SECRETARY OF STATE[721]

Notice of Intended Action

Proposing rule making related to postelection audit and providing an opportunity for public comment

The Secretary of State hereby proposes to amend Chapter 26, "Counting Votes," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.4 and 50.51 [2017 Iowa Acts, House File 516, section 43].

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 50.51.

Purpose and Summary

The Secretary of State has determined that as a result of the enactment of 2017 Iowa Acts, House File 516, these proposed amendments are necessary to keep administrative rules in compliance with the Iowa Code. House File 516 makes significant changes to elections in the state of Iowa, creating a need to update Chapter 26, which pertains to elections.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Secretary of State for a waiver of the discretionary provisions, if any, pursuant to 721—Chapter 10.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Secretary of State no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Molly Hammer
Office of the Secretary of State
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: molly.hammer@sos.iowa.gov

The following rule-making actions are proposed:

ITEM 1.   Reserve rules **721—26.108** to **721—26.199**.

ITEM 2.   Adopt the following **new** 721—Part VI:

PART VI—POSTELECTION AUDIT

ITEM 3.   Adopt the following **new** rule 721—26.200(50):

721—26.200(50) Precinct selection.
26.200(1) One precinct per county shall be selected by lot.
26.200(2) For the purpose of this rule, combined precincts established pursuant to Iowa Code section 49.11 shall be audited as a single precinct if selected by lot; therefore, if one precinct out of the combined precinct is selected, all of the precincts that make up the combined precinct shall be audited.
26.200(3) Absentee and special voters precincts, established pursuant to Iowa Code section 53.20, shall be included in the list of precincts to be selected for each county to be selected by lot.

ITEM 4.   Adopt the following **new** rule 721—26.201(50):

721—26.201(50) State commissioner duties.
26.201(1) The state commissioner of elections shall select the precincts to be included in the postelection audit by lot the day following the election.
26.201(2) The state commissioner shall notify the state chairpersons of the two political parties whose candidates received the highest number of votes statewide for either the office of President of the United States or governor in the preceding general election, of the time and location of the selection at least 24 hours prior to the selection. A public notice shall be posted on the state commissioner's website.
26.201(3) The state commissioner shall notify the commissioners of all precincts selected for an audit following a statewide election.
26.201(4) In advance of any other election, the state commissioner may order an audit of the election in the manner provided for in Iowa Code section 50.51. In the event an audit is ordered, the state commissioner of elections shall notify all commissioners holding an election no less than 24 hours before the election in question that an audit has been ordered. An audit ordered under Iowa Code section 50.51 and rule 721—26.200(50) shall be conducted using the same time frame and procedure as a general election audit.

ITEM 5.   Adopt the following **new** rule 721—26.202(50):

721—26.202(50) Postelection audit time frame.
26.202(1) A postelection audit shall be conducted no later than 20 days following the election.

26.202(2) At least 24 hours prior to the audit start time, commissioners shall post the times and locations of each audit.

26.202(3) The commissioner shall notify the county chairperson of the two political parties whose candidates received the highest number of votes statewide for either the office of president of the United States or governor in the preceding general election, in writing, of the date, time, and place that the audit will be conducted, so that the chairperson may be present or have a representative present.

ITEM 6. Adopt the following **new** rule 721—26.203(50):

721—26.203(50) Audit board and audit procedure.

26.203(1) The commissioner shall appoint three or five audit board members to conduct the audit. Not more than a simple majority of the members of the audit board in any precinct shall be members of the same political party or organization if one or more registered voters of another party or organization are qualified and willing to serve on the audit board.

26.203(2) The commissioner or the commissioner's designee shall supervise the handling of ballots to ensure that the ballots are protected from alteration or damage.

26.203(3) If a polling place precinct is selected for an audit, the hand count shall be conducted by the audit board pursuant to Iowa Code section 50.51. For postelection audit purposes, the audit board shall count votes according to voting system programming standards, outlined in 721—subrule 22.41(1).

26.203(4) If an absentee and special voters precinct is selected for an audit, the audit board shall tabulate at least 50 percent of ballots, but no more than 2,000 ballots, within the precinct. The ballots shall first be tabulated using the same automatic tabulating equipment and program used for tabulating the votes on election day, unless the program is believed or known to be flawed. The same ballots shall then be hand-counted by the audit board pursuant to Iowa Code section 50.51. For postelection audit purposes, the audit board shall count votes according to voting system programming standards, outlined in 721—subrule 22.41(1).

26.203(5) The audit board shall reseal the ballots after they have been audited and before adjournment of the audit board. The signatures of the audit board members shall be placed across the seal or opening of the container so that it cannot be opened without breaking the seal, following the same procedure described in Iowa Code section 50.12. Audited ballots shall be stored separately from nonaudited ballots and clearly marked "AUDITED," along with the date the audit was conducted. If an absentee and special voters precinct is selected for an audit, the ballots that were audited shall be sealed and kept separately from any ballots that were not selected for audit.

26.203(6) Upon completion of the audit, the commissioner shall report the findings on a form prescribed by the state commissioner. One copy of the audit report shall be transmitted to the state commissioner and one copy shall be filed with the county board of supervisors not later than 20 days following the election.

26.203(7) The commissioner may order an administrative recount pursuant to Iowa Code section 50.50 and rule 721—21.25(50) if the commissioner determines the results of an audit require an administrative recount.

ITEM 7. Amend **721—Chapter 26**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 49.98 ~~as amended by 2004 Iowa Acts, Senate File 2269, section 21~~ and 50.51.