

Notice of Development of Rulemaking

DEPARTMENT OF STATE
Division of Elections

RULE NO.: RULE TITLE:

1S-2.042: Third-Party Voter Registration Organizations

PURPOSE AND EFFECT: The purpose of rulemaking is to conform the rule to statutory changes in section 7 of Chapter 2021-11, Laws of Florida which amends subsections (1), (3) and (5) of section 97.0575, Florida Statutes. The new law revises provisions governing third-party voter registration organizations' activities including but not limited to extending the deadline to deliver collected voter registration applications to the supervisor of elections in the applicant's county of residence or the Division of Elections within 14 days but not after registration closes for the next ensuing election. The proposed rule revisions also reorganize some subsections of the rule and incorporate Form DS-DE 148, entitled "Supervisor of Elections' (SOE) Transmittal Form - Third-Party Voter Registration Organization (3PVRO) Noncompliance", used to report to the Division of Elections a 3PVRO's noncompliance with law and rule.

SUBJECT AREA TO BE ADDRESSED: Third-party voter registration organization activities

RULEMAKING AUTHORITY: [20.10.97.012\(1\)](#), [97.0575](#)

LAW IMPLEMENTED: [97.0575](#)

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: June 21, 2022, 2:00 p.m.

PLACE: Heritage Hall (Department of State Auditorium), R.A. Gray Building, 500 S. Bronough St., Tallahassee, FL 32399

Call-in also available at: 1 (888) 585-9008; Conference Room # 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 (850) 245-6513 or Stephanie.Buse@dos.myflorida.com. 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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: W. David Chappell, Assistant General Counsel, at david.chappell@dos.myflorida.com or (850) 245-6503.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

1S-2.042 Third-Party Voter Registration Organizations.

(1) Applicability. This rule provides procedures for the regulation of third-party voter registrations and activities.
(2) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division's webpage at: <http://election.myflorida.com/forms/index.shtml>:

(a) Form DS-DE 119 (eff. 09/2012), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-01866>), entitled "Third-Party Voter Registration Organization Registration Form."

(b) Form DS-DE 121 (eff. ~~___/___/06/2011~~), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00430>), entitled "Form for Complaint Against Third-Party Voter Registration Organization."

(c) Form DS-DE 124 (eff. ~~___/___/06/2011~~) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00608>), entitled "Supervisor of Elections' Accounting of Third-Party Voter Registration Organization's Voter Registration Applications."

(d) Form DS-DE 148 (eff. ~~___/___/___~~) ([insert hyperlink](#)), entitled "Supervisor of Elections' Transmittal Form – Third-Party Voter Registration Organization (3PVRO) Noncompliance."

(3) ~~(2)~~ Definitions. In addition to terms in section 97.0575, Fla. Stat., the following words or phrases are defined as follows ~~For purposes of Section 97.0575, F.S., the following definitions apply:~~

(a) “Affiliate organization” of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) “Engaging in any voter registration activities” means that the organization is collecting voter registration applications from Florida voter registration applicants.

(c) “Force majeure” means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(d) “Impossibility of performance” means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(e) “Registration agent” means any individual who is employed by or volunteers for a third-party voter registration organization and who collects voter registration applications from Florida voter registration applicants on behalf of the organization.

(f) “3PVRO” is an abbreviation for third-party voter registration organization.

(4) ~~(3)~~ Registration process.

(a) Registration.

1. Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter “3PVRO” “organization”) shall complete and file Form DS-DE 119 with the Division. The organization must complete and submit the form as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com. If email is unavailable, the form may be faxed or transmit the form to the Division’s facsimile machine at (850)245-6291. An affiliate organization which itself independently engages in separate collection of voter registration applications from Florida voter registration applicants on behalf of the affiliate must file a Form DS-DE 119 even if its affiliated organization has filed a Form DS-DE 119. An organization shall also use Form DS-DE 119 to update or terminate its registration.

2. ~~(b)~~ Upon receipt of an organization’s initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with “3P.” An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

3. Once a 3PVRO is registered, the 3PVRO’s registration shall be entered into the public database on the Division’s webpage for 3PVRO information.

4. ~~(e)~~ A registration agent may be a registration agent for one or more 3PVROs organizations.

5. ~~(d)~~ A 3PVRO An organization shall submit any change in information previously submitted to the Division, including any addition to the list of its employee registration agents, any termination of an employee registration agent, or change in information about an employee registration agent, within 10 days following the change. A change is not considered filed until the Division receives the change. Notice of termination of an employee registration agent shall be provided as set forth in paragraph ~~(6)(b)~~.

