

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

(1) General application.

(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 to be conducted 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.

(b) An automated independent audit may not be conducted unless the independent audit system has been approved for use. The requirements for approval and use are contained in subsection (10).

(2) Definitions. For purposes of this rule only, the term:

(a) "Audit team" means:

1. For the purposes of a manual audit, a two-person team that manually sorts and tallies the votes; and
2. For the purposes of an automated independent audit, one or more persons, all of whom have been trained on the automated independent audit equipment. Specialized training is not required for the scanning team (personnel scanning ballots) or duplicating team (personnel assigned to duplicate ballots).

3. The audit, scanning, and duplicating teams may consist of employees of the supervisor of elections, poll workers or other temporary personnel acting under the direction of the county or other local canvassing board.

(b) "Automated independent audit" means the use of hardware and software technology to independently tally the votes cast across every race that appears on all ballots in at least twenty percent of the precincts chosen at random by the county canvassing board or the local board responsible for certifying the election.

(c) "Ballot image" means an electronic record of the content of a ballot cast by a voter on a touchscreen device and recorded by the voting device.

(d) "Ballot image report" means the printout of ballot images for each machine or precinct generated.

(e) "Ballot type" means an early voting, election day, or absentee ballot. Provisional ballots cast in the election may be grouped with early voting, election day, or absentee ballots, as applicable. Overseas absentee ballots are to be grouped with other absentee ballots.

(f) "Board" means the county canvassing board or other local board responsible for certifying the election. The Board shall be governed by the provisions of Section 102.141, F.S., including the process for substitution in the event a member is unable to serve.

(g) "Counting segment" means that portion of the voting system and automated independent audit system which accurately tabulates and accumulates the choices made on ballots.

(h) "Election definition" means the voting system tabulator's code programmed for a unique election.

(i) "Independent" means that the audit system is not part of the county voting system's tabulation devices or a similar type of tabulation device using the same election definition.

(j) "Indeterminate vote" means a marginal mark on a ballot where the Board believes the voting system may not have tabulated a choice in a race.

(k) "Manual audit" means a public manual tally of the votes cast in one randomly selected race that appears on a ballot in one or more randomly selected precincts.

(l) "Marginal mark" means a mark other than a prescribed mark (*e.g.*, a solid dark filled oval), which the tabulator or automated independent audit system may or may not interpret as the voter's choice in a race.

(m) "Marksense ballot" has the meaning ascribed in Section 97.021(4), F.S.

(n) "No vote" means that there is no mark and the voter did not make a selection for any candidate or issue in a race.

(o) "Paper ballot image" means an electronic record of the content of a marksense ballot cast by a voter and recorded by the voting device.

(p) "Race" means any contest for filling a candidate office or voting on an issue. Races for state or county executive committees of political parties are not included since these races do not constitute races for candidates pursuant to Section 97.021(5), F.S.

(q) "Technical data package" means the automated independent audit system's description, software source code, executables, software configuration management system, description for creating the election definition and its required input and output, and description of the scanning devices.

(r) "Valid vote" means it could be determined from the mark that the voter has made a definite choice in a race.

(3) Forms.

(a) The following forms are used in this rule and are incorporated by reference:

1. Form DS-DE 105-A, entitled "Manual Audit Team Worksheet for Direct Recording Electronic Ballots" (eff. 01/2014), <http://www.flrules.org/Gateway/reference.asp?No=Ref-03892>.
2. Form DS-DE 105-B, entitled "Manual Audit Team Worksheet for Marksense Ballots" (eff. 01/2014), <http://www.flrules.org/Gateway/reference.asp?No=Ref-03893>.
3. Form DS-DE 106, entitled "Precinct Summary for Manual Audit" (eff. 01/2014), <http://www.flrules.org/Gateway/reference.asp?No=Ref-03894>.
4. Form DS-DE 106A, entitled "Discrepancy Report for Automated Independent Audit" (eff. 01/2014), <http://www.flrules.org/Gateway/reference.asp?No=Ref-03895>.
5. Form DS-DE 107 entitled "Voting System Post-Election Audit Report" (eff. 01/2014), <http://www.flrules.org/Gateway/reference.asp?No=Ref-03896>.

