

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments are necessitated by the passage of 2014 Iowa Acts, House File 2366. The bill was signed into law by Governor Branstad on April 25, 2014, necessitating amendments to a number of existing administrative rules implementing sections of the Iowa Code that have been amended by this legislation. The statutory changes which necessitate these amendments include allowing county commissioners to use one envelope as a combined absentee ballot return envelope and affidavit envelope, eliminating the requirement for a voter to list a party affiliation on a primary election absentee ballot affidavit envelope, and changing the deadline by which a county commissioner must receive an absentee ballot to review the envelope marked with the affidavit for completeness.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on May 28, 2014, as **ARC 1473C**. No public comments or requests for public hearing were received. The following changes have been made to the amendments published under Notice of Intended Action:

1. Proposed Item 9 has been omitted from the amendments published herein because the substance of the amendment is already included in Item 8. Proposed Items 10 to 15 have been renumbered as Items 9 to 14 herein.

2. In subrule 21.404(2) in renumbered Item 14, the filing deadline for candidates for city office has been changed from the seventieth day to the sixty-ninth day before the election to meet the requirements of Iowa Code section 39.2(3)“b.”

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 53 as amended by 2014 Iowa Acts, House File 2366.

These amendments will become effective August 27, 2014.

The following amendments are adopted.

ITEM 1. Amend subparagraph **21.320(3)“b”(3)** as follows:

(3) The ~~affidavit~~ envelope affidavit form, which can be printed by the voter on an envelope and used for the voter’s declaration of eligibility and voter registration application, if necessary.

ITEM 2. Amend rule 721—21.352(53) as follows:

721—21.352(53) Review of returned ~~affidavit~~ envelopes marked with affidavits.

21.352(1) Personnel. The commissioner may assign staff members to complete the review of returned ~~affidavit~~ envelopes marked with affidavits. Only persons who have been trained for this responsibility shall be authorized to review ~~affidavit~~ envelopes marked with affidavits.

21.352(2) ~~Affidavit envelopes reviewed~~ *Review of envelopes marked with affidavits*. The ~~affidavit~~ envelopes marked with affidavits of all absentee ballots returned to the commissioner’s office shall be reviewed, including those ~~of ballots~~ returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds that any absentee affidavits returned from any health care facility are incomplete or defective, the commissioner shall send the bipartisan delivery team back to assist voters as needed with completing affidavits or to deliver any replacement ballots.

21.352(3) Instructions. Each reviewer shall receive instructions in substantially the form prepared by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

a. Leaving unsecured ballots unattended.

- b. Altering any information on any affidavit.
- c. Adding any information to any affidavit, except as specifically required to comply with the requirements of the law.
- d. Sealing any affidavit envelope marked with the affidavit that is found open.
- e. Discarding any return carrier envelopes, ballots, or affidavit envelopes marked with affidavits that are returned by voters.

ITEM 3. Amend rule 721—21.353(53) as follows:

721—21.353(53) Opening the return carrier envelopes that are not marked with voters' affidavits. ~~The~~ If the commissioner is using return carrier envelopes that are not marked with voters' affidavits, the commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the return carrier envelope. The return carrier envelopes opened and emptied pursuant to this rule shall be stored for 22 months for federal elections and 6 months for local elections in a manner that will facilitate retrieval, if necessary.

ITEM 4. Amend rule 721—21.354(53) as follows:

721—21.354(53) Review process. ~~A reviewer shall remove the contents from only one return carrier envelope at a time.~~

~~**21.354(1) Return carrier envelopes preserved.** The return carrier envelopes shall be stored in a manner that will facilitate their retrieval, if necessary. They shall be stored for 22 months for federal elections and 6 months for local elections.~~

~~**21.354(2) 21.354(1) Examination of affidavit envelope marked with affidavit.** The reviewer shall make sure that:~~

- a. The affidavit envelope marked with the affidavit is sealed, apparently with the ballot inside.
- b. The affidavit envelope marked with the affidavit has not been opened and resealed.
- c. The affidavit includes ~~all of the following:~~ the voter's signature.
 - ~~(1) A signature.~~
 - ~~(2) For primary elections only, political party affiliation.~~

~~**21.354(3) 21.354(2) No defects or incomplete information.** If the reviewer finds that the ~~required~~ information on the affidavit is complete signed and that there are no defects that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope marked with the affidavit into a group of envelopes to be retained in the secure storage area with ~~others~~ other ballots that require no further attention until they are delivered to the absentee and special voters precinct board.~~

