

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165  
SECRETARY OF STATE  
ELECTIONS DIVISION

**FILED**

08/28/2020 8:57 AM  
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: 10/20/2020 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: Candy Mifsud  
503-986-1518  
elections.sos@oregon.gov

255 Capitol St NE 501  
Salem, OR 97310

Filed By:  
Candy Mifsud  
Rules Coordinator

HEARING(S)

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

DATE: 09/21/2020

TIME: 3:30 PM - 4:00 PM

OFFICER: Michelle Teed

ADDRESS: Secretary of State /  
Elections Division

255 Capitol St NE Ste 501

Salem, OR 97310

SPECIAL INSTRUCTIONS:

If accommodations are needed please  
contact the elections division at 503-  
986-1518 or  
elections.sos@oregon.gov

NEED FOR THE RULE(S):

Proposing a new rule to conform to and implement legislation passed by the 2019 Legislative Assembly.

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).

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) Because individuals, not businesses, are typically assessed penalties, it is not expected that these amendments will impact small businesses. However, 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) 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) The cost that any business, required to comply with these rules, may be responsible for is dependent upon specific circumstances and cannot readily be determined.

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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.

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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.

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ADOPT: 165-007-0295

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

CHANGES TO RULE:

165-007-0295

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 99.9%.

(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 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 to use the.

(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 258.290 or a partial or full demand recount under 258.161. In the event that a recount under these statutes is commenced, any risk limiting audit is automatically terminated.

(6) Audits conducted under this rule shall not be used to alter the results obtained by the official tally of ballots, unless the procedures in ORS 258.161 are followed to make a demand for recount, either by a qualified person or the county elections official.

(7) For purposes of this rule, a "risk limiting audit" constitutes a hand recount of selected offices or measures by hand to ensure that the risk does not exceed the risk limit. It is not intended to provide a basis for changing the outcome of the results determined by the vote tally equipment, or to substitute for the procedures in state law for the conduct of automatic or demand recounts. Persons interested in challenging the vote tallies in particular races or measures must utilize the procedures in ORS 258.161 and 258.171 in order to have the results of the recount become the official returns.

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

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