SECRETARY OF STATE[721]

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DIVISION I
ADMINISTRATION

CHAPTER 1
DESCRIPTION OF ORGANIZATION

[Prior to 7/13/88, see Secretary of State[750], Ch 6]

721—1.1(17A) Central organization.

1.1(1) The secretary of state is the head of the agency. The secretary is an elected official elected for a term of four years. The secretary's office is on the main floor of the Statehouse, Des Moines, Iowa 50319, telephone number (515)281-5864. The secretary is assisted by the following appointed officials who are responsible to the secretary.

1.1(2) The deputy secretary of state is appointed by the secretary and performs such duties as the secretary may prescribe including general supervisor of all matters and personnel pertaining to the office. During the absence or disability of the secretary, or as directed by the secretary, the deputy possesses most of the powers and performs the duties of the secretary.

1.1(3) Two administrative assistants are appointed by the secretary and perform such duties as presented by the secretary or the deputy. One of the administration assistants acts as the corporation director and the other acts as the uniform commercial code director.

1.1(4) The secretary of state's office is an administrative and ministerial office performing the following duties:

721—1.2(17A) Corporations.

1.2(1) All matters involving corporations, profit and nonprofit organized in Iowa or authorized to do business in Iowa, are handled by the corporation division under the supervision of a director. The office issues all certificates of incorporation for new domestic corporations and issues certificates for authority to do business in Iowa for foreign corporations. Also, certificates of good standing, amendments, mergers, certified copies of articles and other corporate papers are issued by the office.

1.2(2) The annual report forms required of all corporations are sent from the office and upon return by the corporations are processed for accuracy and proper fee and kept for public record.

1.2(3) Any questions on corporations or procedures should be directed to the director of the business services division located in the Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-5204.

721—1.3(17A) Uniform Commercial Code.

1.3(1) All matters pertaining to the secretary of state's responsibilities under the Uniform Commercial Code are processed by the uniform commercial code division of the office. See 721—Chapter 30.

1.3(2) The uniform commercial code division is under the supervision of a director. The office is located in the Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319, and the telephone number is (515)281-5274.

721—1.4(17A) Elections.

1.4(1) The secretary of state is the state commissioner of elections and the deputy is the deputy state commissioner of elections.

1.4(2) There is an election department in the office under the supervision of a director of elections. The director is under the supervision of the state commissioner or the deputy.

1.4(3) The department is in contact with every county commissioner of elections and helps them with their questions, prescribes various uniform forms used in elections and makes rules and procedures as directed by the election laws.

1.4(4) All nomination papers for federal, statewide and legislative office are furnished by the department and the candidates file their nomination papers here. A certification of candidates is sent to the commissioner before the primary election.

1.4(5) All forms for the certifications of the election results are sent to the commissioners. The results are returned to the office to await the state canvass. The same procedure is used on constitutional amendments.

1.4(6) The election division is located in the main office on the first floor of the Statehouse and the telephone number is (515)281-5865.

721—1.5(17A) Land office.

1.5(1) The state land office is a part of the general office and is under the supervision of a land office clerk. A record of all lands owned by the state of Iowa, the original land surveys and plats are part of the records.

1.5(2) Patents issued by the state of Iowa are prepared by the land office.

1.5(3) The land office is located in the general office on the first floor of the Statehouse and the telephone number is (515)281-8360.

721—1.6(17A) Notaries public.

1.6(1) The notary public division is part of the general office and is under the supervision of a notary public clerk.

1.6(2) The notary public division processes all applications for notary public commissions and on expiration of commissions sends out applications for renewal and processes their return. The commission is signed by the secretary of state.

1.6(3) The division also issues certificates of good standing upon the payment of the proper fee. Notaries public have statewide jurisdiction.

1.6(4) Notary public services are part of the business services division located in the Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-5204.

721—1.7(17A) Legislative division—enrolled bills. The secretary of state's office is the depository for all bills introduced in the legislature as well as all bills enacted into law and signed by the governor. Any bill that calls for publication is sent to the designated newspapers. The Constitution of Iowa and all amendments are kept in this office. For location see 1.1(1).

721—1.8(17A) Process agent. The secretary of state, by various chapters in the Iowa Code, especially Iowa Code sections 496A.13, 496A.112, 496A.116 and 617.3, is made the process agent upon whom the service of original notices in law suits may be made. The filing of the original notices is handled by the secretary to the deputy who is in the general office. For location see 1.1(1).

721—1.9(17A) Oaths and bonds. Oaths of office, and bonds where required, for elected officials, appointed officials and appointees to various boards and commissions are filed in the general office. The secretary to the secretary is in charge of this function. For location and telephone number see 1.1(1).

721—1.10(17A) Joint governmental agreements. Joint governmental agreements under Iowa Code chapter 28E are filed, without charge, in the general office. The secretary to the deputy handles this function. For location and telephone number see 1.1(1).

721—1.11 Reserved.

721—1.12(17A) Judiciary.

1.12(1) Under Iowa Code chapter 46 the justices of the supreme court, the judges of the district court and associate district court judges must notify the state commissioner of elections of their intention to stand for retention at the general election preceding the expiration of their term of office.

1.12(2) The state commissioner certifies to the commission the names of the justices, judges and associated district judge to be placed on the ballot in their county. The certification of election and the canvass of the vote are handled as described in 1.4(5).

1.12(3) When a vacancy occurs, or will occur, by resignation, the judge of supreme court or district court shall notify the state commissioner as well as the governor, and if the vacancy occurs because of death, the clerk of court of the county of the judge's residence shall notify the state commissioner as well as the governor, and the state commissioner within 60 days shall notify the chairman of the proper nominating committee.

1.12(4) The governor shall notify the state commissioner of the appointive members of the state and district nominating committees and the clerk of the supreme court shall notify the state commissioner of the elective members of the state and district nominating committees. The deputy is in charge of this function. For location see subrule 1.1(1).

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CHAPTER 2
RULES OF PRACTICE

[Prior to 7/13/88, see Secretary of State[750], Ch 7]

721—2.1(17A) Forms used. Copies of all forms are kept in the main office and may be inspected by anyone during the working day.

721—2.2(17A) Filing complaints. All complaints or objections relating to any matter involving the secretary of state's office shall be in writing addressed to the secretary of state. The complaint or objection may be either mailed or hand delivered. Oral complaints or objections will be handled in an informal procedure by the secretary or secretary's designee with the complainant at the convenience of both parties.

721—2.3(17A) Payment for services. The secretary of state may approve accounts to be used for the payment of services provided by the secretary of state. A user of a service provided by the secretary of state may make payment for the service by authorizing a charge to be made upon an account held by the user.

2.3(1) The secretary of state may prescribe and furnish forms for the purpose of authorizing a charge to be made upon an account. The secretary of state may refuse to charge an account for service requested without the appropriate form.

2.3(2) Application for account. Application for an account shall be made upon a form prescribed and furnished by the secretary of state. The account holder is subject to the terms and conditions contained in the application. The secretary of state reserves the right to adopt changes to the terms and conditions of the account. The secretary of state reserves the right to close a delinquent account.

2.3(3) Account holders will receive a monthly statement of account. The statement will include, for each transaction, the date and amount of the transaction. A transaction may include more than one filing fee.

2.3(4) Payment in full is due within 15 days of the date of the statement of account. An account is considered delinquent after the expiration of 30 days from the date of the statement of account. Interest and finance charges may be assessed on delinquent accounts in accordance with Iowa Code chapter 535.

2.3(5) An annual fee of $25 shall be paid by an account holder for the privilege of maintaining an account. The annual fee shall cover a 12-month period measured from the first day of the month in which the account is approved by the secretary of state. An account that is not delinquent one month prior to the expiration of the annual period shall be renewed upon the payment of the annual fee. The secretary of state shall charge the annual fee to the account on the statement of the account for the monthly period prior to the expiration date. The annual fee shall be used for the purpose of offsetting the expenses incurred by the secretary of state in maintaining the account.

2.3(6) Accounts maintained by the secretary of state prior to July 1, 1989, shall be terminated at the close of business on June 30, 1989, unless the holder of the account complies with subrule 2.3(5) and authorizes the secretary of state to continue the account by filing a renewal application on a form prescribed and furnished by the secretary of state.

721—2.4(17A) Examination and preservation of records.

2.4(1) "Lawful custodian" shall include the secretary of state and staff personnel authorized by the secretary of state.

2.4(2) No person, except the lawful custodian, shall place a mark upon, or in any manner damage, deface, alter, or destroy a public record.

2.4(3) Examination and copying of public records shall be conducted under the supervision of the lawful custodian.

2.4(4) Public records shall not be removed from the offices of the secretary of state, except for the purposes of:

a. Complying with a subpoena duces tecum,

b. Microfilming the records by the department of general services, or

c. Retaining and preserving the public records pursuant to Iowa Code chapter 304.
d. Complying with Iowa Code section 2B.10.

721—2.5(17A) Telecopier service. The secretary of state may provide copies of official records by telecopier to persons who hold an account authorized by the secretary of state pursuant to rule 2.3(17A). In addition to any fee imposed by statute for reproduction of the record, the secretary of state shall charge to the account a fee of $1 per page to offset the cost of the telecopier service.

These rules are intended to implement Iowa Code chapters 17A, 491, 496A, 497, 498, 499, 504, 504A, and 554 (Article 9).

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CHAPTER 3
ADMINISTRATIVE HEARINGS
[Prior to 7/13/88, see Secretary of State[750], Ch 8]

721—3.1(17A) Scope. Iowa Code chapter 17A and the rules contained in this chapter govern the practice, procedure and conduct of contested case proceedings, including proceedings related to the grant, denial, revocation, or renewal of any license issued by the agency where such action is required by constitution or statute to be preceded by notice and opportunity for an evidentiary hearing.

721—3.2(17A) Definitions. As used in these rules:

"Agency" means the secretary of state.

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by an agency after an opportunity for an evidentiary hearing.

"License" means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

"Presiding officer" means the person assigned to hear and decide the contested case whether that individual is the agency director or an administrative law judge appointed according to Iowa Code chapter 17A.

"Proceeding" includes licensing, rule making, declaratory ruling, contested cases, review, and formal or informal procedures allowed by law.

721—3.3(17A) General information.

3.3(1) *Legal representation.* Individuals, at their own expense, may be represented by counsel at contested case hearings. If the individual is not represented by counsel, the presiding officer may meet with the individual to explain the individual's rights and responsibilities in the contested case process.

3.3(2) *Prehearing conference.* At the discretion of the presiding officer or on the motion of any party to the contested case, a preheating conference may be held for the purpose of settlement of the case, facilitating the hearing, or facilitating the decision of the presiding officer. Notice shall be given to the parties of the time and place of the conference and its purpose. A record shall be made of all agreements and actions resulting from any conference. The presiding officer may issue an order setting forth all agreements and actions.

3.3(3) *Informal settlement.* Individuals are encouraged to meet informally with agency representatives to resolve issues that might result in a contested case. If a settlement is reached, it shall be set out in writing. The agreement, when signed by the individual and the appropriate representative of the agency, is binding on the individual and the agency.

3.3(4) *Waiver.* Any of the rights established in Iowa Code chapter 17A or these rules may be waived by the individual.

3.3(5) *Ex parte communications.* No person shall engage in ex parte communication prohibited by Iowa Code subsections 17A.17(1) and 17A.17(2). The recipient of any prohibited ex parte communication shall submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the contested case proceeding. When the presiding officer is the recipient of such communication, an order shall be entered placing it in the record. Any party shall be given an opportunity to respond to statements made in such a communication.

721—3.4(17A) Commencing the contested case. A request for a hearing shall be submitted within 15 days from the individual's receipt of the agency's intended action and shall be submitted in writing by personal service or by certified mail, return receipt requested, to the Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. A request for a hearing shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark.

721—3.5(17A) Notice of hearing. Notice of the hearing shall be prepared by the presiding officer and mailed by certified mail, return receipt requested, to the person requesting the hearing at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties.

The notice shall include:

1. A statement of time, place, and nature of the hearing.
2. A statement of the legal authority under which the hearing is to be held.
3. A reference to the pertinent sections of law or administrative rules.
4. A brief statement of the issues.

721—3.6(17A) Contested case hearing procedures.

3.6(1) *Subpoenas.* When necessary for the full presentation of a contested case, the presiding officer shall issue subpoenas for the attendance and testimony of witnesses and for the production of written or recorded materials of any kind which are relevant or material to any matter at issue in the hearing. Any individual who desires the issuance of a subpoena shall file a request with the presiding officer, designating the witnesses or documents to be produced and describing their address or location. When prepared by the presiding officer, the subpoena shall be returned to the requesting party for service; and the requesting party shall bear all costs associated with serving the subpoenas. Service may be made in any manner allowed by law, but must be performed prior to the hearing date.

3.6(2) *Rules of evidence.* The presiding officer is not bound to follow the technical common law rules of evidence. A finding shall be based upon the kind of evidence which reasonably prudent persons are accustomed to rely upon for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The presiding officer may give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form. Any party intending to submit evidence in written verified form, shall notify any other individuals at least seven working days prior to the hearing so that any objections can be filed with the presiding officer. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

3.6(3) *Discovery.* Discovery procedures may be utilized as permitted under the procedures of the Iowa rules of civil procedure. Depositions taken in accordance with the Iowa rules of civil procedure may be used as evidence with the approval of the presiding officer.

3.6(4) *Presentation of testimony and evidence.* In the hearing, each party shall have the right to present evidence and the testimony of witnesses, who shall testify under oath, and to cross-examine the witnesses of another individual. A person who has submitted testimony in written form is subject to cross-examination if that person is available. Opportunity shall be afforded to each party for redirect and recross-examination, and to present evidence and testimony as rebuttal to evidence presented by another party. Witnesses shall be subject to examination by the presiding officer. The presiding officer may, upon the motion of any party or its own motion, order the sequestration of witnesses.

3.6(5) *Briefs.* The presiding officer may order the filing of briefs on any of the issues presented in the contested case.

3.6(6) *Record.* The record in a contested case shall include:

a. All pleadings, motions and intermediate rulings.
b. All evidence received or considered and all other submissions.
c. A statement of all matters officially noticed.
d. All questions and offers of proof, objections and rulings.
e. All proposed findings and exceptions.
f. Any decision, opinion or report by the officer presiding at the hearing.

3.6(7) *Failure to appear.* If any party fails to appear at the hearing and no continuance has been granted, the presiding officer may proceed with the hearing and render a decision in the absence of the complainant.

3.6(8) *Proceedings recorded and open to the public.* The hearing shall be recorded by tape recording. An individual may demand that the hearing be recorded by a certified shorthand reporter, but that party must bear all costs associated with the shorthand reporter. The record of hearing or a transcript shall be filed with the authority and maintained for a period of five years.

721—3.7(17A) Presiding officer. The presiding officer shall:

1. Open the record and receive appearances.
2. Administer oaths and issue subpoenas.
3. Enter the notice of hearing into the record.
4. Receive testimony and exhibits presented by the parties.
5. Interrogate witnesses.
6. Rule on objections and motions.
7. Close the hearing.
8. Issue a decision containing findings of facts and conclusions of law.

721—3.8(17A) Decisions. When the presiding officer is the agency director, the decision is the final decision of the agency. When the presiding officer is an administrative law judge, a proposed decision is issued.

3.8(1) A proposed decision automatically becomes the final decision of the agency unless an individual appeals to the agency or the agency moves to review the proposed decision within 20 days of the issuance of the proposed decision.

3.8(2) On appeal the agency has all the authority of the presiding officer and may uphold the proposed decision or reverse it, in whole or in part, or remand the case to the presiding officer.

3.8(3) An intra-agency review is limited to the evidence and issues presented at the contested case hearing. The agency may remand the case to the presiding officer when compelling reasons justify the taking of new evidence or the consideration of new issues.

3.8(4) A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated, and must set forth the action to be taken or the disposition of the case. Parties shall be promptly notified of each proposed or final decision or order by certified mail, return receipt requested.

721—3.9(17A) Request for rehearing. Any party may file an application for rehearing, stating the specific grounds and the relief sought, within 20 days after the issuance of any final decision by the agency in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

721—3.10(17A) Judicial review. A party who is aggrieved or adversely affected by a final decision of the agency may seek judicial review of that decision as provided in Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 17A.3.

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CHAPTER 4
FORMS

[Prior to 7/13/88, see Secretary of State[750], Ch 4]

721—4.1(17A) Forms and instructions. Forms and instructions are developed by the agency in accordance with statutory directives.

Copies of forms and instructions of a general nature may be seen at the Office of Secretary of State, Statehouse, Des Moines, Iowa 50319. Copies of forms and instructions relating to corporation matters, the uniform commercial code, elections and other services may be seen at the respective divisions which are located in the Lucas State Office Building, Des Moines, Iowa 50319.

The subrules which follow list and describe those forms and instructions which members of the public use when dealing with the agency and its various divisions. Each direction of every instruction shall be complied with and each question or portion of every form answered in the same manner as if the forms and instructions were embodied in these rules.

4.1(1) Forms of general application.

Form Number	Description
GLO-1	Public disclosure of gifts made to a "local official," "local employee" or to the person's immediate family
GEN-1	Certification of various filings in the office of the Secretary of State, for example, incorporation of cities, legislative bills and other documents

4.1(2) Notary public forms.

Form Number	Description
NO-1	Application for appointment of Notary Public
NO-2	Notarial Bond Form
NO-3	Application for reappointment of Notary Public
NO-4	Certificate of Notarial Commission
NO-5	Certificate of Prothonotary

Copies of application and bond forms for notaries public are available to the public upon request to the Notary Clerk, Office of the Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-5204.

721—4.2(17A) Corporation forms.

4.2(1) Nonprofit corporation forms.

Form Number	Description
NP-1	Certificate of Good Standing — showing that a corporation is in good standing and also used to reflect that certain filings have not been made.
NP-2	Certification Certificates — certifies copies attached are true reproductions of documents on file.
NP-3	Certificate for Perpetual Fee Paid — issued to signify a Chapter 491 Corporation including domestic Insurance Companies have paid their perpetual fees due.
NP-4	Trademark/Service Mark Certificate — issued to the holder of a trade or service mark.
NP-5	Trademark/Service Mark Assignment Certificate — shows the transfer of a trade or service mark from the existing holder to a new registrant.

NP-6	Nonprofit Voluntary Election to Adopt Certificate — showing that a Chapter 504 corporation has adopted Chapter 504A.
NP-7	Foreign Nonprofit Qualification Certificate — issued to foreign nonprofit corporations qualified to do business in Iowa.
NP-8	Nonprofit Application for Authority — used by foreign nonprofit corporations to obtain authority to do business in Iowa.
NP-9	Amended Application for Authority-504A — used by foreign nonprofit corporations already qualified to reflect changes of name or authorized purposes.
NP-10	Application for Withdrawal-504A — used by a foreign nonprofit corporation to stop business in Iowa.
NP-11	Voluntary Election to Adopt-504A — corporations under old laws of Chapter 504 to adopt new law 504A.
NP-12	Nonprofit Articles of Dissolution — for domestic nonprofit corporations to terminate their existence.
NP-13	Suggested Form for Nonprofit Articles of Incorporation — a guide for drafting articles.
NP-14	Suggested Form for Nonprofit Restated Articles of Incorporation — for nonprofit corporations desiring to rewrite the articles of incorporation.
NP-15	Suggested Form for Nonprofit Amendment — a guide for drafting same.
NP-16	Rules and Regulations for Trademarks/Service Marks — a short excerpt from the Code to help filing of trade and service marks.
NP-17	Trademark/Service Mark Applications — self explanatory.
NP-18	Trademark Assignment Application — to assign a mark from original registrant to a new registrant.
NP-19	Trade/Service Mark Renewal Application — used every 10 years to renew mark.
NP-20	Foreign Cooperative Application for Authority — cooperative from another state desiring to do business in Iowa.
NP-21	Reinstatement of A Cooperative — used by a cancelled corporation for failure to file Annual Report to reinstate its rights.
NP-22	Reinstatement of Nonprofit — same as above.
NP-23	Certificate to Issue Capital Stock — for use by Chapter 491 Corporation and Insurance Corporations advising of stock issued.
NP-24	Resolution Naming Resident Agent — Appointing service agent to represent old 491 Corporation.
NP-25	Copy Order Request Form — used to order certified copies and good standing certificates.
NP-26	Reinstatement Application-504A — for use by a cancelled corporation.

4.2(2) Business corporations.

Form Number	Description
BC-1	Certificate of Incorporation — issued to reflect the existence of new corporation. Also used when articles are reinstated and for certificate of dissolution.
BC-2	Certificate of Amendment — used to reflect corporate amendment mergers and consolidations.
BC-3	Certificate of Adoption to the Iowa Business Corporation Act — issued to show adoption of Chapter 496A by a corporation under the old Chapter 491.
BC-4	Certificate of Cancellation — issued to show cancellation for statutory reasons.
BC-5	Certificate of Authority — issued to foreign business corporations which have qualified in Iowa.
BC-6	Certificate of Revocation — issued to delinquent foreign corporations in lieu of cancellation.
BC-7	Certificate of Reservation of Name — shows that a name is reserved for an applicant.
BC-8	Application for Reinstatement — form by which cancelled business corporation can file for reinstatement of its rights.
BC-9	Application for Reservation of Name — form by which applicant can reserve a corporate name for future use.
BC-10	Application to Elect Assumed Name — used for corporation to apply for use of a secondary or dba name.
BC-11	Application to Renew Assumed Name — used to renew assumed name from year to year.
BC-12	Statement of Change of Registered Agent and Office — used by a corporation to change its official service agent and/or service office.
BC-13	Statement of Change of Registered Agent and Office by Agent (Multiple Corporations) — same form as above, to be used when a person who is agent for numerous corporations changes address.
BC-14	Application for Reinstatement — used by corporation cancelled for failure to file Annual Report to reinstate its rights.
BC-15	Application for Amended Certificate of Authority — basically for foreign corporations already qualified to reflect change of name and Iowa purposes.
BC-16	Application for Certificate of Authority — used by foreign corporations to obtain authority to do business in Iowa.
BC-17	Application for a Foreign Corporation to Elect an Assumed Name — same as above.
BC-18	Application for Registration of a Corporate Name — form by which foreign corporation may register name on a yearly basis.

BC-19	Application for Renewal of Registration of Name — to renew registration of name (foreign).
BC-20	Application for Certificate of Withdrawal — used by foreign corporation to stop business in Iowa.
BC-21	Application for a Qualifying Assumed Name — special form of Assumed Name for use by foreign corporation whose official name cannot be used in Iowa.
BC-22	Application for Transfer or Reservation of Name — to transfer a title from one to another.
BC-23	Voluntary Election to Adopt Iowa Business Corporation Act — permits Chapter 491 Corporation to adopt Iowa Business Corporation Act (Chapter 496A).
BC-24	Corporation Filing and Recording Fees — shows all filing and recording fees in the Corporation Division.