~~**21.354(4) 21.354(3) Defective and incomplete affidavits.** The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope marked with the affidavit:~~

~~a. The commissioner shall contact the voter immediately if the affidavit envelope marked with the affidavit is defective. An affidavit envelope marked with the affidavit is defective if:~~

- ~~(1) The absentee ballot is not enclosed in the affidavit envelope marked with the affidavit.~~
- ~~(2) The affidavit envelope marked with the affidavit is not sealed.~~
- ~~(3) The affidavit envelope marked with the affidavit has been opened and resealed.~~
- ~~(4) The voter submits a change of address in a new precinct after returning a voted absentee ballot.~~

~~b. The commissioner shall contact the voter within 24 hours if the affidavit is ~~incomplete~~ not signed. An ~~incomplete~~ affidavit lacks:~~

- ~~(1) The signature of the voter.~~
- ~~(2) For primary elections only, political party affiliation.~~

~~c. If an affidavit envelope marked with the affidavit has flaws that are included in both paragraphs "a" and "b," the commissioner shall follow the process in paragraph "a."~~

~~21.354(5)~~ **21.354(4)** *Defective and incomplete affidavits stored separately.* The commissioner shall store the defective and incomplete affidavit envelopes marked with affidavits separately from other returned absentee ballot affidavit envelopes marked with affidavits.

a. Incomplete affidavit envelopes marked with affidavits requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective affidavit envelopes marked with affidavits must be attached to the replacement ballot (if any) for review by the absentee and special voters precinct board.

ITEM 5. Amend rule 721—21.355(53), introductory paragraph, as follows:

721—21.355(53) Notice to voter. When the commissioner finds an incomplete absentee ballot affidavit or finds a defective affidavit envelope marked with the affidavit, the commissioner shall notify the voter in writing and, if possible, by telephone and by e-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

ITEM 6. Amend subrules 21.355(1) and 21.355(2) as follows:

21.355(1) Notice to voter—*incomplete ballot affidavit.* Within 24 hours after receipt of an absentee ballot with an incomplete affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

a. ~~Explanation of missing required information (lack of signature or, for primary elections only, political party affiliation) that the voter's absentee ballot affidavit is missing the voter's signature.~~

b. The voter's options for ~~correcting~~ completing the affidavit as follows:

(1) Completing the affidavit at the commissioner's office by 5 p.m. the day before the election;

(2) Requesting a replacement ballot pursuant to Iowa Code section 53.18; or

(3) Voting at the polls on election day.

c. Address of commissioner's office, business hours and contact information.

21.355(2) Notice to voter—*defective ballot affidavit.* Immediately after determining that an absentee ballot affidavit envelope marked with the affidavit is defective, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

a. to d. No change.

ITEM 7. Amend the implementation sentence at the end of rule **721—21.355(53)** as follows:

Rules 721—21.351(53) through 721—21.355(53) are intended to implement ~~2009~~ Iowa Code Supplement section sections 53.18 and 53.25 as amended by ~~2010~~ 2014 Iowa Acts, ~~Senate file 2196~~ House File 2366, and ~~section 53.25~~ division II.

ITEM 8. Amend rule 721—21.359(53) as follows:

721—21.359(53) Processing absentee ballots before election day. The commissioner may only direct the absentee and special voters precinct board to open affidavit envelopes marked with affidavits on the Monday before election day under the following circumstances:

For any election, only if the commissioner has provided secrecy envelopes (or folders) pursuant to subrule 21.359(1) and the commissioner determines removing secrecy envelopes from affidavit envelopes marked with affidavits is necessary due to the quantity of voted absentee ballots received as set forth in Iowa Code section 53.23, subsection 3, paragraph "a."

For general elections, if the commissioner convenes the absentee and special voters precinct board pursuant to Iowa Code section 53.23, subsection 3, paragraph "c," to begin tabulation of absentee ballots.

21.359(1) No change.

21.359(2) When the absentee and special voters precinct board convenes to begin processing absentee ballots, the board shall first review voters' affidavits to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected for the reasons set forth in ~~2009~~ Iowa Code Supplement section 53.25. ~~Affidavit envelopes~~ Envelopes marked

with affidavits containing ballots that are rejected shall be stored in the manner prescribed by Iowa Code section 53.26. The applications submitted for rejected ballots shall be stored in a secure location for the time period required by Iowa Code section 50.19.

