

**SECRETARY OF STATE[721]**

**Adopted and Filed**

**Rule making related to post-election audit**

The Secretary of State hereby amends Chapter 26, "Counting Votes," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted 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 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.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 1, 2018, as **ARC 3915C**. The Secretary of State received comments and questions following the publication of the Notice of Intended Action. The comments can be summarized into four categories:

1. Change the deadline for completion of post-election audit so that it aligns with the deadline to request an administrative recount.
2. Better define who is eligible to serve on the audit board.
3. Provide auditors with more flexibility on how many members an audit board may have.
4. Provide auditors with more flexibility on how many ballots to count in an absentee and special voters precinct.

One commenter requested that the Secretary of State select 5 percent of precincts statewide as an alternative to selecting one precinct per county.

In response to the comments received, the Secretary of State has made the following changes to the rules on post-election audits:

1. Audits must be completed not later than 12:00 noon three days after the county canvass of votes. This deadline gives auditors the afternoon to file a request with their board of supervisors if the auditors believe an administrative recount is necessary.
2. Additional language was added regarding who can serve on the audit board. Auditors now have the flexibility to expand boards past five members if they deem it necessary.
3. Added language to clarify that all ballots cast at a precinct polling place must be audited.
4. Added language regarding the supervision of the handling of ballots to protect ballots from alteration, damage, or loss.
5. Added language to clarify that an auditor may expand the number of ballots audited past 2,000 in an absentee and special voters precinct.

*Adoption of Rule Making*

This rule making was adopted by the Secretary of State on September 5, 2018.

*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.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on October 31, 2018.

The following rule-making actions are adopted:

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

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

PART VI—POST-ELECTION 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 by lot the precincts to be included in the post-election audit 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) Post-election audit time frame.**

**26.202(1)** A post-election audit shall be completed not later than 12:00 noon three days after the county canvass of votes.

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

**26.202(3)** A representative selected by each of the two political parties whose candidates received the highest number of votes statewide in the preceding general election shall be invited to observe the hand count. The commissioner shall notify the county chairperson of each political party a minimum of two days before the hand count of the time and place of the hand count.

**26.202(4)** If an invited representative does not appear at the hand count, the commissioner shall notify the state commissioner.

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 the members of the audit board not less than 24 hours prior to the time of the scheduled audit.

*a.* Audit board members shall be registered voters of the county.

*b.* The audit board shall ordinarily consist of three or five members. At the commissioner's discretion, additional members may be appointed. A sufficient number of members shall be appointed to ensure the audit is completed not later than 12:00 noon three days after the county canvass of votes.

*c.* Not more than a simple majority of the members of the audit board shall be members of the same political party or organization if one or more registered voters of another political party or organization are qualified and willing to serve on the audit board.

*d.* For all elections in which a partisan office is on the ballot, the audit board shall include members of the two political parties whose candidates for President of the United States or for governor, as the case may be, received the largest and next largest number of votes in the county at the last general election. Election boards may also include persons who are not members of either of those political parties. However, persons who are not members of either of those political parties shall not comprise more than one-third of the membership of an 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, damage, or loss.

**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. The audit board shall hand count all ballots cast within the polling place precinct. For post-election 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 audit at least 50 percent of ballots, but no more than 2,000 ballots, cast within the precinct. At the commissioner's discretion, more than 2,000 ballots may be audited. 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 post-election 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.

[Filed 9/5/18, effective 10/31/18]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/26/18.