4.2(3) Annual reports.

Form Number	Description
AR-1	Chapter 496A Iowa Domestic Annual Report — required of domestic corporations under the Iowa Business Corporation Act. (Will include instructions sheet designated as AR-25 for reporting year 1981)
AR-2	Chapter 496A Foreign Corporation Annual Report — same as above for foreign corporations. (Will include instruction sheet designated as AR-26 for reporting year 1981)
AR-3	Chapter 504A Iowa Nonprofit Annual Report — required for all Domestic Nonprofit Corporations.
AR-4	Chapter 504A Foreign Nonprofit Annual Report — required to be filed by all Foreign Nonprofit Corporations.
AR-5	Chapter 496C Iowa Professional Annual Report — required to be filed by Domestic Professional Corporations.
AR-6	Chapter 496C Foreign Professional Annual Report — required to be filed by Foreign Professional Corporations.
AR-7	Chapter 491 Iowa Annual Report (old chapter) — required to be filed by profit corporations who still remain under old Chapter 491.
AR-8	Chapter 499 Non Stock Cooperative Annual Report — required to be filed by Chapter 499 non stock corporations.
AR-9	Chapter 499 Stock Cooperative Annual Report — required to be filed by Chapter 499 stock issuing corporations.
AR-10	Chapter 497 Cooperative Annual Report — required to be filed by old Chapter 497 Cooperatives.
AR-11	Chapter 498 Cooperative Annual Report — required to be filed by old Chapter 498 Cooperatives.
AR-12	September 496A Foreign Notice of Revocation — self explanatory.
AR-13	October 496A Domestic Notice of Cancellation — self explanatory.
AR-14	Chapter 496A Domestic Annual Report Instruction Sheet — self explanatory (see AR-1).
AR-15	Chapter 496A Foreign Annual Report Instruction Sheet — self explanatory (see AR-2).
AR-16	Chapter 496C Domestic Professional Corporation Annual Report Instruction Sheet — self explanatory (will become a part of Form AR-5 for reporting year 1982).
AR-17	Chapter 496C Foreign Professional Corporation Annual Report Instruction Sheet — self explanatory (will become a part of Form AR-6 for reporting year 1982).

4.2(4) Farm reporting.

Form Number	Description
FR-1	Agricultural Report
FR-2	Information on Agricultural Reports
FR-3	Pork and Beef Processor Report
FR-4	Registration of Nonresident Alien Land Ownership
FR-5	Nonresident Alien Ownership Report
FR-6	Annual Agricultural Landholding Report

For information concerning availability of forms for farm reporting, contact the Corporations Division, Hoover State Office Building, Des Moines, Iowa 50319, (515)281-8366.

This rule is intended to implement Iowa Code sections 172C.5A, 172C.5B, 172C.8 and 172C.9.

721—4.3(17A) Election forms.

Section 1. Election Day and Canvass Forms

Form Number	Description
1-A(Rev.-95)	Voter's Declaration of Eligibility
1-B	(Reserved)
1-C	(Reserved)
1-D(Rev.-90)	Notice to Voter of Rejection of Absentee or Special Ballot
1-E	(Reserved)
1-F(Rev.-90)	Oath for Officer or Clerk of Election
1-G(Rev.-95)	Statement to Person Casting a Special Ballot
1-H(Rev.-95)	Envelope for Special Ballot
1-I(Rev.-95)	Affidavit of Voter Requesting Assistance
1-J(Rev.-95)	Declaration of Intent to Serve as Election Observer (Public Measure Elections)
1-K(Rev.-90)	Ballot Record and Receipt
1-L(Rev.-95)	County Abstract of Votes
1-M(93)	Accreditation Form—Pollwatchers for Political Parties (Challenging Committees)
1-N(93)	Accreditation Form—Observers for Political Parties (To Witness the Counting of Ballots)
1-O(95)	Letter of Appointment—Pollwatchers for Nonpartisan and Nonparty Candidates
1-P(95)	Application for Additional Ballots
1-Q(95)	Application for Additional Ballots—Auditor's Record of Telephone Request
1-R(95)	Ballot Photocopy Record
1-S(97)	Identification Statement

Section 2. Nomination Documents and Forms

Form Number	Description
2-A(Rev.-97)	Affidavit by Candidate—Primary Election
2-B(Rev.-97)	Affidavit by Candidate—Nominations by Political Parties
2-C(Rev.-97)	Affidavit by Candidate—Nominations by Nonparty Political Organizations
2-D(Rev.-97)	Affidavit by Candidate—Nonpartisan Nominations
2-E(Rev.-97)	Nomination Paper—For U.S. Senator, U.S. Representative & Statewide Offices
2-F(Rev.-97)	Nomination Paper—For State Senator
2-G(Rev.-97)	Nomination Paper—For State Representative
2-H(Rev.-97)	Nomination Paper—For Nonpartisan Nominations and Nonparty Political Organizations
2-I(Rev.-93)	Certificate of Nomination by Nonparty Political Organization—Chapter 44
2-J(Rev.-97)	Nomination Petition for the Offices of Electors for President and Vice President of the United States
2-K(Rev.-97)	Nomination Paper for County Office

2-L(Rev.-95)	Nomination by Convention—Certificate of Nomination by Political Party—Chapter 43
2-M(Rev.-97)	Affidavit by Candidate—School and City Elections
2-N(Rev.-97)	Affidavit by Candidate—City Elections—Chapter 44
2-O(Rev.-97)	Nomination Petition—Merged Area Schools
2-P(Rev.-97)	Petition Requesting Election
2-Q(93)	Judicial Declaration of Candidacy
2-R(93)	Certificate of Candidates for Presidential Electors
2-S(Rev.-97)	Nomination Petition—Governor and Lieutenant Governor—Chapter 45

Section 3. Absentee Voting Forms

Form Number	Description
3-A(Rev.-97)	Application for Absentee Ballot
3-B(Rev.-97)	Absent Voter's Affidavit and Envelope
3-C(Rev.-90)	Affidavit for Voter Who Did Not Receive Absent Voter's Ballot
3-D(Rev.-97)	Absentee Ballot Carrier Envelope
3-E(93)	Statement of Voter—Lost Absentee Ballot
3-F(93)	Log for Absentee Ballot Delivery Team
3-G(Rev.-95)	Challenge of Absentee Voter
3-H(Rev.-97)	Statement to Voter of Change or Declaration of Party Affiliation
3-I(97)	Statement to Voter of Change or Declaration of Party Affiliation for Voter in Nursing Home or Hospital

Section 4. Armed Forces and Overseas Absentee Voting

Form Number	Description
4-A(Rev.-97)	Armed Forces or Overseas Ballot—Delivery Envelope
4-B(Rev.-97)	Armed Forces or Overseas Ballot—Return Carrier Envelope
4-C(Rev.-97)	Armed Forces or Overseas Ballot—Affidavit Envelope
4-D(93)	Proxy Absentee Ballot Request

Section 5. Administrative Forms

Form Number	Description
5-A	(Reserved)
5-B(Rev.-97)	Certificate of Test—Central Count Tabulating Equipment
5-C(Rev.-97)	Certificate of Test—Precinct Count Tabulating Equipment
5-D(Rev.-95)	Election Document Retention Record
5-E	Rescinded

This rule is intended to implement Iowa Code sections 43.13, 43.14, 43.18, 43.42, 43.43, 43.61, 43.67, 43.88, 44.3, 45.1, 45.3, 46.20, 48A.4, 48A.32, 49.65, 49.66, 49.77, 49.79, 49.80, 49.81, 49.90, 49.91, 49.104(2), 49.104(3), 49.104(5), 49.104(6), 50.3, 50.4, 50.5, 50.9, 50.10, 50.12, 50.19, 50.24, 50.26, 50.28, 51.11, 52.23, 52.35, 52.38, 53.2, 53.13, 53.19, 53.21, 53.22, 53.23(4), 53.25, 53.26, 53.30, 53.31, 53.40, 53.46(2), 54.5, 56.2(5), 260C.15(2), 277.4, 278.2, 331.306, 362.4 and 376.4 and 11 CFR, Subpart C, Section 8.7(1995).

721—4.4(17A) Uniform Commercial Code forms. For information concerning UCC forms, see 721—subrule 30.1(9). The UCC Division is located in the Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319, telephone (515)281-5274.

This rule is intended to implement Iowa Code section 17A.3(1)*"b."*

721—4.5(17A) Verified lien statement forms.

Form Number	Description
VLS-1	(8″ x 13″) A five part snap-off form with interleaved carbon paper used for filing agricultural liens under Iowa Code chapter 570A.
VLS-2	(8″ x 5″) A five part snap-off form with interleaved carbon paper used for filing assignments and acknowledgments of satisfaction as they relate to a VLS-1.

This rule is intended to implement Iowa Code chapters 17A, 491, 496A, 497, 498, 499, 504A, Article IX and 1984 Iowa Acts, chapter 1072.

721—4.6(9A,17A) Athlete agent.

Form Number	Description
AA-1	Application for Certificate of Registration — used to apply for a certificate of registration to act as an athlete agent in the state of Iowa.
AA-2	Renewal Application for Certificate of Registration — used to annually renew the certificate of registration.
AA-3	Consent to Service — required of nonresident athlete agents to provide irrevocable consent to service of process.
AA-4	Surety Bond Form — required to show proof of continuous bonding of $25,000.

This rule is intended to implement Iowa Code chapter 9A.

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CHAPTER 5
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The secretary of state adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

721—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "secretary of state".

721—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "secretary of state". In lieu of the words "(insert agency name and address)", insert "the Secretary of State, Statehouse, Des Moines, Iowa 50319".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays".

5.3(7) *Fees.*

c. Supervisory fee. In lieu of the words "(specify time period)", insert the words "one hour". Delete the words "(An agency wishing to deal with search fees authorized by law should do so here.)"

721—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the Secretary of State, Statehouse, Des Moines, Iowa 50319".

721—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

721—5.10(17A,22) Routine use.

5.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law. (Iowa Code chapter 22).

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

721—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

721—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interests in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

721—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be witheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Agricultural reports defined as confidential reports in Iowa Code section 172C.14.

i. Any other records made confidential by law.

5.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

721—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). All records described in this rule are public records. For each record system, this rule describes the legal authority for the collection of that information, and the means of storage of that information. The agency maintains no record systems in which a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

5.14(1) *Liens.* The agency maintains lien records, pursuant to 2000 Iowa Acts, chapter 1149, sections 72 and 90; the Uniform Commercial Code; pursuant to Iowa Code section 570.1 as amended by 2000 Iowa Acts, chapter 1149, section 176, landlord's liens; pursuant to Iowa Code section 570A.4, agricultural supply dealer's liens; pursuant to Iowa Code section 571.3, thresher's or cornsheller's liens; pursuant to Iowa Code section 579A.2(2) as amended by 2001 Iowa Acts, House File 549, section 3, custom cattle feedlot liens; pursuant to Iowa Code section 579B.4(1) as amended by 2001 Iowa Acts, House File 549, section 3, commodity production contract liens; and pursuant to Iowa R.C.P. 260, levies on personalty. Personally identifiable information includes the name and address of the debtor and the secured party, and the time and date of filing of the lien or levy. The information is stored in a computer database, and is indexed by the name of the debtor.

5.14(2) *Candidates for public office.* The agency maintains records of candidates for public office, pursuant to Iowa Code sections 43.11, 43.18, 44.3, 44.4, and 45.3. Personally identifiable information includes the name, address, and political party affiliation of the candidate, and the name of the public office sought by the candidate. The information is stored in a computer database, and is indexed by the name of the candidate.

5.14(3) *Donor and donee records.* The agency maintains records of gifts made to certain public officials, pursuant to Executive Order number 31, and Iowa Code section 68B.11(2). Personally identifiable information includes the name of the donor or donee, the nature, amount, and date of gifts made to a donee in excess of $15 in cumulative value in any calendar day, the title, agency or organization of the donor or donee, and the mailing address of a donor. The information is stored in a manual filing system, and indexed by the name of the donor or the donee.

5.14(4) *County auditors.* The agency maintains records of county auditors in the state of Iowa, pursuant to Iowa Code section 47.1. Personally identifiable information includes the name and address of the county auditor. The information is stored in a computer database, and is indexed by the name of the county auditor.

5.14(5) *Substitute service of process.* The agency maintains records of plaintiffs to litigation in which service of process is achieved pursuant to Iowa Code section 617.3, the "long-arm statute." Personally identifiable information includes the name of the plaintiff and other information included in the document by the plaintiff. The information is stored in a manual filing system, and is indexed by the name of the plaintiff.

5.14(6) *Commissions.* The agency maintains records of commissions issued by the governor, pursuant to Iowa Code section 9.3. Personally identifiable information includes the name and address of the recipient of the commission. The information is stored in a manual filing system, and is indexed by the name of the recipient of the commission.

5.14(7) *Patents and deeds.* The agency maintains records of land patents and deeds to property, pursuant to Iowa Code chapter 10. Personally identifiable information includes the name of the recipient of the land patent or the conveyor of the deed, the county in which the land is located, and a legal description of the land. The information is stored in a manual filing system, and is indexed by the name of the recipient of the land patent or the conveyor of the deed.

5.14(8) *Notary public records.* The agency maintains records of notaries public commissioned pursuant to Iowa Code chapter 77. The records include the name, address, and county of residence of the notary public, the beginning and ending date of the commission, status as a new or renewal notary public, a certificate number, and an audit number. The information is stored in a computer database and on microfilm, and is indexed by the name of the notary public.

5.14(9) *Transient merchants.* The agency maintains records containing information about transient merchants, pursuant to Iowa Code chapter 9C. The records include the name and address of the merchant, and other information required by Iowa Code section 9C.3. The information is stored in manual files and indexed by the name of the transient merchant.

721—5.15(17A,22) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 2.7(11).

721—5.16(17A,22) Other groups of records. This rule describes records maintained by the agency other than record systems as defined in rule 5.14(17A,22). These records are routinely available to the public except records maintained pursuant to Iowa Code chapter 172C. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records may contain information about individuals.

Records are maintained regarding:

1. Corporations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 491, 496A, 496B, 496C, 504, and 504A.
2. Cooperative associations organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapters 497, 498, 499, and 499A.
3. Limited partnerships organized in Iowa or authorized to do business in Iowa pursuant to Iowa Code chapter 487.
4. Farm operations subject to Iowa Code chapters 9H and 567.
5. Athlete agents registered pursuant to Iowa Code chapter 9A.
6. Out-of-state contractors pursuant to Iowa Code section 103A.24.
7. Postsecondary educational institutions pursuant to Iowa Code chapter 261B.
8. Organizations soliciting public donations pursuant to Iowa Code chapter 13C.

9. Agreements relating to the joint exercise of governmental powers filed pursuant to Iowa Code chapter 28E.

10. Files relating to administration of the election laws found in Iowa Code chapters 39 through 41, 43 through 55, 57 through 63, 66, 69, 75, 145A, 161A, 174, 260C, 273, 274, 275, 277, 278, 279, 296, 297, 298, 300, 303, 303B, 306C, 330, 331, 336, 347, 347B, 349, 357, 357B, 357C, 357D, 358, 359 through 362, 368, 372, 376, 384, 392, 394, 400, 420, 422A, 422B, 442, 456, 462, 602, 659, 720, 721, and 722.

11. Administrative records including documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions, and other documents associated with the management of the agency.

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CHAPTER 6
ELECTRONIC FILING OF DOCUMENTS

Rescinded IAB 6/27/01, effective 7/1/01

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

721—7.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

721—7.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

721—7.3(17A) Public rule-making docket. The agency shall maintain a current public rule-making docket. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

1. The subject matter of the proposed rule;
2. A citation to all published notices relating to the proceeding;
3. Where written submissions on the proposed rule may be inspected;
4. The time during which written submissions may be made;
5. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
6. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;
7. The current status of the proposed rule and any agency determinations with respect thereto;
8. Any known timetable for agency decisions or other action in the proceeding;
9. The date of the rule's adoption;
10. The date of the rule's filing, indexing, and publication;
11. The date on which the rule will become effective; and
12. Where the rule-making record may be inspected.

721—7.4(17A) Notice of proposed rule making.

7.4(1) *Contents.* At least 35 days before the adoption of a rule, the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

7.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 7.12(2) of this chapter.

7.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

721—7.5(17A) Public participation.

7.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319, or the person designated in the Notice of Intended Action.

7.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

7.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The secretary, a member of the secretary's staff, or another person designated by the secretary who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the secretary does not preside, the presiding officer shall prepare a memorandum for consideration by the secretary summarizing the contents of the presentations made at the oral proceeding unless the secretary determines that such a memorandum is unnecessary because the secretary will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are required to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall

indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and may permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

7.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

7.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the secretary of state's office at (515)281-5865 in advance to arrange access or other needed services.

721—7.6(17A) Regulatory analysis.

7.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

7.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to the Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

7.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

7.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

a. The administrative rules coordinator;

b. The administrative rules review committee.

7.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

7.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

7.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

7.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

7.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

7.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

7.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business, or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

721—7.7(17A,25B) Fiscal impact statement.

7.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

7.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

721—7.8(17A) Time and manner of rule adoption.

7.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

7.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

7.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

721—7.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

7.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

7.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

7.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

7.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

721—7.10(17A) Exemptions from public rule-making procedures.

7.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

7.10(2) *Public proceedings on rules adopted without notice and comment.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 7.10(1). Upon written petition by a governmental

subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 7.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 7.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

721—7.11(17A) Concise statement of reasons.

7.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

7.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

7.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

721—7.12(17A) Contents, style, and form of rule.

7.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

7.12(2) *Incorporation by reference.* The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the

United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

7.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

7.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

721—7.13(17A) Agency rule-making record.

7.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

7.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the secretary, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment, repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

7.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

7.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 7.13(2)*"g," "h," "i,"* or *"j."*

721—7.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

721—7.15(17A) Effectiveness of rules prior to publication.

7.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

7.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 7.15(2).

721—7.16(17A) General statements of policy.

7.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h," "k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

7.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 7.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

721—7.17(17A) Review by agency of rules.

7.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

7.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code sections 17A.3, 17A.4, and 17A.5 and 1998 Iowa Acts, chapter 1202.

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CHAPTER 8
PETITIONS FOR RULE MAKING

721—8.1(17A) Petition for rule making. Any person or agency may file a petition for rule making with the secretary of state at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The agency must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed, together with a quotation of the relevant language.
2. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 721—8.4(17A).

8.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative (if one is involved), and a statement indicating the person to whom communications concerning the petition should be directed.

8.1(2) The agency may deny a petition because it does not substantially conform to the required form.

721—8.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

721—8.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319.

721—8.4(17A) Agency consideration.

8.4(1) Within 30 days after the filing of a petition, the agency must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency, a member of the agency, or a member of the staff of the agency, to discuss the petition. The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person.

8.4(2) Within 90 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the agency mails or delivers the required notification to petitioner.

8.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 9
DECLARATORY ORDERS

721—9.1(17A) Petition for declaratory order. Any person may file a petition with the secretary of state for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the secretary at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office. The secretary of state's office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 9.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

721—9.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the secretary of state's office shall give notice of the petition to all persons not served by the petitioner pursuant to 9.6(17A) to whom notice is required by any provision of law. The office may also give notice to any other persons.

721—9.3(17A) Intervention.

9.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

9.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the secretary or the secretary's designee.

9.3(3) A petition for intervention shall be filed at the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Lucas State Office Building, Des Moines, Iowa 50319. A petition is deemed filed when it is received in either office.

The office will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

SECRETARY OF STATE

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

721—9.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The secretary of state's office may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

721—9.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Deputy Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319.

721—9.6(17A) Service and filing of petitions and other papers.

9.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

9.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Secretary of State's Office, First Floor, State Capitol Building, Des Moines, Iowa 50319, or the Secretary of State's Office, Lucas State Office Building, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the secretary.

9.6(3) *Method of service, time of filing, and proof of mailing.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the secretary of state's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing. Proof of mailing includes either

a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

721—9.7(17A) Consideration. Upon request by petitioner, the secretary of state's office must schedule a brief and informal meeting between the original petitioner, all intervenors, and the secretary or a member of the secretary's staff to discuss the questions raised. The secretary of state's office may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the secretary by any person.

721—9.8(17A) Action on petition.

9.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the secretary or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

9.8(2) The date of issuance of an order or of a refusal to issue an order means the date of mailing of the order or date of delivery if service is by other means unless another date is specified in the order.

721—9.9(17A) Refusal to issue order.

9.9(1) The secretary shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the secretary to issue an order.
3. The secretary does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the secretary to determine whether a statute is unconstitutional on its face.

9.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

9.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

721—9.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

721—9.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

721—9.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the secretary of state's office, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the secretary. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 10
WAIVER AND VARIANCE RULES

721—10.1(17A) Definition. For purposes of this chapter, a "waiver or variance" means action by the agency which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

721—10.2(17A) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the agency in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

721—10.3(17A) Applicability. The agency may only grant a waiver from a rule if the agency has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The agency may not waive requirements created or duties imposed by statute.

721—10.4(17A) Criteria for waiver or variance. In response to a petition completed pursuant to rule 10.6(17A), the agency may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

721—10.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the agency as follows:

10.5(1) *License or authorization application.* If the petition relates to a license or authorization application, the petition shall be made in accordance with the filing requirements for the license or authorization in question.

10.5(2) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

10.5(3) *Other.* If the petition does not relate to a license application or a pending contested case, the petition shall be submitted in writing to the secretary of state's office.

721—10.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. All relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 10.4(17A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the agency and the petitioner relating to the regulated activity, license, or authorization affected by the proposed waiver, including a description of each

affected license or authorization held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. All information known to the requester regarding the agency's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the agency with information relevant to the waiver.

721—10.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the agency may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the agency may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the secretary of state, or their designees, a committee of the agency, or a quorum of the agency.

721—10.8(17A) Notice. The agency shall acknowledge a petition upon receipt. The agency shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the agency may give notice to other persons. To accomplish this notice provision, the agency may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

721—10.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the agency so provides by rule or order or is required to do so by statute.

721—10.10(17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

10.10(1) *Agency discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the agency, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the agency based on the unique, individual circumstances set out in the petition.

10.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the agency should exercise its discretion to grant a waiver from an agency rule.

10.10(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

10.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

10.10(5) *Conditions.* The agency may place any condition on a waiver that the agency finds desirable to protect the public health, safety, and welfare.

10.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver may be renewed if the agency finds that grounds for a waiver continue to exist.