(b) Copies of the forms may be obtained from the Division of Elections, Room 316, R. A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, from the Division of Elections website at: <http://election.dos.state.fl.us>, or by contacting the Division of Elections at (850)245-6200.

(4) General Procedures. The following procedures apply to both a manual audit and an automated audit except to the extent that the context states otherwise:

(a) The Board shall publish at least a 24-hour advance notice of the meeting to conduct the audit including the random selection of the race(s) and precincts respective to the applicable audit. The notice may be published before the official certification of the election results but neither the random selection nor the manual audit or the review of the audit result in an automated independent audit can occur until after the certification. The notice shall include the date, time and place for each meeting. Notice shall be posted in four conspicuous places in the county and on the home page of the county supervisor of elections' website. A link to the notice on the county supervisor of election's homepage will satisfy the website notice requirement.

(b) The Board shall conduct, complete and make available the results of the audit of a voting system no later than 11:59 p.m. (local time where the audit occurs) of the 7th day following the official certification of election results.

(c) Initial selection procedure for manual audit:

1. The Board shall determine the method of selection of the race and precincts to be audited. The selection method must be done on a random basis using a uniform distribution in which all races have an equal chance of being selected and all precincts in which the selected race appears have an equal chance of being selected. Examples of such selection may include selection by drawing lots or by using a ten-sided die, or using a computerized random selection. However, the selection method should be done in a way that the public is assured that all races as defined in rule that appear on the ballot are included in the random selection of the race, and that all precincts containing the selected race are included in the random selection of the precinct or precincts.

2. The Board shall first randomly select a race from all available races on the ballots. In the event that multiple municipal or other local elections are held on the same day in a county and the county canvassing board certifies the elections, one manual audit will cover all elections held on that day and all races involved in the elections shall be available for selection of the race and precincts.

3. The Board shall next randomly select at least one percent but no more than two percent of the precincts in which the selected race appears. If two percent or less of the precincts equals less than a whole number, the number of precincts to be audited shall be rounded up to the next whole number.

(d) Initial selection procedure for automated independent audit:

1. The Board shall determine the method of selection of the precincts to be audited in an automated independent audit. The selection method must be done on a random basis using a uniform distribution in which all precincts have an equal chance of being selected in an automated independent audit. Examples of such selection may include selection by drawing lots, by using a ten-sided die, or using a computerized random selection. However, the selection method should be done in a way that the public is assured that all precincts are included in the random selection of precincts in an automated independent audit.

2. In the event that multiple municipal or other local elections are held on the same day in a county and the county canvassing board certifies the elections, one automated independent audit will cover all elections held on that day and all precincts involved in the elections shall be available for selection of precincts.

3. The Board shall randomly select a minimum of 20% of the precincts. If twenty percent of the precincts equals less than a whole number, the number of precincts to be audited shall be rounded up to the next whole number. The audit shall consist of a tally of the votes cast across every race that appears on the ballot in those selected precincts.

(e) A majority of the Board shall be present at all times until the manual audit is completed or when a review of the automated independent audit results occurs, whichever is applicable to the audit method being used.

(f) Prior to the beginning of the audit, the Board shall jointly review the rules and statutes governing audit procedures. The Board shall also review the security procedures for audits established by the Supervisor of Elections pursuant to subsection (9).

(g) The Board shall ensure that, at a minimum, the minutes of the audit proceedings are taken and promptly recorded and maintained.