21.359(3) ~~The affidavit envelopes~~ Envelopes marked with affidavits containing ballots that have been accepted for counting by the absentee and special voters precinct board shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed.

21.359(4) No change.

21.359(5) The following security procedures shall be followed:

a. No change.

b. No ballots shall be counted or examined before election day except as provided in Iowa Code section 53.23, subsection 3, paragraph “*c*,” ~~as amended by 2009 Iowa Acts, House File 670, section 1.~~

c. When secrecy envelopes are removed from affidavit envelopes marked with affidavits on the day before an election and not tabulated as permitted by Iowa Code section 53.23, subsection 3, paragraph “*c*,” ~~as amended by 2009 Iowa Acts, House File 670, section 1,~~ the number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be verified before any ballots are removed from the secrecy envelopes on election day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement Iowa Code section 53.23 as amended by ~~2009~~ 2014 Iowa Acts, House File ~~670~~ 2366, division II.

ITEM 9. Amend rule 721—21.361(53), introductory paragraph, as follows:

721—21.361(53) Rejection of absentee ballot. The absentee and special voters precinct board shall reject absentee ballots without opening the affidavit envelope marked with the affidavit if any of the conditions cited in Iowa Code section 53.25 ~~as amended by 2009 Iowa Acts, House File 475,~~ exist.

ITEM 10. Amend subrules 21.361(3) to 21.361(5) as follows:

21.361(3) An absentee ballot shall be rejected if the affidavit envelope marked with the affidavit is open.

21.361(4) An absentee ballot shall be rejected if the affidavit envelope marked with the affidavit has been opened and resealed.

21.361(5) An absentee ballot shall be rejected if the affidavit envelope marked with the affidavit contains more than one ballot of any kind.

ITEM 11. Rescind subrule **21.361(7)**.

ITEM 12. Amend rule **721—21.361(53)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections section~~ section 49.9 ~~and 53.14~~ and section 53.25 as amended by ~~2009~~ 2014 Iowa Acts, House File ~~475~~ 2366, division II.

ITEM 13. Amend subrule 21.403(2) as follows:

21.403(2) Election calendar. The election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the ~~city clerk~~ county commissioner shall be not later than ~~12 noon~~ 5 p.m. on the fifty-third day before the election.

~~*b.* The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the fifty-third day before the election.~~

~~*c.*~~ *b.* A candidate who has filed nomination papers for the special election may withdraw by filing a written notice of withdrawal in the office of the county commissioner not later than 5 p.m. on the fiftieth day before the election.

~~*c.*~~ *c.* A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate’s nomination papers or to the qualifications of the candidate for this special election with the county commissioner not later than 12 noon on the fiftieth day before the election.

~~*d.*~~ *d.* The hearing on the objection must be held within 24 hours of receipt of the objection.

ITEM 14. Amend subrules 21.404(2) and 21.404(3) as follows:

21.404(2) *Special elections to fill vacancies held in conjunction with the general election.* If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of the general election. Candidates shall file nomination papers with the ~~city clerk~~ county commissioner not later than 5 p.m. on the ~~seventieth~~ sixty-ninth day before the general election. ~~The city clerk shall deliver the nomination papers accepted by the clerk not later than 5 p.m. on the sixty-ninth day before the general election.~~ Objection and withdrawal deadlines shall be 64 days before the general election, ~~the same as the deadlines for candidates who file their nomination papers with the commissioner.~~ Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

21.404(3) *Election calendar.* If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

~~a.~~ a. The deadline for candidates to file nomination papers with the ~~city clerk~~ county commissioner shall be not later than ~~12 noon~~ 5 p.m. on the twenty-fifth day before the election.

~~b.~~ b. ~~The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the twenty-fifth day before the election.~~

~~c.~~ c. A candidate who has filed nomination papers for the special election may withdraw by filing a written notice of withdrawal in the office of the county commissioner not later than 5 p.m. on the twenty-second day before the election.

~~d.~~ d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election with the county commissioner not later than 12 noon on the twenty-second day before the election.

~~e.~~ e. The hearing on the objection must be held within 24 hours of receipt of the objection.

[Filed 7/2/14, effective 8/27/14]

[Published 7/23/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/23/14.