10.10(7) *Time for ruling.* The agency shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

10.10(8) *When deemed denied.* Failure of the agency to grant or deny a petition within the required time period shall be deemed a denial of that petition by the agency. However, the agency shall remain responsible for issuing an order denying a waiver.

10.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

721—10.11(17A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the agency is authorized or required to keep confidential. The agency may accordingly redact confidential information from petitions or orders prior to public inspection.

721—10.12(17A) Summary reports. Semiannually, the agency shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the agency's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

721—10.13(17A) Cancellation of a waiver. A waiver issued by the agency pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the agency issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

721—10.14(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

721—10.15(17A) Defense. After the agency issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

721—10.16(17A) Judicial review. Judicial review of the agency's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A.

[Filed emergency 2/2/01—published 2/21/01, effective 2/2/01]
[Filed 4/19/01, Notice 2/21/01—published 5/16/01, effective 6/20/01]

CHAPTERS 11 to 19
Reserved

DIVISION II
ELECTIONS

CHAPTER 20
DEPUTY COMMISSIONERS OF ELECTIONS

[Prior to 7/13/88, see Secretary of State(750), Ch 3]

721—20.1(47) Deputy secretary of state and deputy county auditor to act. In the absence or disability of the state commissioner of elections the deputy secretary of state shall perform all of the duties of the state commissioner of elections. In the absence or disability of the county commissioner of elections the deputy county auditor shall perform all of the duties of the county commissioner of elections.

721—20.2(47) County commissioner of elections may appoint special deputies. The county commissioner of elections may appoint the city clerks of the cities within the county as special deputies to assist in the conduct of elections. However, the county commissioner of elections shall bear full responsibility for all acts of the special deputies as they relate to elections.

These rules are intended to implement Iowa Code chapter 47.

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CHAPTER 21
ELECTION FORMS AND INSTRUCTIONS
[Prior to 7/13/88, see Secretary of State[750], Ch 11]

DIVISION I
GENERAL ADMINISTRATIVE PROCEDURES

721—21.1(47) Emergency election procedures. The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

21.1(1) *Definitions.*

"Commissioner" means the county commissioner of elections.

"Election contest court" means any of the courts specified in Iowa Code sections 57.1, 58.4, 61.1, 62.1 and 376.10.

"Extremely inclement weather" means a natural occurrence, such as a rainstorm, windstorm, ice storm, blizzard, tornado or other weather conditions, which makes travel extremely dangerous or which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"Natural disaster" means a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"Other disaster" means an occurrence caused by machines or people, such as fire, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"State commissioner" means the state commissioner of elections.

21.1(2) *Notice of natural or other disaster or extremely inclement weather.* The county commissioner of elections, or the commissioner's designee, may notify the state commissioner of elections that due to a natural or other disaster or extremely inclement weather an election cannot safely be conducted in the time or place for which the election is scheduled to be held. If the commissioner or the commissioner's designee is unable to transmit notice of the hazardous conditions, the notice may be given by any elected county official. Verification of the commissioner's agreement with the severity of the conditions and the danger to the election process shall be transmitted to the state commissioner as soon as possible. Notice may be given by telephone or by facsimile machine, but a signed notice shall also be delivered to the state commissioner.

21.1(3) *Declaration of emergency due to natural or other disaster or extremely inclement weather.* After receiving notice of hazardous conditions, the state commissioner of elections, or the state commissioner's designee, may declare that an emergency exists in the affected precinct or precincts. A copy of the declaration of the emergency shall be provided to the commissioner.

21.1(4) *Emergency modifications to conduct of elections.* When the state commissioner of elections has declared that an emergency exists due to a natural or other disaster or to extremely inclement weather, the county commissioner of elections, or the commissioner's designee, shall consult with the state commissioner to develop a plan to conduct the election under the emergency conditions. All modifications to the usual method for conducting elections shall be approved in advance by the state commissioner unless prior approval is impossible to obtain.

Modifications may be made to the method for conducting the election including relocation of the polling place, postponement of the hour of opening the polls, postponement of the date of the election if no candidates for federal offices are on the ballot, reduction in the number of precinct election officials in nonpartisan elections, or other reasonable and prudent modifications that will permit the election to be conducted.

21.1(5) *Relocation of polling place.* The substitute polling place shall be as close as possible to the usual polling place and shall be within the same precinct if possible. Preference shall be given to buildings which are accessible to the elderly and disabled. Buildings supported by taxation shall be made available without charge by the authorities responsible for their administration. If it is necessary, more than one precinct may be located in the same room.

A notice of the location of the substitute polling place shall be posted on the door of the former polling place not later than one hour before the scheduled time for opening the polls or as soon as possible. If it is unsafe or impossible to post the sign on the door of the former polling place, the notice shall be posted in some other visible place at or near the site of the former polling place. If time permits, notice of the relocation of the polling place shall be published in the same newspaper in which notice of election was published, otherwise notice of relocation may be published in any newspaper of general circulation in the political subdivision which will appear on or before election day. The commissioner shall inform all broadcast media and print news organizations serving the jurisdiction of the modifications.

21.1(6) *Postponement of election.* An election, other than an election at which a federal office appears on the ballot, may be postponed until the following Tuesday. If the election involves more than one precinct, the postponement must include all precincts within the political subdivision. If the election is postponed, ballots shall not be reprinted to reflect the modification in the election date. The date of the close of voter preregistration by mail for the election shall not be extended. Precinct election registers prepared for the original election date may be used or reprinted at the commissioner's discretion.

On the day that the postponed election is actually held, all election day procedures must be repeated.

21.1(7) *Absentee voting in postponed elections.* Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

21.1(8) *Absentee and special voters precinct board in postponed elections.* The absentee and special voters precinct board shall meet to consider provisional ballots at the times specified in Iowa Code sections 50.22 and 52.23, calculated from the date the election is held. No absentee ballots shall be counted until the date the election is held.

21.1(9) *Canvass of votes in postponed elections.* The canvass of votes shall also be rescheduled for one week after the originally scheduled canvass date.

21.1(10) *Postponements made on election day.* If the emergency is declared while the polls are open and the decision is made to postpone the election, each precinct polling place in the political subdivision shall be notified to close its doors and to halt all voting immediately. People present in the polling place who are waiting to vote shall not be given ballots. People who have received and marked their ballots shall deposit them in the ballot box; unmarked ballots may be returned to the precinct election officials.

The precinct election officials shall seal all ballots which were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the commissioner's office. The ballots shall be stored in a secure place. If it is unsafe to travel to the commissioner's office, the chairperson of the precinct election board shall see that the ballots and the election register are securely stored until it is safe to return them to the commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened, sealed ballot containers shall be destroyed.

If automatic tabulating equipment is used, the automatic tabulating equipment shall be closed and sealed without printing the results. Before the date the election is held, the automatic tabulating equipment shall be reset to zero. Documents showing the progress of the count, if any, shall be sealed in an envelope and stored. No one shall reveal the progress of the count. After six months, the sealed envelope containing the vote totals shall be destroyed if no contest is pending.

21.1(11) *Records kept.* The state commissioner of elections shall maintain records of each emergency declaration. The records of emergency declarations for federal elections shall be kept for 22 months, and records for all other elections shall be kept for six months following the election. The records shall include the following information:

a. The county in which the emergency occurred.

b. The date and time the emergency declaration was requested.

c. The name and title of the person making the request.

d. Name and date of the election affected.

e. The jurisdiction for which the election is to be conducted (school, city, county, or other).

f. The number of precincts in the jurisdiction.

g. The number of precincts affected by the emergency.

h. The nature of the emergency, i.e., natural or other disaster, or extremely inclement weather.

i. The date or dates of the occurrence of the natural or other disaster or extremely inclement weather.

j. Conditions affecting the conduct of the election.

k. Whether the polling places may safely be opened on time.

l. Action taken: such as moving the polling place, change voting system, postpone election until the following Tuesday.

m. Method to be used to inform the public of changes made in the election procedure.

n. The signature of the state commissioner or the state commissioner's designee who was responsible for declaring the emergency.

21.1(12) *Federal elections.*

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

21.1(13) *Military emergencies.* A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area or if the voter is an active member of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard and is located outside the United States or any of its territories. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

21.1(14) *Election contest emergency.* If an election contest court finds that there were errors in the conduct of an election which make it impossible to determine the result of the election, the contest court shall notify the state commissioner of elections of its finding. The state commissioner shall order a repeat

election to be held. The repeat election date shall be set by the state commissioner. The repeat election shall be conducted under the state commissioner's supervision.

The repeat election shall be held at the earliest possible time, but it shall not be held earlier than 14 days after the date the election was set aside. Voter registration, publication, equipment testing and other applicable deadlines shall be calculated from the date of the repeat election.

The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election may be replaced at the discretion of the auditor.

The following materials prepared for the original election shall be used or reconstructed for the repeat election:

Ballots (showing the date of repeat election). This may be stamped on ballots printed for the original election.

Notice of election (showing the date of repeat election).

This rule is intended to implement Iowa Code section 47.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.2(47) Electronic submission of absentee ballot applications and affidavits of candidacy. Absentee ballot applications and affidavits of candidacy may be submitted electronically using either fax or E-mail.

21.2(1) *Electronic copies of absentee ballot applications and affidavits of candidacy accepted for filing.* Assuming that all other legal requirements are met, absentee ballot applications and affidavits of candidacy required by Iowa Code chapters 43, 44, 45, 161A, 260C, 277, 376 and 420 may be submitted electronically by either fax or E-mail if presented to the appropriate filing officer as an exact copy of the original and if the submission is in compliance with subrule 21.2(2).

21.2(2) *Original absentee ballot applications.* The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the Friday before the election. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

a. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

b. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark on the envelope containing the original absentee ballot application is either illegible or later than the Friday before the election.

21.2(3) *Original affidavits of candidacy.* The original copy of an affidavit of candidacy submitted electronically shall also be filed with the appropriate commissioner. The envelope bearing the original affidavit (if any) shall be postmarked not later than the last day to file the document.

a. The filing shall be void if the original affidavit of candidacy filed electronically is not received within seven days after the filing deadline for the original affidavit of candidacy.

b. The filing shall be void if the postmark on the envelope containing the original affidavit of candidacy is later than the filing deadline.

c. If an affidavit of candidacy filing is voided because the original affidavit of candidacy submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

This rule is intended to implement Iowa Code sections 43.11, 43.19, 43.54, 43.67, 43.78, 44.3, 45.3, 45.4, 46.20, 47.1, and 47.2; sections 53.2, 53.8, 53.17, 53.22, 53.25, and 53.40 as amended by 2009 Iowa Acts, House File 475; sections 53.45, 61.3, 161A.5, and 277.4; sections 260C.15 and 376.4 as amended by 2009 Iowa Acts, House File 475; and sections 376.11 and 420.130.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 9879B**, IAB 11/30/11, effective 1/4/12]

721—21.3(49,48A) Voter identification documents.

21.3(1) *Identification documents for persons other than election day registrants.* Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the identification documents listed in Iowa Code section 48A.8 from any person who is asked or required to present identification pursuant to Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

21.3(2) *Identification for election day registrants.*

a. A person who applies to register to vote on election day shall provide proof of identity and residence pursuant to Iowa Code section 48A.7A in the precinct where the person is applying to register and vote.

b. Any registered voter who attests for another person registering to vote at the polls on election day shall be a registered voter of the same precinct. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

21.3(3) *Current and valid identification.*

a. "Current and valid" or "identification," for the purposes of this rule, means identification that meets the following criteria:

(1) The expiration date on the identification has not passed. An identification is still valid on the expiration date. An Iowa nonoperator's identification that shows "none" as the expiration date shall be considered current and valid.

(2) The identification has not been revoked or suspended.

b. A current and valid identification may include a former address.

21.3(4) *Identification not provided.* A person who has been requested to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to Iowa Code section 48A.7A may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct.

This rule is intended to implement Iowa Code section 48A.7A and section 49.77 as amended by 2009 Iowa Acts, House File 475, and P.L. 107-252, Section 303.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.4(49) Changes of address at the polls. An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

21.4(1) To qualify to vote in the election being held that day, the voter shall:

a. Go to the polling place for the precinct where the voter lives on election day.

b. Complete a registration form showing the person's current address in the precinct.

c. Present proof of identity as required by subrule 21.3(1).

21.4(2) The officials shall require a person who is reporting a change of address at the polls to cast a provisional ballot if the person's registration in the county cannot be confirmed. Registration may be confirmed by:

a. Telephoning the office of the county commissioner of elections, or

b. Reviewing a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or

c. Researching the county's voter registration records using a computer.

21.4(3) In precincts where the voter's declaration of eligibility is included in the election register pursuant to rule 721—21.5(49) and Iowa Code section 49.77, the commissioner shall provide to each precinct one of the two following methods for recording changes of address:

a. The voter shall be given both an eligibility declaration and a voter registration form. The eligibility declaration may be printed on the same piece of paper as the voter registration form.

b. The commissioner shall provide blank lines on the election register for the precinct election officials to record the voter's name, address, and, if provided, telephone number, and, in primary

elections, political party affiliation. The voter shall sign the election register next to the printed information. The voter shall also complete a voter registration form showing the voter's current address.

This rule is intended to implement Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.5(49) Eligibility declarations in the election register. To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If a multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.6(43,50) Turnout reports. Rescinded IAB 6/2/10, effective 7/1/10.

721—21.7(48A) Election day registration. In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

21.7(1) Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

a. The photograph shows the person who is registering to vote.

b. The name on the identification document is the same as the name of the applicant.

c. The address on the identification document is in the precinct where the person is registering to vote.

21.7(2) Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the election register that the person has attested for an election day registrant.

21.7(3) Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

21.7(4) In precincts where an electronic program is not used to check the name of an election day registrant against the statewide list of felons who have had their right to vote revoked, precinct election officials shall provide each election day registrant with a "Notice to Election Day Registrants" prepared by the state commissioner before allowing the voter to register and vote on election day. The "Notice to Election Day Registrants" prepared by the state commissioner will be posted on the state commissioner's Web site.

This rule is intended to implement 2007 Iowa Acts, House File 653.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8777B**, IAB 6/2/10, effective 5/7/10]

721—21.8(48A) Notice to election day registrant. The commissioner shall send to each person who registers to vote on election day, pursuant to Iowa Code section 48A.7A, an acknowledgment of the registration by nonforwardable mail. If the postal service returns the acknowledgment as undeliverable, the commissioner shall send a notice to the voter by forwardable mail. The notice shall be substantially in the form titled "Notice to Election Day Registrant" posted on the state commissioner's Web site.

This rule is intended to implement Iowa Code sections 48A.7A and 48A.26A.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.9(49) "Vote here" signs.

1. Size. The signs shall be no smaller than 16 inches by 24 inches.

2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a "vote here" sign at the driveway entrance would not help potential voters find the voting area, no "vote here" sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21.

721—21.10(43) Application for status as a political party. A political organization which is not currently qualified as a political party may file an application for determination of political party status with the state commissioner of elections. The application may be filed after the completion of the executive council's canvass of votes for the general election, but not later than one year after the date of the election at which the organization's candidate for President of the United States or governor received at least 2 percent of the vote.

21.10(1) *Application form.* The application shall be substantially in the form titled "Application for Political Party Status" posted on the state commissioner's Web site.

21.10(2) *Response.* If the political organization meets the requirements established in Iowa Code section 43.2, the commissioner shall declare that the organization has qualified as a political party, effective 21 days after the application is approved. If the organization does not meet the requirements, the state commissioner shall immediately notify the applicant in writing of the reason for the rejection of the application.

21.10(3) *Disqualification of political party.* If at the close of nominations for the general election a political party has not nominated a candidate for the office of President of the United States, or for governor, as the case may be, the political party shall be disqualified immediately.

If the candidate of a political party for President of the United States or for governor, as the case may be, does not receive 2 percent of the votes cast for that office at a general election, the political party shall be disqualified. The effective date of the disqualification shall be the date of the completion of the state canvass of votes.

When a political party is disqualified, the state commissioner shall immediately notify the chairperson or central committee of the disqualified political party.

21.10(4) *Notice of qualification and disqualification of political parties.* The state commissioner of elections shall immediately notify the state registrar of voters, the voter registration commission, and the county commissioners of elections when a political party is qualified or disqualified. The notice shall include the name of the political party and the date upon which change in political party status becomes effective.

The state commissioner of elections shall also publish notice of the qualification or disqualification of a political party in a newspaper of general circulation in each congressional district. The publication shall be made within 30 days of the approval of an application for qualification or within 30 days of the effective date of a disqualification.

This rule is intended to implement Iowa Code sections 43.2 and 47.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.11(49) Statement to provisional voter. Each voter who is required to vote a provisional ballot at the polls on election day shall be given a statement from the precinct election officials which shall be in substantially the following form:

Statement to Person Casting a Provisional Ballot
(To be completed by Precinct Official and given to Voter)

Voter's Name: _____

Reason for Provisional Ballot (check all that apply):

☐ Voter did not have proper identification (see "What you need to provide" below)
☐ Absentee voter with no ballot to surrender

☐ Voter was challenged by another registered voter
Reason: _____

What you need to provide before your ballot will count:

☐ Photo ID that has not expired and contains your name and picture
☐ One of the following that has not expired: Iowa driver's license, out-of-state driver's license, non-driver ID, U.S. passport, U.S. military ID, ID card issued by an employer, student ID issued by Iowa high school or college
☐ One of the following showing your name and current address: bank statement, paycheck, utility bill, property tax statement, residential lease, government check, or other government document

Deadline: _____a.m./p.m., _____ (date)
Mail or Deliver Evidence to: _____, County Auditor
County Auditor Address: _____
_____

If proof of ID or residence is required, your provisional ballot may be counted if you bring a copy of the identification listed above to this precinct before the polls close today or to the county auditor at the above address by the deadline indicated above. If your ballot is not counted, you will be notified by mail of the reason why it was not counted.

Your right to vote will be reviewed by the Special Precinct Board. You have the right and are encouraged to make a written statement and submit additional written evidence to the Board supporting your qualifications as a registered voter.

_____ _____
Precinct Election Official's Signature Date

This rule is intended to implement Iowa Code section 49.81.
[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.12 to **21.19** Reserved.

721—21.20(62) Election contest costs. In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:
1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

721—21.21(62) Limitations. The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

721—21.22(49) Photocopied ballot procedures. If it is necessary for ballots to be photocopied pursuant to Iowa Code section 49.67, the commissioner shall use the "Request for Additional Ballots" form posted on the state commissioner's Web site to record the request and resolution thereof. The commissioner shall complete the form, including the reason additional ballots are needed; who made the request for additional ballots and what time the request was made; the number of additional ballots produced; the

manner of production of the additional ballots, including location of production; and the commissioner's signature.

This rule is intended to implement Iowa Code section 49.67.

[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.23 and **21.24** Reserved.

721—21.25(50) Administrative recounts. When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount. The board of supervisors shall respond as soon as possible after receipt of the commissioner's request.

The recount shall be conducted by members of the absentee and special voters precinct board following the provisions of Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, Iowa Code section 50.49 and 721—Chapter 26. The commissioner may use different memory cards for the recount and shall retain the information on the memory cards used in the election pursuant to 721—subrule 22.51(13). The commissioner may also use different election definition files if the commissioner believes the original election definition files were flawed. If the commissioner uses different election definition files for the recount, the commissioner shall also retain the election definition files for the election as required by 721—subrule 22.51(14).

This rule is intended to implement Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, and Iowa Code section 50.49.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.26 to **21.29** Reserved.

721—21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans. If a city has annexed territory after January 1 of a year ending in zero and before the completion of the redrawing of precinct and ward boundaries during a year ending in one, the city shall include the annexed land in precincts drawn pursuant to Iowa Code sections 49.3 and 49.5.

21.30(1) When the city council draws precinct and ward boundaries, if any, the city shall use the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(2) When the board of supervisors, or the temporary county redistricting commission, draws precinct and county supervisor district boundaries, if any, it shall subtract from the population of the adjacent unincorporated area the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(3) The use of population figures for reprecincting or redistricting shall not affect the official population of the city or the county. Only the U.S. Bureau of the Census may adjust the official population figures, by corrections or by conducting special censuses. See Iowa Code section 9F.6.

This rule is intended to implement Iowa Code sections 49.3 and 49.5.

721—21.31(275) School director district maximum allowable deviation between director districts. Each director district shall have a population that exceeds the population of any other director district by no more than 10 percent. Director district plans with variations in excess of 10 percent between two or more districts shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 275.23A.

This rule is intended to implement Iowa Code section 275.23A.

[**ARC 9559B**, IAB 6/15/11, effective 5/23/11; **ARC 9891B**, IAB 11/30/11, effective 1/4/12]

721—21.32(372) City ward maximum allowable deviation between city wards. Each city ward shall have a population that exceeds the population of any other city ward by no more than 10 percent. City ward plans with variations in excess of 10 percent between two or more wards shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 372.13, subsection 7.

This rule is intended to implement Iowa Code section 372.13.

[**ARC 9559B**, IAB 6/15/11, effective 5/23/11; **ARC 9891B**, IAB 11/30/11, effective 1/4/12]

721—21.33(49) Redistricting special election blackout period. A special election shall not be held on the three Tuesdays preceding and following January 15 of years ending in the number two.

This rule is intended to implement Iowa Code chapter 49.

[**ARC 9893B**, IAB 11/30/11, effective 11/9/11]

721—21.34 to **21.49** Reserved.

721—21.50(49) Polling place accessibility standards.

21.50(1) *Inspection required.* Before any building may be designated for use as a polling place, the county commissioner of elections or the commissioner's designee shall inspect the building to determine whether it is accessible to persons with disabilities.

21.50(2) *Frequency of inspection.* Polling places that have been inspected using the Polling Place Accessibility Survey Form prescribed in subrule 21.50(4) shall be reinspected if structural changes are made to the building or if the location of the polling place inside the building is changed.

21.50(3) *Review of accessibility.* Not less than 90 days before each primary election, the commissioner shall determine whether each polling place needs to be reinspected.

21.50(4) *Standards for determining polling place accessibility.* The survey form available on the state commissioner's Web site titled "Polling Place Accessibility Survey" shall be used to evaluate polling places for accessibility to persons with disabilities.

The term "off-street parking" used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

21.50(5) *Temporary waiver of accessibility requirements.* Notwithstanding the waiver provisions of 721—Chapter 10, if the county commissioner is unable to provide an accessible polling place for any precinct, the commissioner shall apply for a temporary waiver of accessibility requirements pursuant to this subrule. Applications shall be filed with the secretary of state not later than 60 days before the date of any scheduled election. If a waiver is granted, it shall be valid for two years from the date of approval by the secretary of state.

a. Each application shall include the following documents:

(1) Application for Temporary Waiver of Accessibility Requirements.

(2) A copy of the Polling Place Accessibility Survey Form for the polling place to be used.

