

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE
JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR
800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED
09/18/2020 2:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposes a new administrative rule related to risk limiting audits.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/09/2020 2:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Michelle Teed
503-986-1518
elections.sos@oregon.gov

255 Capitol St. NE, Suite 501
Public Service Building
Salem, OR 97310

Filed By:
Michelle Teed
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/21/2020

TIME: 2:00 PM - 3:00 PM

OFFICER: Michelle Teed

ADDRESS: Secretary of State's Office,
Elections Division

255 Capitol St. NE, Suite 501

Public Service Building

Salem, OR 97310

SPECIAL INSTRUCTIONS:

GoToMeeting Information will be provided. If accommodations are needed, please contact the Elections Division at 503-986-1518 or by email at elections.sos@oregon.gov.

NEED FOR THE RULE(S):

Proposing a revised new rule to conform to and implement legislation passed by the 2019 Legislative Assembly. This rule would be adopted instead of/in place of proposed rule OAR 165-007-0295.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Legislation now codified at ORS 254.529, 254.532 and 254.535, available on the Oregon Legislature's website.

FISCAL AND ECONOMIC IMPACT:

The proposed rule may cause minimal fiscal or economic impact to state agencies, local government, or the public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There may be a minimal fiscal impact for the Elections Division for processing applications for certification of risk limiting audit software and answering questions regarding compliance with this rule, or for other unanticipated reasons. County election offices may also have a minimal fiscal impact to obtain approval for risk limiting audit software. There may be a minimal fiscal impact for members of the public who must take action to comply with this rule. (2)(a) The Elections Division estimates that there are less than 10 entities which develop and implement risk limiting audit software and procedures. It is not otherwise expected that this rule will impact small businesses, although there may be a minimal indirect fiscal impact for an unknown, but likely a small number of businesses involved in activities that would require them to comply with this rule. (2)(b) Factors affecting the cost of testing include if the machine or system has been previously been tested or certified. An estimated cost a provider may incur for reporting, recordkeeping and other administrative requirements necessary to have the risk limiting audit system tested is dependent upon the specific circumstances and cannot readily be estimated. Otherwise, the cost that any business, required to comply with this rule, may be responsible for is dependent upon specific circumstances and cannot readily be determined. (2)(c) An estimated cost a provider may incur for equipment, supplies, labor and other administration necessary to have the risk limiting audit system tested is dependent upon the specific circumstances and cannot readily be estimated. The cost that any business, required to comply with this rule, may be responsible for is dependent upon specific circumstances and cannot readily be determined.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

They were not, as this rule does not directly affect small businesses. Additionally, the Elections Division determined that these requirements are the minimum standards necessary to maintain the uniformity and integrity of election results.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The fiscal impact due to the proposed rule is expected to be minimal at most.

ADOPT: 165-007-0450

RULE SUMMARY: Implements ORS 254.529, 254.532 and 254.535, providing guidance about risk limiting audits.

CHANGES TO RULE:

165-007-0450

Risk Limiting Audit Provisions

(1) The purpose of this rule is to establish a procedure for the conduct of risk limiting audits of selected ballots following an election conducted in this state pursuant to ORS 254.532. The Secretary of State, as the chief elections officer for the State of Oregon, has the responsibility to adopt rules that the Secretary considers necessary to facilitate and assist in achieving a maximum degree of correctness, impartiality and efficiency in administration of the election laws. This rule is intended to carry out that responsibility by providing an additional mechanism for selective recounts to confirm the accuracy of the automated vote tally systems used to count ballots.

(2) The "risk limit" required by ORS 254.532(6)(a) is 0.10%.

(3) In order to ensure that no change or error in technology used to assist with the audit could result in an undetected change in the results of the audit, a county elections official may only choose to utilize risk limiting audit software that has been examined by a federally accredited voting systems testing laboratory (VSTL), and

certified by the Secretary of State. The Secretary will review the laboratory report and procedures for the specific risk limiting audit software and then issue a decision on whether to certify the risk limiting audit software not later than 30 days after an application is received in the Elections Division from a county.

(4) Upon completion of the audit, and not later than the date the county certifies the results of the election to the Secretary of State, the county elections official shall publicly report on the results of the audit.

(5) The procedures described in this rule may be implemented only if a county is not required to conduct either an automatic recount under ORS 258.280 and ORS 258.290 or a partial or full demand recount under ORS 258.161. In the event that a recount under these statutes is commenced, any risk limiting audit is automatically terminated.

Statutory/Other Authority: ORS 246.150, ORS 254.465, ORS 254.532

Statutes/Other Implemented: ORS 254.532, ORS 254.529, ORS 254.535