

## Notice of Proposed Rule

### DEPARTMENT OF STATE

#### Division of Elections

RULE NO.: RULE TITLE:

1S-5.026 Post-Election Certification Voting System Audit

PURPOSE AND EFFECT: 1) Separating audit procedures into more user-friendly manual and making collateral formatting and other organizational changes; 2) clarifying “independent” system; 3) removes procedures and references to obsolete touchscreen systems; 4) making other clarifications and changes for consistency with recount rule.

SUMMARY: Set forth procedures for utilizing an independent system to audit an election as required by law

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 101.591; 101.5911, F.S.

LAW IMPLEMENTED: 101.591, F.S.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: May 19th, 2022 at 3:00 p.m.

PLACE: Heritage Hall, 500 S Bronough St., Tallahassee, FL, 32399 or call 1 (888)585 9008, conference room number 201-297-717

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Stephanie Buse at stephanie.buse@dos.myflorida.com or (850)245-6513. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: W. David Chappell at david.chappell@dos.myflorida.com or (850)245-6503

THE FULL TEXT OF THE PROPOSED RULE IS:

**Substantial rewording of Rule 1S-5.026 follows. See Florida Administrative Code for present text.**

1S-5.026 Post-Election Certification Voting System Audit.

**(1) Procedures.**

(a) This rule provides the procedures for a county canvassing board or the local board responsible for certifying the election to conduct either a manual audit or an automated independent audit of a voting system after certification of an election including a municipal election. The purpose of the audit is to ensure that the voting system deployed in the election tabulated all votes properly. An audit is not required in any election in which only paper ballots are used and are not tabulated by a voting system or in which a manual recount is conducted.

(b) Form DS-DE XX (effective MM/YYYY), entitled “Procedures Manual for Post-Election Certification Voting System Audit” is hereby incorporated by reference and available at the following link: [insert link]. The form is also available by download from the Division of Elections’ rules webpage at: <http://dos.myflorida.com/elections/>, by requesting a copy by phone (850) 245-6200 or by mail from the Division of Elections, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

**(2) Requirements for Approval and Use of an Automated Independent Audit System.**

This subsection provides the requirements for testing, approval, and use of an automated independent audit system.

(a) Any person desiring to have an automated independent audit system approved for use in Florida shall submit a letter to the Bureau of Voting Systems Certification, Division of Elections, Department of State, requesting approval and providing the automated independent audit system's technical data package.

(b) The automated independent audit system must satisfy the following criteria prior to approval:

1. Be completely independent of any voting system certified in the State of Florida. The automated independent audit system must not contain any proprietary election-related hardware or software in common with a voting system certified for use in the State of Florida. Any commercially available software or hardware shared between the two systems must not be modified. However, information used to decode the ballot artwork and any barcoding schemes on ballots may be shared from the primary vote tabulation system to the automated independent audit system. For purposes of comparison, standardized results files may be brought into the automated independent audit system.

2. Be fast enough to produce final, public audit results no later than 11:59 p.m. (local time where the audit occurs) on the 7th day following certification of the election by the county canvassing board or the local board responsible for certifying the election.

3. Be capable of demonstrating the ballots of record have been accurately adjudicated by the audit system.

4. For all elections, be capable of operating without outside manufacturer or vendor support to use the system. However, if desired, a county may decide to use the audit system's manufacturer or vendor support.

5. Be capable of automatically comparing the audit results to the certified results by precinct and ballot type. If the certified results are not available by precinct and ballot type the automated independent audit system must be able to automatically compare the audit results to the certified results at the lowest level of detail reported.

6. If the independent audit system captures and retains paper ballot images, then the front and back of a single card must be viewable together either as a single file or multiple associated files.

7. Automated independent audit systems submitted for approval must be capable of automatically examining marked ballots to determine a valid vote, no vote, and marginal mark.

8. Be capable of identifying the physical storage location of each specific ballot based on the designated paper ballot image if digital images are used.

9. Reflect that the audit results will be the same using all specific auditing scanners approved for use with the system.

(a) All examination and testing of the automated independent audit system shall occur at the Bureau of Voting Systems Certification in Tallahassee, Florida, unless the Department of State approves the examination and testing to occur at the vendor's desired location. The vendor shall reimburse the Department of State an amount equal to the actual costs incurred by the department in its testing and examination of the automated independent audit system. Reimbursable actual costs of testing include reasonable travel costs such as lodging, car rental, parking, gas, airfare, travel-related fees and meals, not to exceed the per diem rate established per section 112.061(6), F.S.

(b)

1. Notice of approval or non-approval will be provided within 45 days after all examination and testing of the automated independent audit system is completed.

2. After approval of an automated independent audit system, any changes to the approved system must be submitted to the Bureau of Voting Systems Certification for approval. The new system or new version of an existing system may not be used in Florida until approval is granted.

*Rulemaking Authority 20.10(3), 97.012(1), 101.591(2), 101.5911 FS. Law Implemented 101.591 FS. History—New 11-16-08, Amended 3-20-14, \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Maria Matthews, Director, Division of Elections

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Laurel M. Lee, Secretary of State

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 14, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 12, 2021