(3) A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for the precinct.

b. If an accessible place becomes available at least 30 days before an election, the commissioner shall change polling places and shall notify the secretary of state. The notice shall include a copy of the Polling Place Accessibility Survey Form for the new polling place.

21.50(6) *Emergency waivers.* During the 60 days preceding an election, if a polling place becomes unavailable for use due to fire, flood, or changes made to the building, or for other reasons, the

commissioner must apply for an emergency waiver of accessibility requirements in order to move the polling place to an inaccessible building. Emergency waiver applications must be filed with the secretary of state as soon as possible before election day. To apply for an emergency waiver, the commissioner shall send the following documents:

a. Application for Temporary Waiver of Accessibility Requirements.

b. A copy of the Polling Place Accessibility Survey Form for the polling place selected.

c. A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for this precinct (if any).

21.50(7) *Application form.* The form posted on the state commissioner's Web site titled "Temporary Waiver of Accessibility Requirements" shall be used to apply for a temporary waiver of accessibility requirements.

21.50(8) *Evaluation of waivers.* When the secretary of state receives waiver applications, the applications shall be reviewed carefully. A response shall be sent to the commissioner within one week by E-mail or by fax to notify the commissioner when the waiver request was received and whether additional information is needed.

21.50(9) *Granting waivers.* If the secretary of state determines from the documents filed with the waiver request that conditions justify the use of a polling place that does not meet accessibility standards, the secretary of state shall grant the waiver of accessibility requirements. If the secretary of state determines from the documents filed with the waiver request that all potential polling places have been surveyed and no accessible place is available, and the available building cannot be made temporarily accessible, the waiver shall be granted.

21.50(10) *Notice required.* Each notice of election published pursuant to Iowa Code section 49.53 shall clearly describe which polling places are inaccessible. The notice shall include a description of the services available to persons with disabilities who live in precincts with inaccessible polling places. The notice shall be in substantially the following form:

Any voter who is physically unable to enter a polling place has the right to vote in the voter's vehicle. For further information, please contact the county auditor's office at the telephone number or E-mail address listed below:

Telephone: _____ E-mail address: _____.

For TTY access, dial 711 + [auditor's office number].

21.50(11) *Denial of waiver requests.* The secretary of state shall review each waiver request. The secretary of state shall consider the totality of the circumstances as shown by the information on the waiver request, information contained in previous applications for waivers for the same precinct and for other precincts in the county, and other relevant available information. The waiver request may be denied if it appears that the commissioner has not made a good-faith effort to find an accessible polling place. If the waiver request is denied, the secretary of state shall notify the commissioner in writing of the reason for denying the request.

This rule is intended to implement Iowa Code section 49.21.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 9879B**, IAB 11/30/11, effective 1/4/12]

721—21.51 to **21.74** Reserved.

721—21.75(49) Voting centers for certain elections. The commissioner may establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

21.75(1) *Definition.*

"Voting center" means a location established by the commissioner for the purpose of providing ballots to all registered voters who are qualified to vote in a particular jurisdiction for a regular city election, city primary election, city runoff election, regular school election, or special election.

21.75(2) *Minimum requirements.*

a. Establishment. One or more voting centers may be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted. Regular polling place sites that are

accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used.

b. Location of voting centers. If voting centers are established for an election, at least one voting center must be located within the boundaries of the political subdivision for which the election is being conducted. At the commissioner's discretion, additional vote centers may be established as long as the voting center is located within the boundaries of the political subdivision for which the election is being conducted.

c. Accessibility. A voting center is subject to the requirements of Iowa Code section 49.21 relating to accessibility to persons who are elderly and persons with disabilities and relating to the posting of signs.

21.75(3) *Hours.* Voting center hours shall be the same as permitted for an election pursuant to Iowa Code section 49.73.

21.75(4) *Publications.* The location of each voting center shall be published in the notice of election by the commissioner in the same manner as the location of polling places is required to be published. The notice of election shall also include a description of the voting center in substantially the following form:

For the _____ election to be held on [date], voting centers will be available. Any registered voter of [jurisdiction name] may vote at any of the following places in this election:

[List addresses of voting centers.]

21.75(5) *Posting notices at regular polling places on election day.* If voting centers are established in lieu of regular polling places for an election, the commissioner shall post a notice of voting center locations, not later than the hour at which the polls open on the day of the election, on each door to the usual polling place in the precinct. The notice shall remain posted until the polls have closed.

21.75(6) *I-Voters use prohibited.* The commissioner shall not provide direct access from voting centers to the I-Voters system on election day.

21.75(7) *Determining ballot rotations.* For the purposes of determining ballot rotations pursuant to Iowa Code section 49.31 in an election for which the commissioner has established voting centers, the commissioner may use either precincts established pursuant to Iowa Code sections 49.3 to 49.5 or consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a."* If the commissioner uses consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a,"* the commissioner shall use the same consolidated precincts used in the last regularly scheduled election conducted for the political subdivision in which voting centers were not used.

21.75(8) *Operation of voting centers.*

a. Election registers and voter lists. Each voting center shall have an election register containing the names, addresses and voter statuses of all registered voters who are eligible to vote in that election. The election register may be a paper list or may be available on computers in an electronic format, rather than as an interactive connection to I-Voters.

b. Election day registration at voting centers. A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction served by the voting center.

c. Voters reporting address changes at voting centers. Any person who is already registered in the county and updates the person's voter registration address at a voting center shall show identification listed in Iowa Code section 48A.8. Persons unable to provide requested identification shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

d. Ballots. Each voting center shall have all ballot styles necessary to provide a ballot to any voter who is eligible to vote in the election for the jurisdiction served by the voting center.

e. Precinct election officials. Voting centers shall be administered by a minimum of three precinct election officials selected pursuant to Iowa Code sections 49.12 to 49.16. These officials shall be trained before each election and shall have specific instructions regarding the differences between voting centers and polling places.

f. *Ballot boxes used with optical scan voting equipment at voting centers.* The commissioner may instruct two precinct election officials not of the same political party to open the ballot box periodically throughout election day to ensure the ballots are stacking evenly in the ballot box to prevent a voting equipment malfunction. The precinct election officials charged with inspecting the ballot box shall ensure the ballot box is locked and secured at all times. As an alternative to this procedure, the commissioner may supply any voting center with additional ballot boxes and the precinct election officials may move the optical scan voting equipment to a new ballot box if necessary. All ballot boxes containing voted ballots shall be locked and secured by the precinct election officials at all times.

21.75(9) *Postelection review of voter participation.*

a. Within 45 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

b. The notice to the county attorney shall include a copy of the person's voter registration record and copies of the declarations of eligibility signed by the voter. The notice shall also include a reference to Iowa Code sections 39A.2(2) and 49.11(3)*"b."*

This rule is intended to implement Iowa Code sections 49.9 and 49.11.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.76 to **21.199** Reserved.

DIVISION II
BALLOT PREPARATION

721—21.200(49) Constitutional amendments and public measures.

21.200(1) The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

a. The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?"

b. The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

21.200(2) The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

a. The letter assigned by the commissioner shall be printed on the ballot at least ⅛ of an inch high in the designated place.

b. Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

21.200(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

a. Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed

description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.201(44) Competing nominations by nonparty political organizations.

21.201(1) *Nominations by convention and by petitions.* If one or more nomination petitions are received from nonparty political organization candidates for an office for which the same organization has also nominated one candidate by convention, the candidate nominated by convention shall be considered the nominee of the organization. The names of the other candidates shall appear on the ballot as candidates "nominated by petition," and those candidates shall be notified in writing not later than seven days after the close of the filing period.

21.201(2) *Multiple nomination petitions.* If nomination petitions are received from more than one candidate from the same nonparty political organization for the same office and the organization has not nominated a candidate for the office by convention, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates shall appear on the ballot as candidates "nominated by petition." A copy of the written record of the result of the drawing shall be kept with the nomination petition of each affected candidate, and each candidate shall be sent a copy for the candidate's records not later than seven days after the close of the filing period.

21.201(3) *Multiple nomination certificates.* If more than one nomination certificate is received for the same office from groups with the same nonparty political organization name, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates, including any candidate who filed nomination petitions, shall appear on the ballot as candidates "nominated by petition." A copy of the written record of the result of the drawing shall be kept with the nomination certificate of each affected candidate, and each candidate shall be sent a copy for the candidate's records not later than seven days after the close of the filing period.

This rule is intended to implement Iowa Code section 44.17.

721—21.202(43,52) Form of primary election ballot. All primary election ballots shall meet the following formatting requirements:

21.202(1) *Required information.* In addition to other requirements listed in the Iowa Code, primary election ballots shall also include the following information:

a. The name of the election.

b. The name of the party, which shall be printed at the top of the ballot in at least 24-point type.

c. The name of the county.

d. Instructions for how to mark the ballot.

21.202(2) *Headings and lines.* Rescinded IAB 9/8/10, effective 8/16/10.

21.202(3) *Office titles and order of offices.* Each office printed on the ballot shall be preceded by an office title. The order of offices on the primary election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles on the primary election ballot shall be listed as follows:

(1) U.S. Senator (if any).
(2) U.S. Representative, District ___.
(3) Governor.
(4) Secretary of State.
(5) Auditor of State.
(6) Treasurer of State.
(7) Secretary of Agriculture.
(8) Attorney General.
(9) State Senator, district ___ (if any).
(10) State Representative, District ___.
(11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).
(12) Treasurer.
(13) Recorder.
(14) County Attorney.

b. In presidential election years, the order of office titles on the primary election ballot shall be listed as follows:

(1) U.S. Senator (if any).
(2) U.S. Representative, District ___.
(3) State Senator, District ___ (if any).
(4) State Representative, District ___.
(5) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).
(6) Auditor.
(7) Sheriff.

c. If an office is printed on the primary election ballot followed by the words "To Fill Vacancy," that office shall be listed after the other offices under the appropriate heading. If the office followed by the words "To Fill Vacancy" is the board of supervisors, that office shall appear after the other board of supervisors office(s).

21.202(4) *Vote for number.* Under each office title, the number of choices a voter may make in the race shall be printed in the following form: "Vote for no more than ___." The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election.

21.202(5) *Write-in vote targets.* After the candidates' names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.202(4). Under each write-in line, the following words shall be printed: "Write-in vote, if any."

21.202(6) *Font size.* Candidates' names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

21.202(7) *Two-sided ballots.* If a primary election ballot must be printed on two sides, the words "Turn the ballot over" shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement 2009 Iowa Code Supplement section 43.31 [2009 Iowa Acts, House File 475, section 6].

[**ARC 8698B**, IAB 4/21/10, effective 6/15/10; **ARC 9049B**, IAB 9/8/10, effective 8/16/10]

721—21.203(49,52) Form of general election ballot. All general election ballots shall meet the following formatting requirements:

21.203(1) *Required information.* In addition to other requirements listed in the Iowa Code, general election ballots shall also include the following information:

a. The name of the election.

b. The name of the county.

c. Instructions for how to mark the ballot, including instructions for voting on judicial retentions and constitutional amendments or public measures and instructions for straight-party voting.

d. Ballot location of the judges' names and any constitutional amendment(s).

21.203(2) *Headings and lines.* Rescinded IAB 9/8/10, effective 8/16/10.

21.203(3) *Office titles, order of offices and public measures.* Each office printed on the ballot shall be preceded by an office title. The order of offices and public measures listed on the general election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles and public measures on the general election ballot shall be listed as follows:

(1) U.S. Senator (if any).
(2) U.S. Representative, District ___.
(3) Governor and Lt. Governor.
(4) Secretary of State.
(5) Auditor of State.
(6) Treasurer of State.
(7) Secretary of Agriculture.
(8) Attorney General.
(9) State Senator, District ___ (if any).
(10) State Representative, District ___.
(11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).
(12) Treasurer.
(13) Recorder.
(14) County Attorney.
(15) Township Trustee (if any).
(16) Township Clerk (if any).
(17) County Public Hospital Trustee (if any).
(18) Soil and Water Conservation District Commissioner.
(19) County Agricultural Extension Council Member.
(20) Other nonpartisan offices (if any).
(21) Supreme Court Justice (if any).
(22) Court of Appeals Judge (if any).
(23) District Court Judge (if any).
(24) District Court Associate Judge (if any).
(25) Associate Juvenile Judge (if any).
(26) Associate Probate Judge (if any).
(27) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

b. In presidential election years, the order of office titles on the general election ballot shall be listed as follows:

(1) President and Vice President.
(2) U.S. Senator (if any).
(3) U.S. Representative, District ___.
(4) State Senator, District ___ (if any).
(5) State Representative, District ___.
(6) Board of Supervisors (if plan II or plan III, then Board of Supervisors, district ___).
(7) Auditor.

(8) Sheriff.
(9) Township Trustee (if any).
(10) Township Clerk (if any).
(11) County Public Hospital Trustee (if any).
(12) Soil and Water Conservation District Commissioner.
(13) County Agricultural Extension Council Member.
(14) Other nonpartisan offices (if any).
(15) Supreme Court Justice (if any).
(16) Court of Appeals Judge (if any).
(17) District Court Judge (if any).
(18) District Court Associate Judge (if any).
(19) Associate Juvenile Judge (if any).
(20) Associate Probate Judge (if any).
(21) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:
1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

c. If an office is printed on the general election ballot followed by the words "To Fill Vacancy," that office shall be listed after the other offices under the appropriate heading. If the office followed by the words "To Fill Vacancy" is the board of supervisors, that office shall appear after the other board of supervisors office(s).

21.203(4) *Vote for number.* Under each office title, the number of choices a voter may make in the race shall be printed in the following form: "Vote for no more than ___". The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election. Under the "President and Vice President" office title, "Vote for no more than one team" shall be printed on the ballot. Under the "Governor and Lt. Governor" office title, "Vote for no more than one team" shall be printed on the ballot.

21.203(5) *Write-in vote targets.* After the candidates' names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.203(4). Under each write-in line, the following words shall be printed: "Write-in vote, if any". For the offices of President and Vice President, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: "Write-in vote for President, if any" and "Write-in vote for Vice President, if any". For the offices of governor and lieutenant governor, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: "Write-in vote for Governor, if any" and "Write-in vote for Lt. Governor, if any".

21.203(6) *Font size.* Candidates' names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

21.203(7) *Two-sided ballots.* If a general election ballot must be printed on two sides, the words "Turn the ballot over" shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement 2009 Iowa Code Supplement section 49.57A [2009 Iowa Acts, House File 475, section 32].

[**ARC 8698B**, IAB 4/21/10, effective 6/15/10; **ARC 9049B**, IAB 9/8/10, effective 8/16/10]

721—21.204(260C) Tabulating election results by school district for merged area special elections. All results for merged area special elections, including special precinct results, shall be tabulated by school district. To tabulate the special precinct results in this manner, the county commissioner may either program the voting equipment to tabulate the ballots in this manner or manually sort and tabulate the ballots by school district.

This rule is intended to implement Iowa Code chapter 260C.
[**ARC 9879B**, IAB 11/30/11, effective 1/4/12]

721—21.205 to **21.299** Reserved.

DIVISION III
ABSENTEE VOTING

721—21.300(53) Satellite absentee voting stations.

21.300(1) *Establishment of stations.* Satellite absentee voting stations may be established by the county commissioner of elections or by a petition of eligible electors of the jurisdiction conducting the election.

a. Satellite absentee voting stations established by the county commissioner. The county commissioner of elections may designate locations in the county for satellite absentee voting stations. Satellite absentee voting stations established by the commissioner shall be accessible to elderly and disabled voters. Satellite absentee voting stations must also be established so as to provide for voting in secret and ballot security.

b. Satellite absentee voting stations established after receipt of a valid petition. A petition requesting a satellite absentee voting station shall be substantially in the form titled "Petition Requesting Satellite Absentee Voting Station" available on the state commissioner's Web site. If the commissioner receives a petition requesting a satellite absentee voting station on or before the petition deadline set forth in Iowa Code section 53.11, the commissioner shall determine the validity of the petition within 24 hours. A petition requesting a satellite absentee voting station is valid if it contains signatures of not less than 100 eligible electors of the jurisdiction conducting the election. Electors signing the petition must include their signature, house number, street, and date the petition was signed. Signatures on lines not containing all of the required information shall not be counted. The heading on each page of the petition shall include the satellite location requested and the election name or date for which the location is requested. Signatures on petition pages without the required heading shall not be counted.

c. Mandatory rejection of certain satellite absentee voting stations. Otherwise valid petitions for satellite absentee voting stations shall be rejected within four days of the commissioner's receipt of the petition if:

(1) The site requested is not accessible to elderly and disabled voters,

(2) The site requested has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or

(3) The owner of the site refuses permission to locate the satellite absentee voting station at the site requested on the petition.

d. Discretionary rejection of certain satellite absentee voting stations. Otherwise valid petitions for satellite absentee voting stations may be rejected within four days of the commissioner's receipt of the petition if:

(1) A petition is received requesting satellite voting for a city runoff election and a special election is scheduled to be held between the regular city election and a city runoff election.

(2) The owner of the site demands payment for its use.

e. Provision of ballots. Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. Ballots must be provided for the precinct in which the satellite absentee voting station is located; however, it is not necessary to provide ballots from all of the precincts in the political subdivision for which the election is being conducted.

21.300(2) *Notice provided.* Notice shall be published at least seven days before the opening of any satellite absentee voting station. If more than one satellite absentee voting station will be provided, a single publication may be used to notify the public of their availability. If it is not possible to publish the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be published as soon as possible.

A notice shall also be posted at each satellite absentee voting station at least seven days before the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite

absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

Both the published and posted notices shall include the following information:

a. The name and date of the election for which ballots will be available.

b. The location(s) of the satellite absentee voting station(s).

c. The dates and times that the station(s) will be open.

d. The precincts for which ballots will be available.

e. An announcement that voter registration forms will be available for new registrations in the county and that changes in the registration records of people who are currently registered within the county may be made at any time.

If the satellite absentee voting station is located in a building with more than one public entrance, brief notices of the location of the satellite absentee voting station shall be posted on building directories, bulletin boards, or doors. These notices shall be posted no later than the time the station opens and shall be removed immediately after the satellite absentee voting station has ceased operation for an election.

21.300(3) *Staff.* Satellite absentee voting station workers may be selected from among the staff members of the commissioner's office, from the election board panel drawn up pursuant to Iowa Code sections 49.15 and 49.16, or a combination of these two sources. Compensation of workers selected from the election board panel shall be at the rate provided in Iowa Code section 49.20.

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner's discretion. All workers must be registered voters of the county, and for primary and general elections the workers must be registered with a political party; however, workers not affiliated with any party may be assigned to work at a satellite absentee voting station as long as not more than one-third of the workers assigned to a particular satellite absentee voting station are not affiliated with a political party. For all elections, no more than a simple majority of the workers shall be members of the same political party.

People who are prohibited from working at the polls pursuant to Iowa Code section 49.16 may not work at satellite absentee voting stations.

21.300(4) *Oath required.* Before the first day of service at a satellite absentee voting station, each worker shall take an oath substantially in the form titled "Election Official/Clerk Oath" available on the state commissioner's Web site. The oath must be taken before each election.

21.300(5) *Suggested supplies for each satellite absentee voting station.* A list of supplies suggested for each satellite absentee voting station is available on the state commissioner's Web site.

21.300(6) *Ballot transport and storage.* At the commissioner's discretion the ballots may be transported between the commissioner's office and the satellite absentee voting station by the workers who will be on duty that day, or by two people of different political parties who have been designated as couriers by the commissioner. It is not necessary for the same people to transport the ballots in both directions.

If the ballots are transported by the satellite absentee voting station workers, two workers who are members of different political parties and the ballots must travel together in the same vehicle.

Ballots may be stored at the satellite absentee voting station during hours when the station is closed only if they are kept in a locked cabinet or container. The cabinet must be located in a room which is kept locked when not in use. Voted absentee ballots must be delivered to the commissioner's office at least once each week.

21.300(7) *Ballot receipts.* Satellite absentee voting station workers shall sign receipts for the ballots taken to the satellite absentee voting site. The receipt shall be substantially in the form titled "Satellite Absentee Voting Station Ballot Record and Receipt" available on the state commissioner's Web site. A copy of the ballot record and receipt shall be retained in the commissioner's office. The original shall be sent with the ballots to the satellite absentee voting station.

21.300(8) *Arrangement of the satellite absentee voting station.* Protection of the security of the ballots (both voted and unvoted) and the secrecy of each person's vote shall be considered in the arranging of the satellite absentee voting station.

a. *Security.* The satellite absentee voting station shall be arranged so that ballots are protected against removal from the station by unauthorized persons.

b. *Voting area.* Voting booths without curtains shall be placed so that passersby and other voters may not walk directly behind a person using the booth. At least one voting booth must be accessible to the disabled. The booth must be designed to accommodate a person seated in a chair or wheelchair. A chair must be provided for voters who wish to sit down while voting or waiting in line.

c. *Campaign signs and electioneering.* No signs supporting or opposing any candidate or question on the ballot shall be posted on the premises of or within 300 feet of any outside door of any building affording access to a satellite absentee voting station during the hours when absentee ballots are available at the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

21.300(9) *Operation of the satellite absentee voting station.* At all times the satellite absentee voting station shall have at least two workers present to preserve the security of the ballots, both voted and unvoted.

21.300(10) *Voter registration at the satellite absentee voting station.* Each satellite absentee voting station shall provide forms necessary to register voters, including the oaths necessary to process voters registering pursuant to Iowa Code section 48A.7A, and to record changes in voter registration records. Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper or contained in a computerized data file. As an alternative, the commissioner may provide a computer connection with the commissioner's office.

21.300(11) *Procedure for issuing absentee ballot.* The instructions for absentee voting are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

21.300(12) *Closing a station.* The instructions for closing a satellite absentee voting station are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

21.300(13) *Use of I-Voters at satellite absentee voting stations.* Any county commissioner who wants to use the I-Voters statewide voter registration database at a satellite absentee voting station shall:

a. Complete an application to use I-Voters at a satellite absentee voting station. A separate application shall be completed for each satellite absentee voting station. The application is available on the state commissioner's Web site. The application shall be submitted at least seven days before the opening of the satellite absentee voting station. If it is not possible to submit an application at least seven days before the station opens due to the receipt of a petition, the application shall be submitted as soon as possible. The application will be considered by the state commissioner as soon as practicable after it is received. The state commissioner reserves the right to reject an application for any reason or to limit the number of users at any satellite absentee voting station.

b. Use a cellular telephone service or a wired Internet connection to connect to the Internet from the satellite absentee voting station. If the county uses a wired Internet connection, the commissioner shall use either a regular or a wireless router between the wired Internet connection and the county's computers. Connection to a facility's wireless network is not permitted.

c. Configure any wireless routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

(1) A minimum 10-character password must be assigned to the router administration screens.

