

DEPARTMENT OF STATE

Division of Elections

RULE TITLE:

Post-Election Certification Voting System Audit

RULE NO.:

1SER08-4

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY AND WELFARE: Pursuant to section 120.54(4)(b), Florida Statutes, this emergency rule pertains to the public health, safety, and welfare as it involves the interpretation and implementation of the requirements of chapters 97-102 and 105 of the Florida Election Code.

In 2007, the Florida Legislature substantially revised s. 101.591, F.S. (s. 8, chapter 2007-30, Laws of Florida), relating to voting system audits. The current provision provides that the Legislature may direct that an independent audit be conducted of a voting system in any county at any time. Beginning July 1, 2008, the Florida Legislature requires for every election that a voting system audit be conducted in every county after the election results have been certified. The county canvassing board or other local canvassing board must conduct an audit of a voting system by randomly selecting a race and precincts and tallying the votes cast. The board must complete the audit and publicize the results within 7 days. The board is then required to follow-up with a more detailed audit report to submit to the Florida Department of State within 15 days after the audit is completed. Under section 101.5911, Florida Statutes, the Florida Legislature tasked the Department of State with adopting rules to provide the necessary uniform procedures for conducting the manual audit including providing a format for the audit report.

However, in accordance with section 5 of the Voting Rights Act, the Department had to submit the underlying statutory provision as part of chapter law 2007-30, Laws of Florida, to the U.S. Department of Justice for preclearance and a determination that the law did not discriminate on account of race, color, or membership in a language minority group. In the interim, the Florida Department of State enlisted the assistance of the Florida State Association of Supervisors of Elections to identify issues and parameters as groundwork for the proposed rule language.

Shortly after the U.S. Department of Justice precleared the provision October 29, 2007, the Florida Department of State held the first of two proposed rule development workshops on November 29, 2007. Another proposed rule development workshop was held on May 12, 2008. Significant efforts were undertaken to devise a comprehensive rule that would accommodate a number of logistical issues including the different voting systems used in the state, the different methods by which ballots are tabulated by precinct, and the differences inherent in election processes in small, medium and large-size counties. The proposed language reflects input from the various stakeholders who either attended the workshops or submitted written comments. The proposed language is ready to be published for the next phase of rule development, i.e., public hearing on the proposed rule.

There is insufficient time, however, for the proposed rule to be noticed for the public hearing and adopted prior to the effective date of the underlying law on July 1, 2008, under the normal current rule-making process under chapter 120, Florida Statutes. Therefore, an Emergency Rule is necessary to ensure that the procedures are in place for the county canvassing boards and local canvassing boards to conduct voting system audits for upcoming elections after July 1, 2008, in accordance with section 101.591, F.S. Absent this emergency rule, there will be no uniform methodology for conducting voting system audits in the state which will undermine the legislative intent and purpose of ensuring the integrity and fairness of the elections process including ensuring the accuracy of voting systems. Based on the foregoing, the Department of State finds that the adoption of this rule is necessary to prevent an immediate danger to the public health, safety and welfare.

REASONS FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Division of Elections is aware of the rulemaking procedures prescribed by Section 120.54, Florida Statutes. That process requires advance notice to the general public of intended rules and the opportunity to submit comments on the intended rule, prior to the agency's adoption of the rule. The time period for general rulemaking takes at least 60 days and will prevent the timely amendment and adoption of a rule needed to have procedures in place by July 1, 2008. This emergency rule is based on language developed during the ongoing regular rulemaking process for Rule 1S-5.026, entitled similarly and reflects input from the public. This emergency rule will provide the county canvassing board or local canvassing board with the specific procedures necessary to conduct voting system audits and the time to

become sufficiently familiar with the procedures to conduct a voting system audit in any election held after July 1, 2008, including the Primary Election held on August 26, 2008.

SUMMARY OF THE RULE: This emergency rule provides the specific procedures necessary to implement the legislative intent to conduct a voting system audit in every election by randomly selecting a race and precincts to report on the overall accuracy of such system and to identify any problems or discrepancies, if any.

THE FULL TEXT OF THE EMERGENCY RULE IS:

[See separate pages.]

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Maria Matthews, Assistant General Counsel, Division of Elections, Department of State, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399, (850) 245-6536.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 07/01/08