(h) The Board shall conduct the audit in a room large enough to accommodate the following, at a minimum: the Board, the audit teams and, if present, a maximum of two public observers per audit team. If a large public turnout is anticipated, the Board should take reasonable steps to select the largest available public meeting room to accommodate the turnout. In the event that the room is not large enough to accommodate all public observers present, the Board shall provide for the random selection of the observers from among those present just prior to the beginning of the audit. The observers shall be allowed to witness the audit team's activities but may not interfere with the proceedings. The Board shall announce the procedures that will allow any departing public observers to be replaced by other observers.

(i) The Board may adopt reasonable rules and policies to ensure the public does not interfere or otherwise disturb the audit, including taking whatever reasonable action is necessary to have disruptive and unruly persons removed by law enforcement officials.

(j) The Board shall appoint as many audit teams as necessary to assist in the manual audit or as many audit teams to use the automated audit equipment to meet the deadline in paragraph (4)(b). The Board shall resolve any disagreement on the handling or processing of a ballot by an audit team in accordance with the rule.

(k) No person except the Board, an employee of the Supervisor of Elections or a member of an audit team shall handle any ballot or ballot container, or interfere with or obstruct the orderly audit.

(l) Before beginning an audit, the Board shall verify an accurate ballot count exists between the number of ballots cast in the applicable precincts and races and the number of ballots to be audited. In the event that the ballot count does not match, the Board shall determine if the difference in the ballot count is 1/2 of 1% or more of the total ballots, as indicated by the voting system or the audit, whichever is less. If the difference is 1/2 of 1% or more, the Board must investigate to determine if it can resolve the discrepancy. If the discrepancy cannot be resolved, the Board shall provide an explanation on the "Voting System Post-Election Audit Report" (DS-DE 107).

(m) For an automated independent audit only:

1. Each day before the supervisor of elections scans ballots, the supervisor shall test each scanner to ensure that it is operating correctly. The supervisor shall test the scanner by using procedures prescribed by the vendor of the automated independent audit system.

2. Before scanning ballots in any election, the supervisor of elections shall test the tabulation accuracy of the automated independent audit software by performing a logic and accuracy test on at least one of the scanners that is used for the scanning of the ballots.

3. Before beginning an automated independent audit, the Board shall test the automated independent audit system to ascertain that the system will correctly count the votes cast.

(n) To the extent possible, the certified result from the selected race and precinct(s) to be audited shall not be disclosed in advance to the audit teams.

(5) Specific procedures-direct recording electronic voting machine ballots. The Board and the audit teams shall follow these specific audit procedures for votes cast on direct recording electronic machines:

(a) Manual audit.

1. The Board shall order the printing of one official copy of the ballot image report from each machine to be audited. The ballot image shall constitute the ballot for purposes of the tally in accordance with this subsection.

2. The Board shall differentiate among the voter's various choices in the selected race by assigning a distinct color code to each possible choice in that race.

3. The audit team shall highlight the voter's choice on the ballot image report in accordance with the assigned color code.

4. The audit team shall then tally the results and write the number of votes for each candidate or issue choice on the Manual Audit Team Worksheet for DRE Ballots (DS-DE 105 A).

5. The audit team shall otherwise examine the ballot images and follow the procedures used under subsection (6) for tallying and recording the votes.

(b) Automated independent audit. The Board may use one of the following three processes:

1. The audit team shall duplicate the voter's choices on the ballot image report onto an official marksense ballot. The duplicate ballot shall be clearly labeled "duplicate", and bear a serial number which shall be recorded on the ballot image report; or

2. The audit team may duplicate the ballot using an automatic duplication process that has been approved specifically for auditing purposes by the Division of Elections; or

3. The audit team may compare the number of total ballots as indicated by the voting system minus the marksense ballots counted by the automated independent audit system to determine the number of ballots voted on touchscreen machines. The audit of the total votes in each race is accomplished by comparing the number of votes in each race as indicated by the audit of the marksense ballots and adding the number of votes as indicated by the voting system for touchscreen ballots to ascertain the number of total votes for each race.