(2) WPA (AES) security for wireless connections with a minimum 10-character password must be used.

(3) Remote management of the router must be prohibited.

(4) Universal Plug & Play must be turned off.

(5) Port forwarding on the router must not be disabled.

(6) Unauthorized connections shall be prohibited, including smartphones, personal digital assistants (PDAs) and laptops.

d. Configure any wired routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

(1) Remote management of the router must be prohibited.

(2) Universal Plug & Play must be turned off.

(3) Port forwarding on the router must not be disabled.

(4) Unauthorized connections shall be prohibited, including smartphones, PDAs and laptops.

(5) Administrator passwords for the routers must be changed from the default passwords, and standard county password policies shall be followed.

e. Laptops used at a satellite absentee voting station shall be configured as follows:

(1) The hard drives must be encrypted.

(2) The operating system must be fully supported by the operating system vendor.

(3) The operating system must be fully patched.

(4) Antivirus software and anti-spyware must be installed and up to date.

(5) A full antivirus and anti-spyware scan must be done during the week before a laptop is used at a satellite absentee voting station and at least once a week thereafter while the laptop is being used at satellite absentee voting stations.

(6) The administrator password must be changed from the default password.

(7) Guest user accounts must be disabled or renamed.

(8) File/print sharing must be turned off, and remote access must be disabled.

(9) Bluetooth must be turned off.

(10) The Windows firewall must be turned on.

f. Laptops connected to I-Voters at a satellite absentee voting station shall never be left unattended.

g. Laptops connected to I-Voters at a satellite absentee voting station shall not have any USB memory sticks or CDs/DVDs inserted in the computer after the virus scan is conducted pursuant to subrule 21.300(13), paragraph *"e."*

h. Laptops connected to I-Voters at a satellite absentee voting station shall not be used to visit any other Web sites.

i. No software applications, other than I-Voters, shall be used while the I-Voters application is in use at a satellite absentee voting station.

21.300(14) *Provisional voting at satellite absentee voting stations.* If it is necessary for a voter to cast a provisional ballot at a satellite absentee voting station, the voter shall receive the same ballot style as the majority of the voters would receive in the precinct in which the satellite absentee voting station is located.

This rule is intended to implement Iowa Code section 53.11.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 9139B**, IAB 10/6/10, effective 9/16/10; **ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.301(53) Absentee ballot requests from voters whose registration records are "inactive."

21.301(1) *In person.* Absentee voters whose registration records are "inactive" and who appear in person to vote, either at the office of the commissioner or at a satellite absentee voting station, shall be assigned a status of "active" after requesting an absentee ballot.

21.301(2) *By mail.* When a request for an absentee ballot is received by mail from a voter whose registration record has been made "inactive" pursuant to Iowa Code section 48A.29, the commissioner shall update the voter's residential address to the address listed on the absentee ballot request if requested by the voter and assign the voter a status of "active."

21.301(3) *Absentee ballots received from a voter subsequently assigned "inactive" status.*

a. The commissioner shall mail an absentee ballot to a voter if a voter's status is changed to "inactive" between the time the voter requested an absentee ballot and the time the absentee ballots are ready to mail. The commissioner shall also separately notify the voter of the requirement to provide identification before the ballot can be counted pursuant to paragraph 21.301(3)*"c."*

b. The commissioner shall set aside the absentee ballot of a voter whose status is changed to "inactive" pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter's absentee ballot.

c. Pursuant to Iowa Code section 53.31, the commissioner shall notify any voter assigned an "inactive" status subsequent to requesting or returning an absentee ballot that the voter's absentee ballot has been challenged and may be counted only if the voter personally delivers or mails a copy of the voter's identification as listed in Iowa Code section 48A.8 to the commissioner's office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter's identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

This rule is intended to implement Iowa Code section 48A.29 and sections 48A.26, 48A.37 and 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.302(48A) In-person absentee registration. After the close of voter registration for an election, a person who appears in person to apply for and vote an absentee ballot may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote using identification that meets the requirements set forth in Iowa Code section 48A.7A. The voter must also complete an oath of person registering on election day. If the voter does not have appropriate identification, the voter may establish identity and residence using the attestation procedure in Iowa Code section 48A.7A, subsection 1, paragraph *"c."* Otherwise, the person may cast only a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballot envelopes shall be used.

This rule is intended to implement Iowa Code section 48A.7A.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.303(53) Mailing absentee ballots. The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

5. Return carrier envelope. The return carrier envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in substantially the form prescribed by the state commissioner of elections.

8. Receipt. The receipt form required by 2007 Iowa Acts, Senate File 601, section 227, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.304(53) Absentee ballot requests from voters whose registration records are "pending." A voter who requests an absentee ballot and is assigned a status of "pending" must provide identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475.

21.304(1) *In-person applicants.* In-person applicants for absentee ballots assigned a status of "pending" must show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, before casting a ballot. If an in-person applicant provides identification as required by Iowa Code section 48A.8 when casting an absentee ballot in person, the commissioner shall assign the voter's registration record a status of "active" and provide the voter with an absentee ballot. Voters who are unable to provide identification as required by Iowa Code section 48A.8 shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

21.304(2) *By-mail applicants.* By-mail applicants for absentee ballots assigned a status of "pending" must either come to the commissioner's office and show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, or mail a photocopy of identification pursuant to Iowa Code section 48A.8 before the voter's absentee ballot can be counted by the absentee and special voters precinct board. The commissioner shall mail the voter a notice informing the voter of the requirement to provide one of the identification documents listed in Iowa Code section 48A.8 before the voter's absentee ballot can be considered for counting by the absentee and special voters precinct board. If a by-mail applicant provides identification as required by Iowa Code section 48A.8, the commissioner shall assign the voter's registration record a status of "active."

21.304(3) *By-mail absentee voters assigned a status of "pending" who do not provide identification prior to election day.* The ballot of a by-mail absentee voter assigned a status of "pending" who has not shown identification in person at the commissioner's office or provided a photocopy of identification by mail pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, shall be challenged by a member of the absentee and special voters precinct board on election day pursuant to Iowa Code section 53.31. The absentee and special voters precinct board shall immediately mail notice of the challenge to the voter. The notice shall include the deadline for the voter to provide identification pursuant to Iowa Code section 48A.8. If the voter provides identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's ballot shall be considered for counting by the absentee and special voters precinct board. If the voter does not provide identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's absentee ballot shall be rejected by the absentee and special voters precinct board. The voter shall be notified of the reason for rejection pursuant to Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475.

This rule is intended to implement Iowa Code section 53.31 and sections 48A.8 and 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.305(53) Confirming commissioner's receipt of an absentee ballot on election day. If a voter's name is on the absentee list prepared pursuant to Iowa Code sections 49.72 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196, and the voter appears at the polling place to vote on election day, the precinct election officials may contact the commissioner's office to confirm whether the commissioner has received the voter's absentee ballot. If the precinct election officials are able to confirm either that the commissioner has not received the voter's absentee ballot or that the voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the precinct election officials shall permit the voter to cast a regular ballot at the polling place.

After confirming that a voter's absentee ballot has not been received or that a voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the commissioner shall mark the voter's absentee ballot as "Void" in the statewide voter registration system. The commissioner shall enter "Voted at polls" in the comment box that appears when the ballot is marked as "Void."

If a voter's absentee ballot is returned to the commissioner's office after being marked as "Void" pursuant to this rule, the absentee ballot shall be rejected by the absentee and special voters precinct board pursuant to Iowa Code section 53.25 because the voter cast a ballot in person at the polling place.

This rule is intended to implement Iowa Code sections 49.72, 49.81 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196.

[**ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.306 to **21.319** Reserved.

721—21.320(53) Absentee voting by UOCAVA voters. This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

21.320(1) *Definitions.* The following definitions apply to this rule:

"Armed forces," as used in this rule, is defined in Iowa Code section 53.37(3).

"FPCA" means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

"UOCAVA voter" means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

21.320(2) *Requests for absentee ballots.* All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

a. *Forms.* UOCAVA voters may use the following official forms to request absentee ballots:

(1) A federal postcard absentee ballot application and voter registration form (FPCA).

(2) A state of Iowa official absentee ballot request form.

(3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1)*"b."*

b. *Form not required.* UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

(1) Name.

(2) Age or date of birth.

(3) Iowa residence, including street address (if any) and city.

(4) Address to which the ballot shall be sent.

(5) Township of residence, if applicable.

(6) County of residence.

(7) Party affiliation, if the request is for a ballot for a primary election.

(8) Signature of voter.

(9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, "I am a U.S. citizen living in France."

c. *Methods for transmitting absentee ballot requests.* UOCAVA voters may transmit absentee ballot requests by any of the following methods:

(1) Mail.

(2) Personal delivery by the voter or a person designated by the voter.

(3) Facsimile machine.

(4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include either an image of the physical signature or a digital signature shall not be accepted.

d. *Original request not needed.* If the request is sent by E-mail or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

e. Multiple requests from the same person. Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1)*"b,"* the request received from the voter shall be the one honored, not the proxy request.

f. Subsequent request after ballot has been sent. Not more than one ballot shall be transmitted by the commissioner to any UOCAVA voter for a particular election unless, after the ballot has been mailed or transmitted electronically pursuant to rule 721—21.320(53), the voter reports a change in the address, E-mail address or fax number to which the ballot should be sent. The commissioner shall void the original absentee ballot request and include a comment in the voter's registration record, noting the I-Voters-sequence number of the original ballot and noting that a replacement ballot was sent to an updated address. If the original ballot is returned voted, it shall be counted only if the replacement ballot does not arrive before the deadline for receiving absentee ballots set forth in Iowa Code section 53.17.

g. Requests for absentee ballots through the end of the calendar year. 2009 Iowa Code Supplement section 53.40 as amended by 2010 Iowa Acts, Senate File 2194, permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request in which the UOCAVA voter requests ballots for all elections, the commissioner shall send the applicant a ballot for each election held after the request is received through the end of the calendar year in which the request is received. If the applicant does not request ballots for all elections or does not specify which elections the request is for, the commissioner shall send the applicant a ballot only for federal elections through the end of the calendar year in which the request is received.

(1) When an absentee ballot for a UOCAVA voter is returned as undeliverable by the United States Postal Service or an E-mail server or a fax cannot be transmitted to the number provided by the voter, the commissioner shall do the following:

1. Verify that the commissioner's office sent the absentee ballot to the address, E-mail address or fax number requested by the UOCAVA voter. If the absentee ballot was sent incorrectly, the commissioner shall correct the error and immediately transmit a new absentee ballot.

2. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall E-mail the voter if the commissioner has an E-mail address on file to inform the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address if the voter wishes to continue to receive absentee ballots.

3. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall also attempt to contact the voter by sending a forwardable notice to both the voter's residential address and the voter's absentee mailing address informing the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address, E-mail address or fax number if the voter wishes to continue to receive absentee ballots.

4. If the absentee ballot was mailed, E-mailed or sent to the correct address or fax number, the commissioner shall terminate the voter's current FPCA request and shall not send the voter any further ballots unless a new absentee ballot request is received from the voter.

(2) If the voter provides a new FPCA with a new mailing address, E-mail address or fax number before election day, the commissioner shall enter a new absentee request on the voter's registration record and transmit the ballot via the method requested by the voter. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

21.320(3) *Electronic transmission of absentee ballots to UOCAVA voters.*

a. Electronic transmission of absentee ballots by facsimile machine or by E-mail is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner may employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

b. Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

(1) Instructions to the county commissioners of elections for providing this service.

(2) Instructions to the voter for marking and returning the ballot.

(3) The affidavit envelope 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.

(4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

21.320(4) *Ballot return by electronic transmission.*

a. Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are located in an area designated as an imminent danger pay area or for active members of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard who are located outside the United States or any of its territories, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: "I understand that by returning this ballot by electronic transmission, my voted ballot will not be secret. I hereby waive my right to a secret ballot."

b. When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

c. The absentee ballot shall be sealed in an envelope marked with the voter's name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

This rule is intended to implement Iowa Code sections 53.40 and 53.46.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8777B**, IAB 6/2/10, effective 5/7/10; **ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.321 to **21.349** Reserved.

721—21.350(53) Absentee ballot processing for elections held following July 1, 2007. Rescinded IAB 9/26/07, effective 9/7/07.

721—21.351(53) Receiving absentee ballots. The commissioner shall carefully account for and protect all absentee ballots returned to the office.

21.351(1) *Note receipt.* The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner's office. The commissioner shall also record receipt of the ballot in I-Voters.

21.351(2) *Temporary storage.* If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

21.351(3) *Secure area.* The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for completeness and defects.

[**ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.352(53) Review of returned affidavit envelopes.

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

21.352(2) *Affidavit envelopes reviewed.* The affidavit envelopes 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 found open.

e. Discarding any return carrier envelopes, ballots, or affidavit envelopes returned by voters.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.353(53) Opening the return carrier envelopes. 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 envelope.

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) *Examination of affidavit envelope.* The reviewer shall make sure that:

a. The affidavit envelope is sealed, apparently with the ballot inside.

b. The affidavit envelope has not been opened and resealed.

c. The affidavit includes all of the following:

(1) A signature.

(2) For primary elections only, political party affiliation.

21.354(3) *No defects or incomplete information.* If the reviewer finds that the required information on the affidavit is complete 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 into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

21.354(4) *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:

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

(1) The absentee ballot is not enclosed in the affidavit envelope.

(2) The affidavit envelope is not sealed.

(3) The affidavit envelope 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. An incomplete affidavit lacks:

(1) The signature of the voter.

(2) For primary elections only, political party affiliation.

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

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

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

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

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.355(53) Notice to voter. When the commissioner finds an incomplete absentee ballot affidavit or finds a defective affidavit envelope, 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.

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).

b. The voter's options for correcting 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 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. Reason for defect.

b. The voter's options for correcting the defect as follows:

(1) The voter may request a replacement ballot;

(2) The voter may vote at the polls on election day; or

(3) In the event an absentee ballot becomes defective because a voter reregisters to vote in a new precinct or county after casting an absentee ballot, the voter may correct the defect by reregistering to vote in the precinct in which the absentee ballot was cast, provided the voter can still claim residence for voter registration purposes in the precinct in which the absentee ballot was cast pursuant to Iowa Code sections 48A.5 and 48A.5A. If a voter reregisters after the voter registration deadline listed in Iowa Code section 48A.9 for a particular election, the voter shall be required to follow election day registration procedures as set forth in Iowa Code section 48A.7A, subsection 3.

c. Process for requesting a replacement ballot.

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

21.355(3) *Telephone contact.* If the voter has provided a telephone number, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

a. Name of the person making the call.

b. Date and time of the call.

c. Whether the person making the call spoke to the voter.

21.355(4) *E-mail contact.* If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10; **ARC 9989B**, IAB 2/8/12, effective 1/17/12]

Rules 721—21.351(53) through 721—21.355(53) are intended to implement 2009 Iowa Code Supplement section 53.18 as amended by 2010 Iowa Acts, Senate file 2196, and section 53.25.

721—21.356 to **21.358** Reserved.

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 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 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) The secrecy envelope shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:

Secrecy Envelope

After you vote, put your ballot in here.

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 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 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) If a voter has not enclosed the ballot in a secrecy envelope and the ballot has not been folded in a manner that conceals all votes marked on the ballot, the officials shall put the ballot in a secrecy envelope without examining the ballot.

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

a. The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2. If, after receiving notice from the commissioner pursuant to Iowa Code section 53.23, subsection 3, paragraph *"a,"* either or both political parties fail to appoint an observer, the commissioner may continue with the proceedings.

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 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 Iowa Acts, House File 670.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.360(53) Failure to affix postmark date. Rescinded IAB 4/20/11, effective 3/31/11.

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

21.361(1) An absentee ballot shall be rejected if the affidavit lacks the voter's signature.

21.361(2) An absentee ballot shall be rejected if the applicant is not a duly registered voter in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5 or a consolidated precinct established by the commissioner pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a."*

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

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

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

21.361(6) An absentee ballot shall be rejected if the voter has voted in person at the polls.

21.361(7) An absentee ballot shall be rejected if in primary elections the voter does not declare a party affiliation on the voter's affidavit.

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

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.362 to **21.369** Reserved.

721—21.370(53) Training for absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.371(53) Certificate. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.372(53) Frequency of training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.373(53) Registration of absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.374(53) County commissioner's duties. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.375(53) Absentee ballot courier training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.376(53) Receiving absentee ballots. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.377 to **21.399** Reserved.

DIVISION IV
INSTRUCTIONS FOR SPECIFIC ELECTIONS

721—21.400(376) Signature requirements for certain cities. This rule applies to cities which have all of the following characteristics:

1. Nomination procedures under Iowa Code section 376.3 are used. (This includes cities with primary or runoff election provisions. It does not include cities with nominations under Iowa Code chapter 44 or 45.)
2. Some or all council members are voted upon by the electors of wards, rather than by the electors of the entire city.
3. Ward boundaries have been changed since the last regular city election at which the ward seat was on the ballot.
4. The number of wards has not changed.

Calculation of the number of signatures for ward seats shall use the vote totals from the wards as the wards were configured at the time of the last regular city election at which the ward seat was on the ballot.

This rule is intended to implement Iowa Code section 376.4.

721—21.401(376) Signature requirements in cities with primary or runoff election provisions. In cities using the provisions of Iowa Code section 376.4 for nomination of candidates and in which more

than one council member was elected at-large at the last preceding regular city election, the number of signatures shall be calculated by the following formula:

V = the total number of votes cast for all candidates for council member at-large at the last regular city election;

E = the number of people to be elected at the last regular city election;

$$\frac{V}{E} \times .02 = \text{the number of signatures needed by each candidate in the next regular city election.}$$

This rule is intended to implement Iowa Code section 376.4.

721—21.402(372) Filing deadline for charter commission appointment petition. If a special election has been called by a city to present to the voters the question of adopting a different form of city government, receipt by the city council of a petition requesting appointment of a charter commission shall stay the special election if the petition is received no later than 5 p.m. on the Friday preceding the date of the special election.

This rule is intended to implement Iowa Code section 372.3.

721—21.403(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.

21.403(1) *Notice to the commissioner.* At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

a. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

b. No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

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 shall be not later than 12 noon 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. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the fiftieth day before the election.

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 not later than 12 noon on the fiftieth day before the election.

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

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.404(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements. This rule applies to cities that have adopted by ordinance one of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

21.404(1) *Notice to the commissioner.* At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

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

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the twenty-second day before the election.

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 not later than 12 noon on the twenty-second day before the election.

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

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.405 to **21.499** Reserved.

721—21.500(277) Signature requirements for school director candidates. The number of signatures required to be filed by candidates for the office of director in the regular school election shall be calculated from the number of registered voters in the district on May 1 of the year in which the election will be held. If May 1 falls on a day when the commissioner's office is closed for business, the commissioner shall use the number of registered voters in the district on the next day that the commissioner's office is open for business to determine the number of required signatures. Candidates who are seeking election in districts with election plans as specified in Iowa Code section 275.12(2)*"b"* and *"c,"* where the candidate must reside in a specific director district, but is voted upon by all of the electors of the school district, shall be required to file a number of signatures calculated from the number of registered voters in the whole school district. Candidates who will be voted upon only by the electors of a director district shall be required to file a number of signatures calculated from the number of registered voters in the director district in which the candidate resides and seeks to represent.

If a special election is to be held to fill a vacancy on the school board, the number of registered voters on the date the commissioner receives notice of the special election shall be used to calculate the number of signatures required for the special election.

This rule is intended to implement Iowa Code sections 277.4 and 279.7.

[**ARC 9466B**, IAB 4/20/11, effective 3/31/11]

721—21.501 to **21.599** Reserved.

721—21.600(43) Primary election signatures—plan three supervisor candidates. Rescinded IAB 11/30/11, effective 1/4/12.

721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors or method of election. After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204 or the method of electing supervisors has been

changed from plan I or plan II to plan III since the last general election, the signatures for candidates at the next primary and general elections shall be calculated as follows:

21.601(1) *Primary election.* Divide the total number of party votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

21.601(2) *Nominations by petition.* If the effective date of the change in the number of districts or method of election was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

This rule is intended to implement Iowa Code chapters 43 and 45.

[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—21.602(43) Primary election—nominations by write-in votes for certain offices.

21.602(1) The process described in subrule 21.602(2) shall be used to determine whether the primary election is conclusive and a candidate was nominated for partisan offices that are:

a. Not mentioned in Iowa Code section 43.53 (township offices) or 43.66 (state representative and state senator), and

b. For which no candidate's name was printed on the primary election ballot, and

c. For which no candidate's name was printed on the primary election ballot in any previous primary election.

21.602(2) To be nominated by write-in votes, the person must receive at least 35 percent of the number of votes cast in the previous general election for that party's candidate for president of the United States or for governor, as the case may be, as follows:

a. Statewide office: 35 percent of votes cast statewide.

b. Congressional district: 35 percent of votes cast within the current boundaries of the Congressional district.

c. County office, including plan II supervisors: 35 percent of the votes cast within the county.

d. Plan III county supervisor: 35 percent of the votes cast within the supervisor district. If the boundaries of the supervisor district have changed since the previous general election, the number of votes cast within the county for the party candidate for president or for governor, as the case may be, shall be divided by the number of supervisor districts in the county; then the quotient shall be multiplied by 0.35.

21.602(3) If a write-in candidate is declared nominated at the canvass of votes, Iowa Code section 43.67, which requires the appropriate election commissioner to notify the candidate, shall apply.

This rule is intended to implement Iowa Code section 43.66.

721—21.603 to **21.799** Reserved.

721—21.800(423B) Local sales and services tax elections.

21.800(1) Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall include the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local sales and services tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which notice is given to the commissioner.

21.800(2) As an alternative to the method of initiating a local option tax election described in subrule 21.800(1), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county auditor pursuant to Iowa Code section 423B.1, subsection 4, paragraph *"b,"* requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

21.800(3) Notice of local sales and services tax election.

a. Not less than 60 days before the date that a local sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots, but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

b. The city councils and the supervisors shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

c. The information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.800(3)*"b"*(1), 21.800(3)*"b"*(3), and 21.800(3)*"b"*(4) above, the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Zero percent (0%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.801(423B) Form of ballot for local option tax elections. If questions pertaining to more than one of the authorized local option taxes are submitted at a single election, all of the public measures shall be printed on the same ballot. The form of ballots to be used throughout the state of Iowa for the purpose of submitting questions pertaining to local option taxes shall be as follows:

21.801(1) *Local sales and services tax propositions.* Sales and services tax propositions shall be submitted to the voters of an entire county. If the election is being held for the voters to decide whether to impose the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of imposition shall be voted upon in all parts of the county where the tax has not been approved. If the election is being held for the voters to decide whether to repeal the

tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of repeal shall be voted upon in all parts of the county where the tax was previously imposed. If the election is being held for the voters to decide whether to change the rate or use of the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of rate or use change shall be voted upon in all parts of the county where the tax was previously imposed.

