

The State of Texas



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Rolando B. Pablos
Secretary of State

December 6, 2017

Brooke Thernes
State Certification Manager
Election Systems and Software
11208 John Galt Blvd.
Omaha, Nebraska 68137

Dear Ms. Thernes:

The Office of the Secretary State (the "Office") received a petition (as amended) for the adoption of rules under Section 2001.021 of the Texas Government Code and 1 T.A.C. §71.16, requesting modifications to 1 T.A.C. §§ 81.52 and 81.62. In accordance with Section 2001.021(c)(2) of the Texas Government Code and 1 T.A.C. §71.16, the Office proposed changes to 1 T.A.C. §§ 81.52 and 81.62, in the July 28, 2017 issue of the Texas Register. The proposed changes, among other things, eliminated the requirement that a continuous feed real-time audit log printer remain attached to (1) a precinct ballot counter used during early voting by personal appearance and, (2) central accumulators.

Due to the adoption of changes to 1 T.A.C. § 81.52, effective September 28, 2017, the requirement for a continuous feed audit log printer for precinct ballot counters used during early voting by personal appearance in 1 T.A.C. § 81.52 was removed from the Texas Administrative Code. Due to the adoption of changes to 1 T.A.C. § 81.62, effective November 7, 2017, the requirement for this continuous feed audit log printer for central accumulators in 1 T.A.C. § 81.62 was also removed from the Texas Administrative Code

The Office's December 15, 2016 Report of Review of ES&S EVS 5.2.1.0, ExpressVote, and AutoMARK Voting Systems (the "EVS 5.2.1.0 Report") contained the following condition:

[p]recinct devices used during early voting by personal appearance, and central accumulators, pursuant to 1 TAC §§ 81.52(h) and 81.62(a), are required to attach continuous feed audit log printers. Due to 1 T.A.C. §§ 81.52(h) and 81.62(a), end-users shall not use the DS200 as (1) a precinct device during early voting by personal appearance or (2) a central accumulator.

Because precinct ballot counters certified as part of the EVS 5.2.1.0 voting system were not certified with a continuous feed audit log printer, there is no need for any modification to each voting system as to the use of precinct ballot counters to accommodate the changes made by the modifications to 1 T.A.C. §§ 81.52 and 81.62. Instead, as a result of these administrative code changes, the EVS 5.2.1.0 voting system is affected in the follow manner:

1. The condition related to 1 T.A.C. § 81.52 in the EVS 5.2.1.0 Report was moot, effective September 28, 2017.
2. The condition related to 1 T.A.C § 81.62 in the EVS 5.2.1.0 Report, was moot, effective November 7, 2017.

Please note, however, that all previous certifications for systems that included printers and/or attendant software, and that contained requirements for a continuous feed audit log printer in accordance with 1 T.A.C § 81.62 (including central accumulators certified as part of the above systems with printers), remain in place, as those printers and/or attendant software were certified as part of the system. If ES&S would like the ability to use previously certified equipment and software without the attached printer with which the system was certified, ES&S must follow the process for an administrative certification of a minor modification in accordance with 1 T.A.C § 81.65.

If you have any questions, please contact our office toll-free at 1-800-252-VOTE (8683).

Sincerely,



Keith Ingram
Director of Elections

c: Tom Watson
Stephen Berger
Brandon Hurley
Jim Sneeringer
Amanda Crawford
Christina Worrell Adkins

KI:CA