(6) Specific procedures-optical scan machine ballots. The Board and the audit teams shall follow these specific audit procedures for votes cast on optical scan machines:

(a) Manual audit. The manual audit shall include a tally of the selected race for the selected precinct or precincts of ballots cast on Election Day and during the Early Voting period, absentee ballots (to include absentee ballots cast by uniformed and overseas citizens), and provisional ballots (if tabulated separately).

1. The tally shall be of the marksense ballots that were tabulated by the voting system.

2. Ballots cast at the precinct on Election Day, early voted ballots, absentee ballots, and provisional ballots (if grouped separately), for each precinct shall be audited separately.

3. In order to distinguish between errors attributable to improper marking of the ballot versus voting system tabulation error, each audit team shall examine a ballot and if in agreement, shall place a ballot into one of the following stacks:

a. Ballots on which the voter overvoted in the selected race.

b. Ballots on which the voter undervoted in the selected race.

c. Ballots on which the voter marked the race in a manner that should have been read by the voting system tabulator.

d. Ballots on which the voter marked the race in a manner that might not have been read by the voting system tabulator.

4. The audit team shall sort the ballots that were stacked in sub-subparagraph (6)(a)3.c. according to the voter's choice in the selected race. For example, all ballots with votes for Candidate A should be placed in one stack and all ballots with votes for Candidate B should be placed in another stack. The audit team members shall then tally the number of ballots in each of those stacks and write the number of votes for each candidate or issue choice in the specific race on the Manual Audit Team Worksheet for Marksense Ballots (DS-DE 105B).

5. For a race with "Vote for no more than (enter # to be elected)," the audit team shall sort out the undervoted ballots with no selection made and record the count. For the remaining undervoted ballots, the team shall sort the ballots into two stacks with the first stack having candidate A and the second stack with the remaining candidates, then record votes for Candidate A on the Manual Audit Team Worksheet for Marksense Ballots (DS-DE 105B). Then, the team shall resort the ballots again with two stacks with the first stack having candidate B and the second stack with the remaining candidates and then record the count for Candidate B on the Manual Audit Team Worksheet for Marksense Ballots (DS-DE 105B). This process shall be repeated for each subsequent candidate until complete.

6. The audit team members shall also tally the number of ballots for each stack as separated in sub-subparagraphs (6)(a)3.a., b., and d. and write the number of ballots in each stack on the Manual Audit Team Worksheet for Marksense Ballots (DS-DE 105B).

7. The manual audit shall continue until completed. A recess may be called but procedures, established by the Supervisor of Elections, for securing the tally results and ballots shall be followed during the recess.

(b) Automated independent audit: The automated independent audit system shall produce and print the tally for all races from the selected precincts of ballots cast by ballot type.

(7) Results Compilation. The Board shall direct the supervisor to print a report from the voting system for the precincts selected which provides the group detail of the number of ballots for Election Day, early voting, absentee, and provisional. The provisional number may be included in one of the other numbers. This report will be what the Board shall compare to the audit teams' manual

count or to the automated independent audit count, as applicable. The report shall not be provided to the audit team members. Additional specific procedures apply to the:

(a) Manual audit. After the audit team has finalized its tally, the Board shall compile the results and compare the manual tally under subsections (5) and (6) to the official vote totals for the selected race in the selected precinct(s).

1. If the manual tally and official vote totals match for that precinct, this result is to be listed on the Precinct Summary for Manual Audit form (DS-DE 106).

2. If the manual tally and official vote totals show a discrepancy in any contest of 1/2 of 1% or more of the votes being audited, the Board must investigate the discrepancy. This shall be done by the Board determining if the difference can be reconciled by reviewing the official totals and the stack set out pursuant to sub-subparagraphs (6)(a)3.a., b., and d. If the re-tally and totals still are 1/2 of 1% or more of the votes being audited, the Board shall direct a different audit team, if available, to conduct a manual re-tally.

(b) Automated independent audit. After the automated independent audit system has finalized its tally, the Board or the automated independent audit system shall compile and compare the results to the official vote totals for all races in the selected precincts.