The ballot submitted to the voters of each incorporated area and the unincorporated area of the county shall show the intended uses for that jurisdiction. The ballot submitted to the voters in contiguous cities within a county shall show the intended uses and repeal dates, if not uniform, for each of the contiguous cities. The ballots shall be in substantially the following form:

a. Imposition question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

b. Imposition question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at

the rate of _____ percent (_____%) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

c. Imposition question with an automatic repeal date for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

d. Imposition question with an automatic repeal date for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of ____ percent (____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

e. Repeal question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize repeal of the ____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The _____ percent (_____%) local sales and services tax shall be repealed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

f. Repeal question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize repeal of the ____ percent (_____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the

ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The _____ percent (_____%) local sales and services tax shall be repealed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

g. Rate change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to ____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year). The current rate is ____ percent (_____%).

Revenues from the sales and services tax are allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

h. Rate change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax are allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

i. Use change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize a change in the use of the _____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the _____ percent (_____%) local sales and services tax shall be changed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

Revenues from the sales and services tax are currently allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

j. Use change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize a change in the use of the _____ percent (_____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the _____ percent (_____%) local sales and services tax shall be changed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

CURRENT USES OF THE TAX:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

k. Imposition question with differing automatic repeal dates for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month/day/year) until automatic repeal date specified.

A local sales and services tax shall be imposed in the following cities at the rate of _____ percent (_____%) to be effective from _____ (month/day/year) until the date specified below and the revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

21.801(2) *For a local vehicle tax:*

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize the county of (insert name of county) to impose a local vehicle tax at the rate of _____ dollars ($_____) per vehicle and to exempt the following classes from the tax:

_____.

The revenues are to be expended as set forth in the text of the public measure.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using optical scan ballots which are read by automatic tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The county of _____, Iowa shall be authorized to impose a local vehicle tax at the rate of _____ dollars ($_____) per vehicle and to exempt the following classes of vehicles from the tax:

_____

_____ (insert percentage or dollar amount) of the revenues is/are to be used for property tax relief.

The balance of the revenues is to be expended for:

(List purposes for which remaining revenues will be used)

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.802(423B) Local vehicle tax elections.

21.802(1) Petitions requesting imposition of local vehicle taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall add the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local vehicle tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which notice is given to the commissioner.

21.802(2) Notice of local vehicle tax election. Not less than 60 days before the date that a local vehicle tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include a sample ballot, but shall include all of the information that will appear on the ballot. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.803(82GA,HF2663) Revenue purpose statement ballots. When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the "penny sales and services tax for schools," the following ballot formats shall be used.

21.803(1) *Ballot to propose a revenue purpose statement.* The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES

NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

21.803(2) *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES

NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

21.803(3) *Ballot to extend a revenue purpose statement.* The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES

NO

Summary: To authorize _____ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

_____ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement 2008 Iowa Acts, House File 2663, section 29.

721—21.804 to **21.809** Reserved.

721—21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding.

21.810(1) *Form of ballot.* The ballot for the E911 referendum shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed service area).

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

"Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within the proposed E911 service area shown on the map below."

21.810(2) *Cost of election.* The E911 service board shall pay the costs of the referendum election.

21.810(3) *Enhanced 911 emergency service funding referendum held in conjunction with a scheduled election.*

a. Notice to commissioner. The joint E911 service board shall notify the commissioner in writing, no later than the last day upon which nomination papers may be filed, of their intention to conduct the referendum with the scheduled election. The notice shall contain the complete text of the referendum question including the description of the proposed E911 service area. If a map is to be used on the ballot to describe the proposed E911 service area, the map shall be included. If the E911 service area includes more than one county, the service board shall notify the commissioner of each of the counties.

b. Conduct of election. All qualified electors in a precinct which is to be served, in whole or in part, by the proposed E911 service area, shall be permitted to vote on the question. The results of the referendum shall be canvassed by the board of supervisors at the time of the canvass of the scheduled election. The commissioner shall immediately certify the results to the joint E911 board.

c. Service board duties. If subscribers from more than one county are included within the proposed service area, the E911 service board shall meet as a board of canvassers to compile the results from the counties. The canvass shall be held on the tenth day following the election at a time established by the E911 service board. The service board shall prepare an abstract showing in words and numbers the

number of votes cast for and against the question and, if a simple majority of those voting on the question has voted in the affirmative, the board shall declare that the surcharge has been adopted. Votes cast and not counted as a vote for or against the question shall not be used in computing the total vote cast for and against the question.

21.810(4) *Form of ballot for alternative surcharge.* The ballot for elections conducted pursuant to Iowa Code section 34A.6A shall be in the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed service area). The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

"Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within the proposed E911 service area shown on the map below. The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line."

This rule is intended to implement Iowa Code sections 34A.6 and 34A.6A.

721—21.811 to **21.819** Reserved.

721—21.820(99F) Gambling elections.

21.820(1) Petitions requesting elections to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure shall be filed with the county board of supervisors and shall be substantially in the form posted on the state commissioner's Web site titled "Petition Requesting Special Election."

a. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure in the county. The election shall be held on the next possible special election date pursuant to Iowa Code section 39.2, subsection 4, paragraph *"a,"* but no fewer than 46 days from the date notice is given to the county commissioner.

b. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat or the gambling structure election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days' written notice. Otherwise, the supervisors shall give at least 46 days' written notice.

21.820(2) Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

⬭ YES
⬭ NO

Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

21.820(3) Form of ballot for elections to continue gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

⬭ YES
⬭ NO

Summary: Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in _____ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election. (Iowa Code section 99F.7(10)*"c"*)

21.820(4) Ballot form to permit gambling games at existing pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

⬭ YES
⬭ NO

The operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

21.820(5) Abstract of votes. A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

21.820(6) Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

⬭ YES
⬭ NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in _____ County will end.

21.820(7) Ballot form for general election for continuing gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

Summary: The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved.

The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue on an excursion gambling boat or at a gambling structure in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on an excursion gambling boat or at a gambling structure in _____ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 and Iowa Code Supplement section 99F.4D.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.821 to **21.829** Reserved.

721—21.830(357E) Benefited recreational lake district elections. Elections for benefited recreational lake districts shall be conducted according to the following procedures.

21.830(1) *Conduct of election.* It is not mandatory for the county commissioner of elections to conduct elections for a benefited recreational lake district. However, if both a public measure and a candidate election will be held on the same day in a benefited recreational lake district, the same person shall be responsible for conducting both elections. All elections must be held on a Tuesday.

21.830(2) *Ballots.* Ballots for benefited recreational lake district trustee elections shall be printed on opaque white paper, 8 by 11 inches in size. The ballots for the initial election for the office of trustee shall be in substantially the following form:

OFFICIAL BALLOT
BENEFITED RECREATIONAL LAKE DISTRICT
Election date

(facsimile signature of person responsible for printing ballots)

FOR TRUSTEE:

To vote: Neatly print the names of at least three people you would like to see elected to the office of Trustee of the Benefited Recreational Lake District. You may vote for as many people as you wish, but you must vote for at least three.

(At the bottom of the ballot a space shall be included for the endorsement of the precinct election official, like this:)

Precinct official's endorsement: _____

21.830(3) *Canvass of votes.* On the Monday following the election, the board of supervisors shall canvass the votes cast at the election. At the initial election the supervisors shall choose three trustees

from among the five persons who received the most votes. The results of benefited recreational lake district elections shall be certified to the district board of trustees.

This rule is intended to implement Iowa Code section 357E.8.

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◊ Two or more ARCs

CHAPTER 22
VOTING SYSTEMS

[Prior to 7/13/88, see Secretary of State[750] Ch 10]

TESTING AND EXAMINATION OF VOTING EQUIPMENT

721—22.1(52) Definitions for certification of voting equipment.

"Accredited independent test authority" means a person or agency that was formally recognized by the National Association of State Election Directors as competent to design and perform qualification tests for voting system hardware and software. "Accredited independent test authority" also includes voting system test laboratories accredited by the Election Assistance Commission to test voting systems for compliance with federal voting system standards and guidelines, as required by the Help America Vote Act, Section 231.

"Audio ballot" means the presentation of the contents of a ballot on an electronic ballot marking device in a recorded format, played to the voter over headphones.

"Automatic tabulating equipment" means apparatus that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices and to count the votes marked on the ballots.

"Ballot" means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more paper ballots. The term includes optical scan paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, "ballot" also includes conventional paper ballots.

"Ballot marking device" means a pen, pencil, or similar writing tool, or an electronic device, all designed for use in marking an optical scan ballot, and so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

"Certification" means formal approval of an optical scan voting system for use in Iowa pursuant to Iowa Code sections 52.5 and 52.26.

"De minimis change" means a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, security and operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. A change shall not be considered de minimis if it has reasonable and identifiable potential to affect the system's operation and compliance with applicable voting system standards.

"Early voting" means the process of receiving ballots from voters before election day without using absentee voting procedures. Iowa law does not authorize this process.

"Electronic ballot marking device" means a component of an optical scan voting system designed to assist voters with disabilities by displaying audio and visual ballot information to the voter, providing accessible methods for the voter to make selections, and then printing the voter's choices on an optical scan ballot.

"Electronic transmission" means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

"Examiners" means the board of examiners for voting systems described in Iowa Code section 52.4.

"Modification" means a change to a certified voting system's software or firmware. Modification also means a change to a certified voting system's hardware that has the potential to affect the reliability, functionality, capability, security or operability of a system.

"Optical scan ballot" means a printed ballot designed to be marked by a voter with a ballot marking device and to be counted by use of automatic tabulating equipment.

"Optical scan voting system" means a system employing paper ballots under which votes are cast by voters by marking paper ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

"Program" means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

"Qualification test" means the examination and testing of a voting system by an independent test authority using the voting system standards required by Iowa Code section 52.5 and rule 721—22.2(52) to determine whether the system complies with those standards.

"Vendor" means a person or representative of a person owning or being interested in an optical scan voting system and seeking certification of the equipment for use in elections in Iowa.

"Voting booth" means an enclosure designed to be used by a voter while marking a conventional paper ballot, optical scan ballot or ballot card.

"Voting equipment" means an optical scan voting system which is required by Iowa Code sections 52.5 and 52.26 to be approved for use by the examiners.

"Voting system" means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). "Voting system" also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

[**ARC 8244B**, IAB 10/21/09, effective 10/2/09; **ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—22.2(52) Voting system standards. All electronic voting systems approved for use by the board of examiners after April 9, 2003, shall meet Voting Systems Performance and Test Standards, as adopted by the Federal Election Commission April 30, 2002, or the 2005 Voluntary Voting Systems Guidelines, as adopted by the U.S. Election Assistance Commission in December 2005. The report of an accredited independent test authority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

[**ARC 9468B**, IAB 4/20/11, effective 5/25/11; **ARC 9762B**, IAB 10/5/11, effective 9/8/11]

721—22.3(52) Examiners. The examiners annually shall elect a chairperson. All three examiners must be present for any formal action. Approval by two of the three examiners is required to approve any action to be taken by the examiners.

22.3(1) Notice of the time and place of any meeting by the board of examiners must be published pursuant to Iowa Code section 21.4.

22.3(2) Meetings of the examiners are open to the public, except that closed meetings may be held as permitted by Iowa Code section 21.5.

22.3(3) Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

721—22.4(52) Fees and expenses paid to the examiners.

22.4(1) The examiners shall be reimbursed for travel to and from the meeting place at the rate specified in Iowa Code section 70A.9. The examiners shall also be reimbursed for actual expenses for meals and lodging, if necessary.

a. If the meeting was called for the purpose of examining, reexamining, testing, or discussing the certification of voting equipment offered by a vendor, the examiners' expenses shall be paid by the vendor within seven days following the completion of the examination and testing of the voting equipment.

b. If the meeting was called for the purpose of advising the secretary of state regarding administrative rules for the examiners, or to hear complaints or requests for decertification of voting equipment, or any other business of interest to the examiners, the expenses shall be paid by the secretary of state.

22.4(2) The vendor shall pay the examiners the amount of compensation specified in Iowa Code section 52.6 at the beginning of each meeting for which compensation is required to be provided to the examiners. The fee shall be paid as follows:

a. For each meeting or series of meetings held for the purpose of certifying an optical scan voting system or component thereof.

b. For each meeting or series of meetings for reconsideration of an optical scan voting system or component thereof after denial of certification.

This rule is intended to implement Iowa Code sections 17A.19, 49.25(3), 52.5, 52.6, and 52.26.

[**ARC 8244B**, IAB 10/21/09, effective 10/2/09]

721—22.5(52) Examination of voting equipment—application. Any vendor who wishes to apply for certification of voting equipment for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. The application shall include five copies of each of the following:

22.5(1) History of the equipment to be examined. This history shall include a complete description of the equipment to be examined, descriptions of any previous models of the equipment, the date the system to be examined went into production, and a complete list of jurisdictions which have used the equipment. The user list shall include jurisdictions which used the equipment experimentally without purchasing it, jurisdictions which purchased earlier versions of the equipment to be examined, and jurisdictions which purchased the current version of the equipment to be examined.

22.5(2) Copies of all manuals developed for use with the system including, but not limited to, technical manuals for repair and maintenance of the equipment, operations manuals for election officials, printer's manuals for ballot production, and any other written documents prepared by the vendor that describe the operation, use, and maintenance of the machine.

22.5(3) Report of an accredited independent test authority certifying that the system is in compliance with the voting systems standards required by rule 721—22.2(52). Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, members of the board of examiners, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked "CONFIDENTIAL" and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

22.5(4) Copies of the reports of any test authority who has examined the equipment in conjunction with certification requirements of other states.

22.5(5) Reports of the certifying authorities of any other states that have examined the equipment, whether or not the equipment was approved for use.

22.5(6) Brochures, photographs and advertising material used to encourage sales of the equipment.

22.5(7) Manuals for the use and maintenance of any components of the equipment that are not manufactured by the vendor.

22.5(8) Rescinded IAB 4/20/11, effective 5/25/11.

22.5(9) Reserved.

22.5(10) The form prescribed by the state commissioner of elections to request examination and testing of voting systems.

[**ARC 8244B**, IAB 10/21/09, effective 10/2/09; **ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—22.6(52) Review of application by examiners. Upon receipt of the application, the secretary of state shall immediately forward copies of the application to each of the examiners. The examiners shall review the application and within seven days a date shall be set for the examiners to meet and examine

the equipment. If additional information is needed by the examiners, they may delay setting a date for the examination pending the submission of the requested materials.

721—22.7(52) Consultant. If the examiners determine that a consultant is necessary to determine whether a system meets the requirements of Iowa law or whether a change to a voting system is de minimis or a modification, the examiners shall notify the vendor of the decision. The vendor may suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

A consultant may be employed if no other state has certified the equipment for use. The examiners may require a consultant if the equipment has been modified following certification by other states, or if the examiners believe it to be necessary.

If a test authority has been determined to be necessary by the examiners and a suitable consultant cannot be agreed upon by the examiners and the vendor, the equipment shall not be approved for use.
[**ARC 8244B**, IAB 10/21/09, effective 10/2/09]

721—22.8(52) Contact other users. The examiners shall contact a representative sample of the users of the equipment to determine the nature of the experience of other users.

721—22.9(52) Testing the equipment. The vendor shall provide to the examiners one, or more, if deemed necessary by the examiners, production models of the equipment submitted for certification. The equipment shall be prepared by the examiners with the aid of the vendor to be tested at two sample elections: a sample partisan primary election, and a sample general election.

22.9(1) Test county for absentee voting. Voting equipment which is designed to be used for tabulation of absentee ballots shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. congressional district, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

22.9(2) Test county for absentee systems. Voting equipment which is designed to be used for tabulation of absentee ballots only shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. Congressional District, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

22.9(3) Test precinct for precinct count systems. The test precinct shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

22.9(4) All requirements for preparation and printing of test ballots shall be met in the preparation of ballots for the test elections including, but not limited to, rotation of candidates' names and the provision of space for write-in votes.

22.9(5) Test ballots provided by vendor. The vendor shall provide the ballots to be used in the testing of the equipment. A total of at least 2000 ballots shall be printed for each of the two test elections. One thousand ballots for each test election shall be marked and manually tabulated by the vendor to use as a test of the ability to tabulate results accurately. The balance of the ballots shall be delivered to the examiners before the date set for the examination. The examiners shall mark and manually tabulate an additional set of at least 300 test ballots.

721—22.10(52) Test primary election for three political parties.

22.10(1) *Closed primary election.* Voters may only cast votes for the candidates of one of the parties.

22.10(2) *Offices.* The following offices shall each have two candidates for each party. Candidate names shall be rotated as required by Iowa Code section 43.28.

a. U.S. Senator

b. U.S. Representative

c. Governor
d. Secretary of State
e. Auditor of State
f. Treasurer of State
g. Secretary of Agriculture
h. Attorney General
i. State Senator
j. State Representative
k. County Supervisor (vote for no more than three of six candidates)
l. County Treasurer
m. County Recorder
n. County Attorney
o. and *p.* Rescinded IAB 8/1/07, effective 7/13/07.

22.10(3) *Write-in votes.* Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office.

721—22.11(52) Test general election. The ballots for the test general election shall include the following:

22.11(1) Offices. In the test general election all of the above offices shall be included with the addition of candidates for lieutenant governor to be voted for jointly with each candidate for governor. Each political party and nonparty political organization shall have one candidate for each office that appeared on the primary ballot, except county supervisor, which shall have three candidates for each party and nonparty political organization. Names of candidates for county supervisor shall be rotated as required by Iowa Code section 49.31, subsection 2.

The following nonpartisan offices shall also be included on the ballot with the heading "Nominated by Petition":

a. Township Trustee
b. Township Clerk
c. County Public Hospital Trustee
d. Soil and Water Conservation District Commissioners
e. Agricultural Extension Council

22.11(2) Judicial ballot. Portions of the judicial ballot may be printed separately if necessary.

a. Supreme Court (five justices)
b. Appeals (four judges)
c. District Court (six judges)
d. District Associate Judges (three judges)

22.11(3) Public measures.

a. Constitutional Amendments (two)
b. Local public measures (three)

22.11(4) Straight party voting for three political parties and five nonparty political organizations.

22.11(5) Write-in votes. Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office. This does not include judges standing for retention.

721—22.12(52) Report of findings. The examiners shall complete a report showing their findings. The report shall include a checklist containing all statutory requirements for voting systems and shall indicate whether each requirement applies to the voting system being examined and whether the voting system is compliant or not compliant. The checklist must indicate that all applicable items are compliant with statutory requirements in order for the examiners to find that the voting system may be approved for use.

22.12(1) *Approval permits use.* If the report states that the voting system has been approved for use, the voting system may be adopted for use at elections.

22.12(2) *Report filed with the secretary of state.* The report shall be filed with the secretary of state. The secretary of state shall retain the vendor's application and other documents submitted pertaining to the certification as long as the voting system remains certified.

721—22.13(52) Notification. The examiners shall promptly notify the vendor of their decision and shall provide the vendor with a copy of their report.

721—22.14(52) Denial of certification. If the examiners find that the equipment does not meet the requirements prescribed by the Code of Iowa and the Iowa Administrative Code, the examiners shall deny certification to the equipment. The report of the board shall specify the reasons for the denial, as well as all areas in which the equipment complied with the requirements of the law. Certification may be denied for any of the following reasons:

22.14(1) The absence of any feature required by Iowa Code section 52.5 or 52.26.

22.14(2) Failure to pay the examiners' fees and expenses, or the fees of any consultant mutually agreed upon by the examiners and the vendor.

22.14(3) Failure to provide the examiners with a complete application as required by rule 721—22.5(52).

22.14(4) Failure of the equipment to produce accurate results in one or both of the test elections. The test groups of ballots shall be tabulated manually to determine the expected outcome of each test election. If the equipment fails to reproduce exactly the results of the manual tabulation, the system shall not be approved for use, unless it can be demonstrated that the manual tabulation was in error and the machine tabulation was accurate.

[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—22.15(52) Application for reconsideration. Following denial of certification a vendor may make the necessary modifications to the system and apply for reconsideration. Aspects of the equipment which were approved in the initial application do not need to be reexamined unless the examiners find that the modifications may have affected the ability of the equipment to comply in other areas. If certification was denied for the reasons cited in 22.14(1) or 22.14(4), both test elections must be completed satisfactorily, or approval shall not be granted.

721—22.16(52) Appeal. If the vendor believes the denial of certification is in error, the vendor must file written exceptions with the examiners within 30 days after issuance of the report. The examiners will issue a response to the exceptions within 30 days after filing of the exceptions. A vendor who is aggrieved or adversely affected by a denial after a ruling on exceptions may seek judicial review pursuant to Iowa Code section 17A.19.

721—22.17(52) Changes to certified voting systems. The procedures in this rule shall be followed anytime a change is made to a certified voting system, including a change in tabulation software, firmware, or hardware.

22.17(1) *Notification of change.* The vendor shall notify the examiners of any changes in a certified voting system. The vendor shall provide the examiners with the following information at the time the vendor provides notice of the change(s):

a. A description of the changes made.

b. Reports of test results conducted by an accredited independent test authority, and any reports of test results conducted by or for other states following the changes to the voting system.

c. Copies of manuals, instructions, advertisements and other documents submitted with the voting system's original application for certification that have been updated since the original application was submitted.

d. An assessment from an accredited independent test authority of the change as either a de minimis change or a modification to the voting system.

22.17(2) *Commencing review proceedings.* Within seven days of receiving a voting system change notice from a vendor, the examiners shall commence review proceedings to independently determine

whether the change submitted by the vendor is a de minimis change or a modification to the voting system. In making this independent determination, the examiners may use any means available, including hiring a consultant pursuant to rule 721—22.7(52).

22.17(3) *De minimis changes.* If the examiners determine a change to a voting system is de minimis, the examiners may approve the changes by motion and certify the changed voting system for use in the state.

22.17(4) *Modifications to voting systems.* If the examiners determine a change to a voting system is a modification to the voting system, the examiners shall require the vendor to submit a new application for certification and testing of the voting system pursuant to rules 721—22.5(52) to 721—22.11(52).
[**ARC 8244B**, IAB 10/21/09, effective 10/2/09]

721—22.18(52) Rescinding certification.