6. ~~(e)~~ Except as otherwise provided in paragraph ~~(4)~~ ~~(6)(b)~~, any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the Form DS-DE 119 used to initially register an organization as a 3PVRO.

(b) Termination.

1. If a 3PVRO terminates its registration with the State, the 3PVRO shall submit within 10 days a Form DS-DE 119 reflecting its termination.

2. If a registration agent employed by the 3PVRO is terminated, the 3PVRO shall file notice of the agent’s terminated status by emailing an updated Form DS-DE 119 as an attachment in pdf format to 3PVRO@dos.myflorida.com. If email is unavailable, the form may be faxed to (850) 245-6291. If Form DS-DE 119 is not used as the means of

notification, the notification shall contain the 3PVRO's assigned identification number and the name of the employee registration agent being terminated. Notice of termination hereunder must be provided within 10 days of termination.

3. If a 3PVRO has had no registration activity in 2 years from date of registration, notice shall be sent to the 3PVRO's highest ranked officer and registered agent to re-affirm information as current. The Division will terminate 3PVRO's registration if mail is returned undeliverable. A terminated 3PVRO may submit a new registration application at any time. The prior 3PVRO unique identifier number may not be re-used.

~~(5) (4) Voter Registration Applications Provided to and Used by 3PVROs Third Party Voter Registration Organizations.~~

(a) All blank voter registration applications provided by the Division and each supervisor of elections to a 3PVRO an organization shall include its assigned 3PVRO the third party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

(b) The registration agent or the 3PVRO organization shall print the date that the applicant delivered the application to the registration agent in a conspicuous space on the bottom portion of the reverse side of the voter registration application in a manner that does not obscure any other entry. The date printed by the registration agent or the 3PVRO organization shall be in the following numerical format: MM/DD/YY. For example, if the voter registration applicant completed the application on May 15, 2022 2014, the entry on the bottom portion of the reverse side of the application shall be: 5/15/22 5/15/14.

(c) Each 3PVRO organization shall ensure that its assigned 3PVRO organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(d) A 3PVRO collecting voter registration applications may deliver in person or by mail the completed or incompletd applications to the ~~Delivery of the voter registration application by the organization to the Division or~~ a supervisor of elections in the applicant's county of residence or to the Division. ~~may be accomplished by in person delivery or mail. The application must be delivered within 14 calendar days after the application was completed by the applicant. If the applications are mailed by the 3PVRO or any of its registration agents, the envelope must All applications must be delivered to the Division or a supervisor of elections or be postmarked within 14 10 calendar days after the application was completed of collection by an organization or any of its registration agents. If the 10th day falls on a weekend, holiday, or other day on which the Division or the supervisor of elections office is closed, the voter registration application must be delivered to the Division or the supervisor of elections or be postmarked by the following business day. If, however, a book closing deadline for any given election for federal or state office falls within the 14-day 10-day period described above, all applications collected by an organization or any of its registration agents before book closing must be delivered to the Division or a supervisor of elections in the applicant's county of residence or to the Division on or before the book closing deadline.~~

~~(5) Referral to Attorney General for Enforcement; Waiver of Fines upon Showing of Force Majeure or Impossibility of Performance.~~

~~(a) In exercising the authority to refer violations of the third party voter registration law to the Attorney General for enforcement, the Secretary of State's principal concern is the protection of applicants who have entrusted their voter registration applications to a third party voter registration organization. By law, the organization serves as a fiduciary to those applicants, who have a right to expect that their applications will be timely delivered to an elections official irrespective of party affiliation, race, ethnicity, or gender.~~

~~(b) Any organization claiming that its failure to deliver a voter registration application within the required timeframe was based upon force majeure or impossibility of performance may provide a statement to the Division explaining the circumstances constituting force majeure or impossibility of performance.~~

~~(c) If the information provided to the Division by the organization demonstrates that the failure to timely deliver a voter registration application was the result of force majeure or impossibility of performance, the Secretary of State will not refer the violation to the Attorney General for enforcement.~~

~~(6) Termination of Organization and Employee Registration Agent.~~

~~(a) If an organization terminates its status as a third party voter registration organization, the organization shall submit within 10 days a Form DS-DE 119 reflecting its termination.~~

~~(b) If an employee registration agent's employment with an organization is terminated, the organization shall file notice of the terminated status of the employee registration agent by submitting an updated Form DS-DE 119 or by~~