1. The results of the automated independent audit shall be produced as a summary report listing the number of ballot and vote discrepancies computed at the lowest level of aggregation reported in the election.

2. If the automated tally and official vote totals show a discrepancy in every contest of less than 1/2 of 1%, the Board shall list this result on the "Voting System Post-Election Audit Report" (DS-DE 107).

3. If the automated tally and official totals show a discrepancy in any contest of 1/2 of 1% or more of the votes being audited:

a. The Board must investigate the discrepancy. This shall be done by reviewing the paper ballot images or extracts therefrom to ascertain if any voter marked a race in a manner that likely was not read by the voting system tabulator or by the automated independent audit system.

b. The Board shall prepare a completed "Discrepancy Report for Automated Independent Audit" form (DS-DE 106A) or, alternatively, the automated independent audit system may print a report providing the same information required by the DS-DE 106A.

c. The Board shall explain the discrepancy on the "Post-Election Certification Audit Report" (DS-DE 107).

(8) Audit Report. The Board shall submit to the Department of State a report of the audit results within 15 days after the audit is completed. The Board shall submit its report using the "Voting System Post-Election Audit Report" (DS-DE 107).

(a) For a manual audit, each audit report shall be accompanied by a completed Precinct Summary for Manual Audit form (DS-DE 106) for each precinct audited.

(b) For an automated independent audit, each audit report shall be accompanied by the summary report as specified in subparagraph (7)(b)1. or a completed Discrepancy Report for Automated Independent Audit form (DS-DE 106A), as applicable, for each precinct audited.

(c) The audit report shall also include a description of:

1. The overall accuracy of the audit.

2. Problems or discrepancies encountered, if any.

3. The likely cause of any problems or discrepancies encountered, if any.

4. Recommended corrective or remedial actions for any problems or discrepancies encountered, for purposes of avoiding or mitigating such problems or discrepancies in future elections.

(9) Security procedures. Each county supervisor of elections pursuant to its responsibility under Section 101.015, F.S., shall ensure that its security procedures include procedures relating to ballot accountability, the security of ballots, chain of custody controls, protocols for authorized access and secure storage of ballots that may be used in an audit.

(10) Requirements for 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 the primary voting 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.a. For all elections on or after January 1, 2016, 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.

b. Any automated independent audit system used in any election on or after January 1, 2016, must be capable of providing the county the option to operate the system without manufacturer or vendor support. If a system has been previously approved without this capability, the system must be resubmitted for review and approval for this capability in order to continue its use in an election on or after January 1, 2016. The extent of the approval process would depend upon the modification to the previously approved automated independent audit system. For example, if the modification is merely a separate software module that does not contain a counting segment, only that module would need to be examined and a regression test on its interaction with the previously approved system would be performed.

5. Be capable of comparing the audit results to the certified results by precinct and ballot type for marksense ballots.

6. Be approved with its counting segment.

7. Be capable of examining marked ballots to determine a valid vote, no vote, and marginal mark.

8. Be capable of identifying the location of a physical marksense ballot based on the designated paper ballot image identification.

9. Reflect that the audit results will be the same using all auditing scanners from the same manufacturer.

(c) 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 in the case of meals, not to exceed the per diem rate established per Section 112.061(6), F.S.

(d) For a county to use an approved automated independent audit system, the system must not include any type of tabulation system that the county uses in its elections or a tabulation device that uses the same election definition.

(e)1. Notice of approval or non-approval will be provided within 30 days after all examination and testing of the automated independent audit system is completed.

2. After approval of an automated independent audit system, any recommended changes to the approved software code must be documented and provided to the Bureau of Voting Systems Certification for a desktop review; however, if the counting segment has changed, the Bureau shall conduct a regression test to determine if approval of the automated independent audit system will continue. Also, if any recommended changes are made to the approved scanning hardware or other scanning hardware is added, the Bureau shall conduct a regression test on the automated independent audit system to determine if approval of the system will continue.

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.