22.18(1) *Grounds for rescinding certification.* Certification may be rescinded if it is found that:

a. The equipment does not produce accurate results and reports as required for an election.

b. Modifications have been made in a certified voting system that have not been approved by the examiners.

c. Equipment which has been certified for use has not been adopted by any county in Iowa, or is no longer used by any county in Iowa, and is no longer available for purchase from the manufacturer. The examiners may rescind certification of such voting equipment without a complaint or contested case proceedings.

d. Equipment that has been certified for use no longer complies with the requirements of Iowa law.

e. Any other grounds that may materially affect delivery or performance of the equipment.

22.18(2) *Procedure for rescinding certification.* Complaints regarding voting equipment certified for use in Iowa shall be filed with the secretary of state. The examiners shall review all complaints and may initiate a contested case to rescind certification on any ground listed above. The contested case may be conducted before the examiners or before an administrative law judge. A contested case for rescinding certification shall be conducted, to the extent applicable, in accordance with the procedural rules specified in 481—Chapter 10, Iowa Administrative Code.

22.18(3) *Suspension of certification.* If the administrative law judge hearing the contested case, or the examiners, as the case may be, find that the voting equipment can be modified to correct the deficiency, certification may be suspended until the deficiency is corrected. If it is found that the deficiency is limited to a specific flaw not present in all models of the equipment, the suspension may be limited to the deficient models. While certification is suspended, the equipment may not be used for any election.

After the required modifications have been made the vendor may apply for reexamination of the equipment following the procedure described in rule 721—22.17(52).

22.18(4) *Further use prohibited.* If certification of voting equipment is rescinded without qualification, no further use shall be permitted by any county.
[**ARC 8244B**, IAB 10/21/09, effective 10/2/09]

These rules are intended to implement Iowa Code sections 17A.12, 21.4, 21.5, 52.4, 52.5, 52.6, 52.7, 52.26, and 70A.9.

721—22.19(52) Examination of voting booths—application. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.20(52) Review of application by examiners. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.21(52) Contact other users. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.22(52) Criteria for approval. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.23(52) Report. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.24(52) Notification. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.25(52) Denial of certification. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.26(52) Application for reconsideration. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.27(52) Appeal. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.28(52) Reexamination following changes in voting booth. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.29(52) Rescinding certification. Rescinded IAB 10/21/09, effective 10/2/09.

721—22.30(50,52) Electronic transmission of election results.

22.30(1) *Certification of equipment.* On or after December 17, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before December 17, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

22.30(2) *Procedures on election day.* The election results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

22.30(3) *Procedures after election day.* Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

This rule is intended to implement Iowa Code sections 50.11 and 52.41.

721—22.31(52) Acceptance testing. When the commissioner receives voting equipment from a vendor, the commissioner shall carefully examine and test the equipment to:

22.31(1) Verify that the system delivered is certified for use in Iowa. The commissioner shall compare the voting system version numbers with the list of certified voting equipment provided by the state commissioner;

22.31(2) Verify that everything in the contract has been delivered by:

a. Comparing a copy of the purchase contract with the items received;

b. Making certain that all components, such as power cords, casters, and keys, are included;

c. Reviewing instruction and maintenance manuals to be sure that the correct version of each manual was provided; and

22.31(3) Verify that everything delivered actually works. The commissioner shall run a simulated election to confirm that each part of the system and the system as a whole function properly.

721—22.32(52) Optical scan voting system purchase program. Rescinded IAB 4/20/11, effective 5/25/11.

721—22.33 to **22.38** Reserved.

721—22.39(52) Public testing for direct recording electronic voting machines. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.40(52) Public testing of lever voting machines. Rescinded IAB 8/1/07, effective 7/13/07.

721—22.41(52) Public testing of optical scan systems. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35. The process and results of the test shall be documented and available for inspection.

22.41(1) Each automatic tabulating device (including equipment that will be used for counting absentee ballots) shall be tested to determine the following:

a. The device and its programs will accurately tabulate votes for each candidate and question on the ballot.

b. Votes cast for more candidates for any office than the number to be elected will result in the rejection of all votes cast for that office on that ballot. Votes properly cast for other offices on the same ballot shall be counted.

c. The tabulating equipment records all votes cast and no others. A written tally of the test votes shall be prepared before the test. The results of the test voting shall be recorded. The results of the machine tabulation shall be printed and compared with the test plan.

d. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled, and the write-in votes are tallied correctly.

e. For primary elections, the tabulating equipment accurately records votes cast for all political parties.

f. For general elections:

(1) A ballot marked with only a straight party vote is recorded with one vote for each candidate of the designated political party, and no other votes are recorded for partisan offices;

(2) The voter may override a straight party vote for any office by voting for any candidate not associated with that political party; and

(3) For offices to which more than one person will be elected, if a voter has chosen to override a straight party vote, only the candidates whose names are marked shall receive a vote.

22.41(2) Conducting the test.

a. The commissioner shall follow the process described in rule 721—22.42(52) for preparing test decks.

b. If, during the test, there are differences between the test plan and the results produced by the optical scan device, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the faulty program or equipment shall not be used in the election.

c. The test decks, the preparer's tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

721—22.42(52) Preparing test decks. The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

22.42(1) *Requirements for all test decks prepared by the commissioner and used in public testing.* The commissioner shall:

a. Replace ballots spoiled during the marking process instead of attempting to correct errors.

b. Fill in each oval completely using the recommended pen, pencil or AutoMARK VAT.

c. Mark each ballot "Test Ballot."

22.42(2) *Required test method.* The commissioner shall:

a. Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. Follow the instructions in subrules 22.42(3) through 22.42(5) in preparing the test decks.

b. Mark the test ballots according to the test plan.

c. Print a zero totals report from the optical scan tabulator before inserting any ballots.

d. Insert the ballots into the optical scan tabulator and print a report showing the number of votes recorded for all offices, questions and judges, including undervotes and overvotes.

e. Compare the printed report with the test plan to ensure that the correct number of votes was counted for each oval.

f. If the commissioner finds errors, the commissioner shall identify and correct them. The commissioner shall repeat the testing process until the printed results from the tabulator match the test plan. If the commissioner cannot produce an errorless test, the equipment shall not be used in the election.

22.42(3) *Systematic test deck.* The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or "NO" votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:

a. On general election ballots, leave the straight party choice blank.

b. For offices without candidates, mark all of the write-in ovals for that office.

c. For offices in which the voter may vote for more than one candidate, vote for the maximum allowed on at least one ballot.

d. On a ballot that contains at least one valid vote, overvote one other office or question.

22.42(4) *System-specific testing requirements.* Separate tests are prescribed for each certified voting system.

a. *Election Systems & Software—overvote and blank ballot test.* For an overvote and blank ballot test, the commissioner shall:

(1) Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

(2) If the test is for ballots that will be used in a general election, mark two straight party votes on one ballot. Do not mark any other ovals. In the test plan, this ballot should be tallied to show that the straight party selection was overvoted, and to show undervotes for all other offices and questions on the ballot.

(3) When the overvoted ballots are rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. Add to the manual tally the number of overvotes in this test. The tally for this part of the test deck will show no votes for any candidate.

(4) Insert a blank ballot. This is a very important test of the accuracy of ballot printing. Printing errors sometimes put readable marks in the voting target area.

(5) Orientation test. Mark the maximum number of choices for each office and question on one ballot.

Scan this ballot in each of the four possible orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

b. *Premier Election Solutions.*

(1) Blank and fully voted test. The commissioner shall use two ballots for this test.

1. Leave one ballot completely blank.
2. On the second ballot, mark every oval on both sides of the ballot.

3. Select "Test Blank Ballots" and insert the blank ballot in all four orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

4. Select "Test Fully Voted Ballots" and insert the second ballot in each of the four orientations listed in numbered paragraph "3" above.

5. Reinsert the blank ballot and the fully voted ballot and override the rejection feature.

(2) Overvote. Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

22.42(5) *Straight party test for general elections.* For a straight party test, the commissioner shall:

a. For each set of ballots:

(1) Mark straight party votes in a pattern, such as one vote for the first straight party choice, two votes for the second, and so on, and tally the expected results. Do not mark anything else on this group of ballots.

(2) On a second set of ballots containing as many ballots as there are straight party choices, mark the straight party option and, for each office affected by the straight party vote, mark the write-in oval, and tally the expected results.

(3) If the election includes an at-large county supervisor race with more than one person to be elected, mark a ballot with only a straight party vote and then vote for one candidate from the same political party as the straight party vote. Only this separately marked candidate should receive a vote.

b. Compile the results of the straight party test deck.

721—22.43(52) Conducting the public test.

22.43(1) The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

a. The correct program cartridge or memory card is in place for the election and the precinct or precincts in which it will be used.

b. All counters are set at zero before the test is begun.

22.43(2) The commissioner shall conclude the test not later than 12 hours before the polls open on election day. Following the test, the tabulating equipment shall be inspected to determine that:

a. All counters have been returned to zero.

b. All required locks or seals are in place.

c. The automatic tabulating equipment is ready for operation at the election.

The results tape from each scanner produced during the public test shall be signed by the person conducting the test and by any observers present at the test. The signers shall write their signatures at the end of the tape where it will be detached from the machine. The tape shall be torn or cut across the signatures, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester's signature, shall be retained with the appropriate test deck for the period of time required by Iowa Code section 50.19.

22.43(3) Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

a. Not more than ten ballots may be submitted by any person.

b. Only official ballots provided by the commissioner at the test shall be used.

c. The observer submitting the test shall provide a written tally of the test deck.

d. The results of the machine tabulation shall be printed and compared with the observer's tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.

e. The test decks, the tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

Rules 721—22.41(52) through 721—22.43(52) are intended to implement Iowa Code section 52.35.

721—22.44 to **22.49** Reserved.

721—22.50(52) Voting system security. Each county shall have a written security policy. The policy shall include detailed plans to protect the election equipment and data from unauthorized access. The policy shall describe the methods to be used to preserve the integrity of the election and to document the election process.

22.50(1) *Staff access.* The security policy shall describe who shall have access to the voting equipment.

22.50(2) *Computers.* For security purposes, computers used in the commissioner's office to prepare ballots and voting equipment programs or to compile and report election results should not be used for any other function and should not be linked to any computer network or to the Internet.

a. If the election computers are linked to a network or to the Internet, the commissioner shall use a firewall to filter network traffic. Data transmissions over the Internet shall be encrypted and password-protected. Information posted to a Web site shall not be considered transmission of data over the Internet.

b. Access shall be limited to persons specified by the commissioner in the written security policy. The level of access shall be included in a written security policy.

(1) Uniqueness. Every ID and password shall be unique. The creation of generic or shared user IDs is specifically prohibited. Each user shall have exactly one user ID and password, except where job requirements necessitate the creation of multiple IDs to access different business functions.

(2) Authority. Each user shall be granted only the level of access specifically required by the user's job. Use of "Administrator," "Super User," "Security Administrator," or "SA" levels of authority shall be severely restricted.

(3) Generic user IDs. Staff members with generic user IDs are not allowed to sign on to voting systems.

(4) Password standards.

Account Policy	Recommended Setting
Maximum Password Age	90 days
Minimum Password Age	2 days
Minimum Password Length	8 characters
Enforced Password History	6 passwords (last 6 cannot be used)
Account Lockout (number of unsuccessful log-on attempts)	3 bad attempts
Account Lockout Duration	6 hours
Reset Account Lockout Counter After	6 hours

22.50(3) *Evacuation.* If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

a. Keep people safe.

b. If possible, gather and secure voted ballots, election equipment and critical election documents.

721—22.51(52) Memory cards. A memory card is a small, removable device containing data files of the election definition programmed for use in voting equipment for each election. For all voting equipment, the following security measures are required:

22.51(1) *Serial number.* Each memory card shall have a serial number printed on a readily visible label. The label shall include the name of the county.

22.51(2) *Inventory.* Memory cards owned by the county and retained in the custody of the county commissioner shall be maintained under perpetual inventory, with a record of inventory activity. The commissioner shall maintain a similar record of relevant actions if the memory cards are acquired from a vendor for each election. The record of inventory activity shall reflect:

a. The date each memory card was acquired;

b. Each use of each memory card in an election;

c. Each maintenance activity to a memory card, such as changing the battery;

d. Any problems or errors detected while using the memory card during its life;

e. Records of the disposal of any memory cards at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

22.51(3) *Custody.*

a. In counties where the commissioner has the necessary software and equipment to program the memory cards locally, the commissioner shall maintain a memory card log for each election as required in subrule 22.51(4) during the period when the memory cards are removed from storage, prepared for an election, and until they are sealed into a voting device. Only county employees and precinct election officials, as applicable, authorized by the county's security policy shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time. If a person who is not authorized by the security policy to have access to the memory cards transports them to another location, such as a warehouse, the memory cards shall be enclosed in a transport container with a tamper-evident seal.

b. In counties where the commissioner purchases programming services from a vendor, the memory cards shall be shipped to and from the vendor by a shipping service that employs tracking numbers. The memory cards shall be enclosed in a package sealed with a numbered, tamper-evident seal. Programmed memory cards shall be shipped in a package sealed with a numbered, tamper-evident seal from the vendor to the commissioner. If the seal is not intact upon arrival, the commissioner shall immediately contact the vendor for replacement cards. Only county employees authorized by the county's security policy (and precinct election officials, as applicable) shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time.

22.51(4) *Memory card log.* For each election, the commissioner shall create a log to record the serial numbers of each memory card, the voting device into which the memory card was installed, the serial number of the seal, the ballot style and the precinct to which the machine is assigned. The log shall be in substantially the same form as Form A or Form B, as applicable:

Form A

State of Iowa

Election Log: Memory Cards for _____ County

Use this form in counties where the memory cards are programmed locally.

Memory card chain of custody record for: _____ Election to be held ___/___/20___

Memory Card Serial #	Precinct and/or Polling Place	Programmed By		Installed in Machine #	Installed By	Installation		Seal Number	Card Returned from Polls	
		Date	Time			Date	Time		By	Date

Memory Card Serial #	Precinct and/or Polling Place	Programmed By		Installed in Machine #	Installed By	Installation		Seal Number	Card Returned from Polls	
		Date	Time			Date	Time		By	Date

Form B*

State of Iowa

Election Log: Memory Cards for _____ County

Use this form if a vendor programs the memory cards.

Memory card chain of custody record for: _____ Election to be held ___/___/20___

Memory Card Serial #	Precinct and/or Polling Place	Sent for Programming		Installed in Machine #	Installed By	Installation		Seal Number	Card Returned from Polls	
		Date Out	Date In			Date	Time		By	Date

*Form B continues on next page.

Form B (cont'd)

Memory Card Shipping Record for _____ County

Shipped for programming:

Record each card number before packing to ship, and check out each card number on the chain of custody record. Enclose a photocopy of the Memory Card Record with the cards.

Shipped by: _____ _____ Date: ___/___/___ Time: ___:___a.m./p.m.
Print name Signature

Shipped to: _____ Shipped via: _____
_____ Tracking number: _____
_____

Instructions to vendor:

Check in each card number on the enclosed chain of custody record when unpacking cards.

By: _____ _____ Date: ___/___/___ Time: ___:___ a.m./p.m.
Print name Signature

- If memory cards are removed from this inventory for any reason, make a notation of which card(s) on the Memory Card Record.
- Replacement card(s) if issued should be added to the bottom of the Memory Card Record as a new card. A serial number will be assigned later by the receiving county.

Shipped via: _____ Date: _____ Tracking number: _____

Received by County Election Department on Date: ___/___/___

Was the package sealed? _____Was the seal intact? _____Notes: _____

Keep the memory cards in secure storage after they are received and until they are installed in the voting equipment.

22.51(5) *Preparation and installation.* When memory cards are installed, they shall be sealed immediately into the machine using a numbered, tamper-evident seal. Appropriate log entries shall be completed.

22.51(6) *Replacing seals or memory cards.* If a seal is accidentally broken or a memory card is replaced for any reason, the issuance of a new seal and the entry into the log shall be witnessed by more than one person. The facts of the incident and the names of the individuals who detected and resolved it shall be recorded.

22.51(7) *Opening the polls.* Immediately before the polls open on election day, the precinct election officials shall turn on the voting equipment and print the report showing that all counters are set at zero.

22.51(8) *Verification log.* The commissioner shall provide to each precinct a precinct verification log with the ballot record and receipt. The verification log shall provide places for precinct election officials to record or check the following information before the polls open and again before leaving the polling place at the end of the day:

a. Seal numbers from the voting equipment; and

b. Condition of seals on ballot containers.

22.51(9) *Election day.*

a. Before the polls are opened, the precinct election officials shall verify the required information in the verification log and sign the log.

b. After the polls are closed, the precinct election officials shall verify the required information in the verification log and sign the log before leaving the polling place.

c. If the precinct election officials remove the memory cards from the voting equipment, the officials shall first print the results report from the voting equipment.

22.51(10) *Return of memory cards.* If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

Memory Cards

Election Date: _____
Precinct: _____

This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

[Signatures of all precinct election officials shall be included on the label.]

22.51(11) *Storage.* If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). When the memory cards are removed, their serial numbers shall also be verified against the verification log returned by the precinct's election officials. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

22.51(12) *Results verified.* Before the conclusion of the canvass of votes, the individual results reports from the precincts, as signed by the precinct election officials at the polls on election night, shall be compared to the election results compiled for the canvass (either manually or electronically) to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before the supervisors conclude the canvass.

22.51(13) *Retention of programmed memory cards.* The election information on all memory cards used for an election shall be retained on the memory cards until after the time to file requests for recounts and election contests has passed. If a contest is pending, the memory cards shall be retained until the contest is resolved. Before the memory cards are permanently erased, the commissioner shall print the memory card audit log from each card.

22.51(14) *Retention of program information.* The commissioner shall retain all instructions and other written records of the process for programming the memory cards and the memory card audit logs for the period required by Iowa Code section 50.19. The contents of memory cards and other electronic records of the election process shall be collected and retained in an electronic or other medium and stored with the other election records for the time period required by Iowa Code section 50.19.

721—22.52(52) Voting equipment malfunction at the polls. The precinct election officials shall immediately cease using any malfunctioning voting equipment and report the problem to the commissioner. Only a person who is authorized in writing by the commissioner to do so shall be

permitted to attempt to repair malfunctioning voting equipment. The person shall show identification to the precinct election official. The commissioner shall keep a written record of all known malfunctions and their resolution. The precinct election officials shall return the voting equipment to service only if the malfunction is corrected.

22.52(1) *Routine resolution.* Some problems may be easily resolved by following simple instructions. If the commissioner and the precinct election officials are able to resolve a problem without replacing the equipment, the officials shall document the problem, the time it occurred, how it was resolved, and by whom.

22.52(2) *Repair or replacement.* Repairs to voting equipment at the polls on election day shall be limited. If the problem cannot be easily resolved, a person who is authorized to do so by the commissioner shall replace the equipment as soon as possible. Two election officials, one from each political party, shall witness repair or replacement of any voting equipment, including memory cards. The authorized person making the repair or replacement and the two election officials shall sign a report of the incident.

721—22.53 to **22.99** Reserved.

OPTICAL SCAN VOTING SYSTEMS

721—22.100(52) Optical scan ballots, automatic tabulating equipment, and absentee voting. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.101(52) Definitions. The definitions established by this rule shall apply whenever the terms defined appear in relation to an optical scan system used with the type of ballot defined in this rule.

"Ballot" means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more optical scan ballots.

"Optical scan voting system" means a system employing optical scan ballots under which votes are cast by voters by marking the optical scan ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

"Overvote" means to vote for more than the permitted number of choices for any office or question on a ballot.

"Secrecy envelope" means a reusable envelope of sufficient construction that when the optical scan ballot is inserted in it all portions indicating voting marks are hidden from view.

"Tabulating device" means the portable apparatus which examines and counts the votes recorded on the optical scan ballot and produces a paper printout of the results of the voting.

"Ticket" means each list of candidates nominated by a political party or group of petitioners.

"Undervote" means to vote for fewer than the permitted number of choices for any office or question on a ballot.

"Voting system" means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). "Voting system" also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

"Voting target" means the space on an optical scan ballot which the voter marks to cast a vote for a candidate, judge or question. This target shall be printed according to the requirements of the voting system to be used to read the ballots.

721—22.102(52) Optical scan ballots. The optical scan ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

22.102(1) The optical scan ballots may be printed on both sides of a sheet of paper. If both sides are used, the words "Turn the ballot over" shall be clearly printed on the front and the back of the optical scan ballot, at the bottom.

22.102(2) Printed at the top of the front side of the optical scan ballot shall be the name and date of the election; the words "Official Ballot"; a designation of the ballot style or precinct, if any; and a facsimile of the commissioner's signature.

22.102(3) The voting target shall be printed opposite each candidate's name and write-in line on the optical scan ballot, and opposite the "yes" and "no" for each public measure and judge. The voting target shall be printed on the left side of the name or "yes" and "no". The voting target shall be an oval unless the voting system requires a target with a different shape.

22.102(4) For partisan primary elections, the names of candidates representing each political party shall be printed on separate optical scan ballots. The ballots shall be uniform in quality, texture and size. The name of the political party shall be printed in at least 24-point type (¼″ high) at the top of the ballot.

22.102(5) There shall be printed on the ballot a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

22.102(6) It is not necessary for public measures to be printed on colored paper.

22.102(7) Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify by precinct the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct except in general elections pursuant to Iowa Code section 53.20 as amended by 2008 Iowa Acts, House File 2367. Identical ballots shall not be coded to identify groups of voters within a precinct.

22.102(8) No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

22.102(9) Ballots shall be stored in a locked room or storage area. Access to the storage area shall be restricted to those persons identified in the election security plan. Throughout the election process, the commissioner shall keep accurate records of the number of each type of ballot or ballot style printed for the election. This record shall include the number of ballots:

a. Ordered from the printer.

b. Printed and delivered by the printer to the commissioner. The commissioner may store sealed, unopened packages of ballots without verifying the number of ballots in the package.

c. Used for testing as required by Iowa Code sections 52.9 and 52.35 and rule 721—22.41(52).

d. Held in reserve for emergencies as required by Iowa Code section 49.66.

e. Delivered to and returned from the polling places as required by Iowa Code sections 49.65 and 50.10.

f. Used for absentee voting, including any spoiled ballots.

g. Issued as sample ballots to the public as permitted by Iowa Code section 43.30.

h. Photocopied ballots used pursuant to Iowa Code section 49.67.

i. Printed by the commissioner using any voting system program, such as Election Systems & Software's Ballot on Demand program.

721—22.103 to **22.199** Reserved.

PRECINCT COUNT SYSTEMS

721—22.200(52) Security.

22.200(1) At least one tabulating device shall be provided at each precinct polling place for an election. If the tabulating device is delivered to the polling place before election day, it shall be secured against tampering or kept in a locked room.

