

The State of Texas



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Rolando B. Pablos
Secretary of State

October 26, 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 will also be removed from the Texas Administrative Code

The Office's July 28, 2017 Report of Review of ES&S EVS 5.2.2.0, ExpressVote, and AutoMARK (the "EVS 5.2.2.0 Report"), and the Office's July 28, 2017 Report of Review of ES&S EVS 5.4.0.0, ExpressVote, and AutoMARK (the "EVS 5.4.0.0 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 the current iteration of 1T.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.

In addition, the Office's July 26, 2017 Report of Review of ES&S Unity 3.4.1.4 (the "Unity 3.4.1.4 Report") provided that "[c]onditions incorporated into previous certifications of Unity 3.0.1.1 and Unity 3.4.1.0 are hereby incorporated by reference, to the extent applicable." The Office's September 2, 2014 Report of Review of ES&S Unity 3.4.1.0 and DS200 Precinct Tabulator and DS850 Central Count Tabulator (the "Unity 3.4.1.0 Report") also contained the following condition:

[t]he M100 and DS200 are certified for use only as precinct ballot counter on election day. The M100 and DS200 may not be used as precinct ballot counters during the early voting period because the system does not have the ability to comply with 1 T.A.C. 81.52(h), which requires a precinct ballot counter to be attached to a continuous feed audit log printer.

Because precinct ballot counters certified as part of EVS 5.2.2.0, EVS 5.4.0.0, Unity 3.4.1.4, and Unity 3.4.1.0 voting systems 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 5.2.2.0, EVS 5.4.0.0, Unity 3.4.1.4, and Unity 3.4.1.0 Reports, are affected in the follow manner:

1. The conditions related to 1 T.A.C. § 81.52 in, or incorporated into, the EVS 5.2.2.0, EVS 5.4.0.0, Unity 3.4.1.4, and Unity 3.4.1.0 Reports, were moot, effective September 28, 2017.
2. The condition related to 1 T.A.C § 81.62 in the EVS 5.2.2.0 and EVS 5.4.0.0 Reports, will be 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