~~sending a notification of the termination by email to 3PVRO@dos.myflorida.com or by transmitting the notification to the Division's facsimile machine at (850)245-6291 within 10 days of the termination. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the employee registration agent being terminated.~~

~~(c) Forms DS-DE 119 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.~~

~~(6) (7) Processing of Voter Registration Applications from a 3PVRO an Organization by the Division and Supervisors of Elections.~~

~~(a) For each non-blank registration application that a 3PVRO or registration agent an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries.~~

~~(b) For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered in person by the 3PVRO organization. by in-person delivery or, if mailed, the date of delivery shall be the date of a clear postmark, if one is present on the mailing envelope. If a postmark is not present or unclear, the date of delivery to the Division or a supervisor of elections is the actual date of receipt. For a determination of a fine based upon the application being received by mail after the book closing date, a clear postmark on or before the date of book closing will excuse the fine. If a 3PVRO an organization delivers more than one application at the same time, those applications shall bear the same date of delivery regardless of when the applications are processed.~~

~~(c) (b) A 3PVRO An organization's untimely delivery of a voter registration application does not affect the validity of the application. Every application must be processed regardless of the timeliness of its delivery.~~

~~(7) (e) Accounting of applications.~~

~~(a) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on Form DS-DE 124 by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. A supervisor of election is Supervisors of Elections are not required to submit Form DS-DE 124 when they did not provide any voter registration applications to, or receive any from, a 3PVRO an organization on the preceding business day.~~

~~(b) (d) Form DS-DE 124 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.~~

~~(8) Noncompliance.~~

~~(a) Pursuant to authority under subsection (4) of Section 97.0575, F.S., the Secretary of State may refer any violation under Section 97.0575, F.S., including but not limited to untimely submission of collected voter registration applications, to the Attorney General for enforcement.~~

~~(b) A 3PVRO is liable for fines for failure to deliver collected voter registration applications as specified in subsection (3) of Section 97.0575, F.S.~~

~~(c) Supervisors of elections or their staff shall report, using Form DS-DE 148, any untimely filed voter registration application submitted by a 3PVRO, as well as a 3PVRO engaging in any voter registration activities without being registered as a 3PVRO with the Division. Form DS-DE 148 must include an explanatory statement and copies of relevant supporting documents, including a copy of the voter registration application(s), and shall be submitted in pdf format as an attachment to email to 3PVRO@dos.myflorida.com or by express mail or expedited courier service to the Division, whichever is convenient. The form shall be submitted to the Division only after the applications have been processed in accordance with subsection (8).~~

~~(d) For any application containing an organization's identification number – but no other information indicating it was collected by a third-party voter registration organization, such as a cover letter or a “date delivered” mark as required by (5)(b), and that was received after the book closing date or more than 10 days after the date on which the applicant signed it – the explanatory statement should include a description of the supervisor's efforts to contact the applicant to confirm that the application was delivered to the organization.~~

~~(e) Any 3PVRO claiming that its failure to deliver a voter registration application within the required timeframe was based upon force majeure or impossibility of performance may provide a statement to the Division explaining the circumstances constituting force majeure or impossibility of performance.~~

(e) If the information provided to the Division by the organization demonstrates that the failure to deliver a voter registration application within the required timeframe was the result of force majeure or impossibility of performance, the Secretary will not refer the violation to the Attorney General for enforcement.

(9) ~~(8)~~ Complaints Against a 3PVRO.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.

(b) Except as noted below, any other person may report allegations of irregularities or fraud involving an organization's voter registration activities by filing an elections fraud complaint with the Division. See Rule 1S-2.025, F.A.C.

~~(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.myflorida.com, by transmitting the explanatory statement and documentation to the Division's facsimile machine at (850)245-6291, or by having them delivered by express mail or expedited courier service. For any application containing an organization's identification number but no other information indicating it was collected by a third party voter registration organization, such as a cover letter or a "date delivered" mark as required by paragraph (4)(b), and that was received after the book closing date or more than 10 days after the date on which the applicant signed it the explanatory statement should include a description of the supervisor's efforts to contact the applicant to confirm that the application was delivered to the organization.~~

~~(d)~~ The Secretary of State will not refer a violation to the Attorney General unless there is evidence that the applicant entrusted the voter registration application to the third-party voter registration organization.

Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS. Law Implemented 97.012(1), (2), (15), 97.021(37), 97.053, 97.0575 FS. History—New 2-26-09, Amended 5-31-10, 11-2-11, 12-5-12, _____.