22.200(2) The maintenance key or keys used to gain access to the internal parts of the tabulating device shall be kept in a secure place and in a secure manner, in the custody of the commissioner. On election day, the key used to obtain the paper printout shall be kept by the chairperson of the precinct election officials in a secure manner. Small electronic devices, such as memory cards, cartridges or other data storage devices used to activate tabulation equipment or to store election information, shall be in the custody of the precinct chairperson when the devices are not installed on the voting equipment.

22.200(3) If a password is needed for precinct election officials to have routine access to the tabulating device during election day, the password shall be changed for every election. The commissioner shall restrict access to the password in the written security policy.

721—22.201(52) Programming and testing the tabulating devices for precinct count systems.

22.201(1) All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed to ensure that all votes will be counted in accordance with the laws of Iowa. Tabulating devices shall be programmed to return to the voter any ballots:

a. That are not coded to be used in the precinct.

b. That are read as blank.

c. That have one or more overvoted offices or public measures.

22.201(2) Rescinded IAB 10/25/06, effective 10/4/06.

721—22.202(50) Unique race and candidate ID numbers for election night results reporting. All tabulating devices programmed for primary and general elections and for special elections conducted pursuant to Iowa Code section 69.14 shall be programmed using the unique race and candidate ID numbers assigned by the state commissioner. The unique race and candidate ID numbers will be provided to the county commissioners with the candidate certification prepared by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—22.203(50) Reporting election night results electronically. For all primary and general elections, the county commissioner shall provide the state commissioner with an electronic results file generated from the county's vote tabulation software system, if any. For special elections conducted pursuant to Iowa Code section 69.14, the county commissioner shall provide election night results in the manner requested by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—22.204 to **22.220** Reserved.

721—22.221(52) Sample ballots and instructions to voters. Sample special paper ballots and printed instructions for casting votes on special paper ballots shall be prominently displayed in each polling place. Instructions shall also be displayed inside each voting booth. Each special paper ballot shall also include an example of the method of marking the ballot recommended by the manufacturer of the tabulating device. Further instructions shall be provided to any voter who requests assistance in accordance with Iowa Code section 49.90.

721—22.222 to **22.230** Reserved.

721—22.231(52) Emergency ballot box or bin. Each precinct shall be furnished with an emergency ballot box or bin that is suitably equipped with a lock and key or numbered, tamperproof seal. In the event of power failure or malfunction of the tabulating device, voted ballots shall be deposited in the locked or sealed emergency ballot box or bin. A precinct election official shall put the ballot into the emergency ballot box or bin for the voter. The voted ballots so deposited may be removed from the locked emergency ballot box or bin and tabulated before the polls close whenever a properly functioning tabulating device becomes available, or the voted ballots so deposited may be removed and counted

electronically or manually immediately after the polls are closed. If the ballots are counted manually, the precinct election officials shall follow the requirements of 721—Chapter 26.

721—22.232(52) Manner of voting. After the precinct election official has endorsed a ballot, the official shall instruct the voter to use only the marker provided. The ballot shall be inserted in a secrecy folder and given to the person who is entitled to receive the ballot in accordance with the provisions of Iowa Code section 49.77.

22.232(1) The precinct officials shall provide each voter with a secrecy folder. The commissioner may print basic ballot marking instructions on the secrecy folder. It is not necessary to print information on secrecy folders that will limit the usefulness of the secrecy folder to one or more elections or election types. Upon receipt of the ballot in the secrecy folder, the voter shall retire alone to a voting booth and without delay mark the ballot.

22.232(2) The voter shall vote upon the ballot by marking the appropriate voting target with an appropriate pen or pencil in the manner described in the instructions printed on the ballot.

When a write-in vote has been cast, the ballot must also be marked in the corresponding voting target in order to be counted.

22.232(3) After marking the ballot, the voter shall replace it in the secrecy folder and leave the voting booth at once.

22.232(4) The voter shall at once deposit the ballot, still enclosed in the secrecy folder, in the tabulating device so that the ballot is automatically removed from the secrecy folder, the votes tabulated, and the ballot deposited in the ballot box.

22.232(5) If the tabulating device is equipped with a mechanism that will not permit more than one ballot to be inserted at one time, the voter may insert the ballot into the tabulating device. If the tabulating device cannot detect and reject multiple ballots, the voter shall be required to hand the ballot in the secrecy folder to the precinct election official without revealing any of the marks on the ballot. The precinct election official shall at once deposit the ballot in the manner described in subrule 22.232(4).

22.232(6) If the tabulating device returns a ballot, the precinct official attending the device shall ask the voter to wait. Without examining the ballot, the official shall enclose the returned ballot in a secrecy folder. If necessary, the official shall read to the voter the information provided by the device about the reason the ballot was returned. The official shall offer the voter the opportunity to correct the ballot. The precinct official shall mark the returned ballot "spoiled" and shall also tear or mark the ballot so that the tabulating device cannot count it. The voter may use the spoiled ballot as a guide for marking the corrected ballot. After the voter has marked the corrected ballot, the precinct officials shall collect the spoiled ballot and keep it with other spoiled ballots.

22.232(7) If the voter who cast the returned ballot is not available, or declines to correct the ballot, the precinct official shall not mark the ballot "spoiled." Either the voter or the official shall reset the tabulating device to accept the ballot. The voter, or the official if the voter has gone, shall insert the ballot into the precinct counter without further examination.

721—22.233 to **22.239** Reserved.

721—22.240(52) Results. After the polls are closed and the tabulating device has processed all of the ballots, including any ballots from the emergency ballot box or bin, the precinct election officials shall:

22.240(1) Unlock the tabulating device and obtain a paper printout showing the votes cast for each candidate and public measure.

22.240(2) Fasten the paper printout to the official tally sheet.

22.240(3) Unlock or remove the seal on the ballot box or bin containing ballots with write-in votes and open it. The precinct officials shall remove the ballots and manually count the write-in votes as required by 721—Chapter 26. The officials shall record the write-in votes in the tally list. A single tally list is sufficient for use when tabulating write-in votes.

22.240(4) Seal all ballots in a transfer case to be returned to the commissioner in accordance with Iowa Code section 50.12.

22.240(5) It is not necessary for the precinct officials to separate primary election ballots by political party.

721—22.241(52) Electronic transmission of election results. If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made. If the voting system includes a data card, cartridge or other small device that contains an electronic copy of the election results, the precinct chairperson shall secure the device and ensure its safe delivery to the commissioner.

721—22.242 to **22.249** Reserved.

721—22.250(52) Absentee voting instructions. Printed instructions shall be included with the ballot or ballots given to or mailed to each absentee voter. Written instructions to the voter shall be sent with every absentee ballot. For federal elections, the commissioner shall use only the instructions provided by the state commissioner.

721—22.251(52) Absentee voting instructions. Rescinded IAB 11/23/05, effective 12/28/05.

721—22.252 to **22.259** Reserved.

721—22.260(52) Specific precinct count systems. Additional rules are provided for the following systems approved for use in Iowa. Rule 721—22.261(52) applies only to the voting system indicated and is in addition to the general provisions set forth in rules 721—22.200(52) through 721—22.250(52).

721—22.261(52) Election Systems & Software Model 100—preparation and use in elections.

22.261(1) *Security.* The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at the polling places on election day shall be changed for each election.

b. The control key for the Model 100 shall be in the possession of the precinct chairperson during election day.

22.261(2) *Configuration choices.* The following selections are mandatory for all elections:

a. *Maximum number of votes.* The following description for each office shall be used: "Vote for no more than xx." Do not include "vote for" language for public measures or judges.

b. *Ballot control.* In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

(1) Overvoted ballot.

(2) Blank ballot.

(3) Unreadable ballot.

c. *Unit control.* The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

d. *Reports.* The following are required reports:

(1) Opening the polls. Print the Zero Certification report.

(2) Closing the polls. Print the poll report before transmitting the election results by modem. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text to appear at the end of the poll report:

We, the undersigned Precinct Election Officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the M100 Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials Date: _____ Time: _____

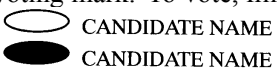
e. *Reopen polls.* The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

22.261(3) *Ballot printing.*

a. *Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the "yes" and "no" choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

b. *Instructions for voters.* The following instructions shall be printed on ballots:

(1) Voting mark. To vote, fill in the oval next to your choice.



(2) Straight party voting. To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions.

(3) Public measures.

Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word "Yes". To vote against a question, fill in the oval in front of the word "No".

22.261(4) *System error messages.* Precinct election officials shall be provided with the following list of system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner's designee for all other messages.

Overvoted ballot returned. Ask voter to reinsert ballot. If the ballot is returned again, do not look at the voter's ballot. Put it in a secrecy folder. Tell the voter that for one or more offices the scanner read more votes than the maximum number of votes allowed. To correct the error, the voter must mark a new ballot and may copy votes from the original ballot. Only if the voter agrees to mark a new ballot, write "spoiled" on the original ballot and tear off one corner to prevent it from being accepted by the scanner. Advise the voter to return to the booth and mark the new ballot. Be sure to collect the spoiled ballot before the voter leaves.

Overvoted ballot accepted. This message will appear when the scanner accepts an overvoted ballot.

Unidentified mark—check your ballot. One or more marks on the ballot are not dark enough to be seen as a vote. Do not look at the voter's ballot. Put it in a secrecy folder and return the ballot to the voter. Ask the voter to review the ballot and to darken the marks. Then the voter may put the ballot back into the scanner.

If any of the following messages appear more than twice for the same ballot, call the auditor's office to report the problem:

100—MISSED ORIENTATION MARKS/Turn Ballot Over and Try Again.

101—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

102—NO DATA FOUND/Please Reinsert Ballot After Beeps.

104—ORIENTATION SKIP ERROR.

106—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

If any of the following messages appear, ask the voter to remove the ballot and reinsert it. If the same message appears more than twice for the same ballot, call the auditor's office to report the problem.

107—BALLOT ERROR: INVALID CC SEQUENCE.

108—BALLOT ERROR: INVALID CC TYPE.

109—BALLOT ERROR: INVALID CC SPLIT.

115—MISSED BACK ORIENTATION MARK/Turn Ballot Over and Try Again.

119—MULTIPLE BALLOTS DETECTED/Please Reinsert Ballot After Beeps. Did the voter actually try to put an extra ballot in? Is the ballot folded?

123—UNABLE TO READ TIMING BAND/Turn Ballot Over and Try Again.

124—BALLOT DRAGGED/Turn Ballot Over and Try Again.

126—BLACK CHECK: FACE DOWN HEAD EDGE/Turn Ballot Over and Try Again.
127—BLACK CHECK: FACE DOWN TAIL EDGE/Turn Ballot Over and Try Again.
128—BLACK CHECK: FACE UP HEAD EDGE/Turn Ballot Over and Try Again.
129—BLACK CHECK: FACE UP TAIL EDGE/Turn Ballot Over and Try Again.
130—POSSIBLE FOLDED BALLOT/Turn Ballot Over and Try Again.

22.261(5) *Record retention.* The Model 100 uses a thermal printer. The maximum anticipated life span of the results from each Model 100 is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the Model 100 was used.

[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—22.262(52) Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count devices.

22.262(1) *Security.* The commissioner shall have a written security plan for the voting system. Access to voting equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at polling places shall be changed for each election.

b. For each election, the precinct chairperson shall be responsible for the custody and security of the control card and ballot box keys and the security of the voting system.

22.262(2) *Configuration choices.* The following selections are mandatory for all elections:

a. Reject settings shall be configured as follows:

(1) Return to voters ballots that include one or more overvoted races and blank-voted ballots. Include on the override log the number of times the override option was used for overvoted and blank-voted ballots.

(2) Divert to the write-in ballot bin only ballots with write-in votes.

(3) Do not include reject settings for blank voted races, undervoted races, straight party overvotes, multiparty overvotes or duplicate votes.

b. Tally settings shall be as follows:

(1) The straight party shall be "Exclusive."

(2) The write-in setting shall be "Combined."

22.262(3) *Zero totals reports.* Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

22.262(4) *Ballot printing.* Although the Premier Election Solutions' GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot.

22.262(5) *Preelection testing.* All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner's discretion, the commissioner may conduct additional tests.

721—22.263(52) AutoMARK Voter Assist Terminal (VAT).

22.263(1) *Acceptance testing.* Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

22.263(2) *Audio ballot preparation.* Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

22.263(3) *Preelection testing.* Each AutoMARK VAT shall be tested before each election in which it will be used. The commissioner may use the AutoMARK VAT to prepare some ballots for test decks required by rule 721—22.42(52). In addition, the commissioner shall:

a. Perform the test ballot print, then review the ballot to be sure that all ovals are darkened and the appropriate names are printed on each line.

b. Calibrate the touchscreen.

c. Select, then deselect each voting position in each race.

d. Verify that the overvote and undervote functions are programmed correctly.

e. Test the write-in function for each office on one ballot, and test all of the letters in the alphabet.

f. Use the audio ballot function to mark one ballot.

g. Tabulate the marked ballots from this test on the appropriate optical scanner.

h. Ensure that the AutoMARK VAT is available for demonstration at public tests.

22.263(4) *Compact flash memory cartridge or memory card.* The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the AutoMARK VAT is delivered to the polling place until the time the precinct election officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

22.263(5) *Calibration testing.* The commissioner may provide for printer and touchscreen calibration testing after delivery of the AutoMARK VAT to the polling place. If calibration testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day and shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, the date and time of the test, the name of the person performing the test, and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester and shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

22.263(6) *AutoMARK VAT keys.* Possession of the AutoMARK VAT keys shall be restricted to precinct election officials and authorized members of the commissioner's staff.

22.263(7) *Table.* The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep. The top of the table shall be from 28 inches to 34 inches above the floor.

22.263(8) *Privacy.* The commissioner may provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs) as well as privacy.

22.263(9) *Abandoned ballots.* If a voter or precinct election official discovers that a voter has left the AutoMARK VAT without printing the voter's ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing the ballot or making any changes, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

721—22.264 to **22.339** Reserved.

OPTICAL SCAN VOTING SYSTEM USED FOR ABSENTEE AND SPECIAL VOTERS PRECINCT

721—22.340(52) Processing. All scanners used to tabulate absentee and provisional ballots shall be configured to sort blank ballots and ballots containing marks in write-in vote targets for review by the resolution board. The scanners shall not be configured to sort ballots with overvotes. However, if it is not possible to configure the scanners used to count absentee ballots differently from those used at the polling places, the person operating the scanner shall override the scanner and accept overvoted ballots

as they are processed. The resolution board shall follow the requirements of 721—subrule 26.2(2). The commissioner shall provide the resolution board with a copy of 721—Chapter 26, "Counting Votes."

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

721—22.341(52) Reporting results from absentee ballots and provisional ballots. Absentee and provisional ballot results shall be reported as a single precinct as required by subrule 22.102(7).

721—22.342(52) Tally list for absentee and special voters precinct.

22.342(1) Write-in votes shall be reported on a separate tally sheet which provides a column for the names of offices, a column for the names of persons receiving votes, space to tally the votes received, and a column in which to report the total number of votes cast for each person. In tally lists provided for primary elections, separate pages shall be provided to tally the write-in votes for each political party. Each member of the board who participated in the count shall attest to each tally sheet for write-in votes.

22.342(2) The officials shall certify the procedures followed. The certification shall be in substantially the following form:

Absentee and Special Voters Tally Certificate

_____County

We, the undersigned officials of the Absentee and Special Voters Precinct for this county, do hereby certify that all ballots delivered to the Board for this election were tabulated as shown in the attached report.

We further certify that a record of any write-in votes or other votes manually counted pursuant to Iowa Code chapter 52 is included in this Tally List, and that the numbers entered in the column headed "Total Votes" are the correct totals of all votes manually counted by us.

Signed at _____ on ____/____/____, ___:___ a.m./p.m.

[signatures of officials] 1. _____

2. _____ (etc.)

22.342(3) The record generated by the tabulating equipment shall be attached to or enclosed with the tally list and shall constitute the official return of the precinct.

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

721—22.343(39A,53) Counting absentee ballots on the day before the general election. When absentee ballots are tabulated on the day before the election as permitted or required by Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670, the absentee and special voters precinct board and county commissioner shall implement the following security precautions:

22.343(1) *Seal and label voted ballot envelopes or other containers with date of tabulation.* The precinct election officials shall seal all ballots tabulated on the day before the election in a voted ballot envelope or other container labeled with the date of tabulation. The precinct election officials shall seal and sign the envelope or other container in a manner that will make it evident if the envelope or other container is opened.

22.343(2) *Ensure secure storage of all ballots.* Before adjourning for the day, the precinct election officials shall transfer custody of all absentee ballots to the commissioner. The commissioner shall ensure all absentee ballots are stored in a secure location until tabulation is resumed on election day.

22.343(3) *Ensure memory card security.* Before the absentee and special voters precinct board adjourns for the day, the memory card used in the tabulator(s) on the day before the election shall be secured by the precinct election officials in one of the following ways:

a. The memory card may be left in the tabulator when a tamper-evident seal is affixed over the memory card in a manner that will make it evident if the seal is removed.

b. The memory card may be removed from the tabulator and placed in an envelope. The precinct election officials shall seal the envelope in a manner that will make it evident if the envelope is opened.

22.343(4) *Ensure security of the tabulator(s).* Before adjourning for the day, the precinct election officials shall ensure the security of the tabulator(s). The tabulator(s) must be stored in a secure location until the absentee and special voters precinct board resumes tabulation on election day.

22.343(5) *No results tape printing on the day before the election.* No results tapes may be printed from the tabulator(s) on the day before the election.

22.343(6) *No upload of results to tabulating software until election day.* No results may be uploaded or input into tabulating software on the day before the election.

22.343(7) *Verify no tampering before resuming tabulation on election day.* Before tabulation resumes on election day, the absentee and special voters precinct board shall verify the tabulator(s), memory card(s) and memory card port(s) have not been obviously tampered with overnight.

22.343(8) *Resume tabulation.* The absentee and special voters precinct board shall resume tabulation using one of the following methods:

a. Using the same memory card(s) used on the day before the election and resuming tabulation.

b. Using a new memory card(s) and compiling the results contained on the memory card(s) used on election day and on the day before the election.

22.343(9) *Print audit logs.* After the election, the audit logs must be printed and be available for public inspection.

This rule is intended to implement Iowa Code section 39A.5, section 1, paragraph *"a,"* subparagraph (3), and Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670.

[**ARC 8698B**, IAB 4/21/10, effective 6/15/10]

721—22.344 to **22.349** Reserved.

721—22.350(52) Election Systems & Software models. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.351(52) Diebold Election Systems' AccuVote-OS central count process. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.352 to **22.430** Reserved.

VOTING MACHINES

721—22.431(52) Temporary use of printed ballots in voting machine precincts. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.432(52) Abandoned ballots. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.433(52) Prohibited uses for direct recording electronic voting machines. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.434(52) Audio ballot preparation. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.435 to **22.460** Reserved.

721—22.461(52) MicroVote Absentee Voting System. Rescinded IAB 8/1/07, effective 7/13/07.

721—22.462(52) Fidlar & Chambers' Absentee Voting System. Rescinded IAB 10/30/02, effective 1/1/03.

721—22.463(52) Election Systems & Software iVotronic. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.464(52) Diebold Election Systems AccuVote TSX DRE. Rescinded IAB 10/8/08, effective 9/19/08.

721—22.465 to **22.499** Reserved.

721—22.500(52) Blended systems. Rescinded IAB 10/8/08, effective 9/19/08.

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CHAPTER 23
VOTER REGISTRATION IN STATE AGENCIES

721—23.1(48A) Definitions.

"Agency" means a voter registration agency as defined in Iowa Code section 48A.19 and the offices of each county auditor.

"Applicant" means a person who is provided an application for services or assistance by a voter registration agency. This includes persons who have been accepted for services or assistance and who are submitting change of address notices or applications for renewal or recertification. The term also includes a person who has submitted an application for services or assistance and whose application has been rejected by the agency.

"Application" means the forms used to request services or assistance from a voter registration agency and which are used to determine eligibility. If no written form is required or used, "application" means the act of requesting services or assistance.

"Recertification" means a process initiated by the agency to reevaluate the applicant's qualifications for services or assistance. This does not include regular reports by applicants to show continuing eligibility or compliance with agency requirements.

"Renewal" means the process of applying to continue to receive services or assistance from an agency after the prescribed time of service has passed.

"Service or assistance" means a government benefit or service other than voter registration for which application is made to an agency.

721—23.2(48A) Registration forms. The use of electronic registration records and combined forms for voter registration and for application for services is encouraged. These forms shall be approved by the voter registration commission. Otherwise, the Iowa mail registration form shall be used. Agencies, such as military recruiting offices, which serve a substantial number of applicants who live outside the state of Iowa shall keep a supply of the Election Assistance Commission's national registration form.

721—23.3(48A) Declination forms. The offer of voter registration shall include a declination form in substantially the following form:

STATE OF IOWA
Voter Registration Information

You can apply to register to vote when you apply for assistance. This agency is required to offer you the chance to register to vote.

Registration Rules—You must be registered before you can vote in an election.

To register to vote in Iowa you must—

- be a citizen of the United States
- be a resident of Iowa
- be at least 17½ years old (you must be 18 to vote)
- not have been convicted of a felony (or have had your rights restored)
- not currently be judged "mentally incompetent" by a court
- give up the right to vote in any other place.

Help: If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.

Benefits: Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.

Privacy: If you register to vote, the name of the office where you turn in the form will be kept private. If you do not register to vote, this fact will be kept private. This information will be used only for voter registration purposes.

Complaints: If you believe that someone has interfered with your right to

- register or to decline to register to vote,
- privacy in deciding whether to register,
- privacy in applying to register to vote,
- choose your own political party or other political preference,

you may file a complaint with:

Voter Registration Commission
Level B
Hoover State Office Building Telephone:
Des Moines, Iowa 50319 (515)281-5781

If you are not registered to vote where you live now, would you like to apply to register to vote here today?

□ **Yes,** I want to register to vote.

□ **No,** I do not want to register to vote.

If you do not check either box, you will be considered to have decided not to register to vote at this time.

Sign here: X _____

Print your name: _____ Date: _____

721—23.4(48A) Electronic declination records. The agency may offer the opportunity to register to vote orally and record the applicant's responses electronically. The agency shall ask each applicant the following questions:

"Did you receive a copy of the Voter Registration Information brochure?" If the applicant has not received it, the agency shall provide the applicant with a copy of the brochure and shall review it with the applicant. Then the applicant shall be asked the following question:

"If you are not registered to vote where you live now, would you like to apply to register to vote here today?" (The applicant may answer yes or no. If the applicant does not answer, the applicant shall be presumed to have declined to register to vote.)

721—23.5(48A) Retention and storage of declination forms. Declination forms shall be retained by the agency receiving them for 22 months after the next general election following receipt of the form. Declination forms signed during the ten days before a general election, when registration is closed, shall be retained for 22 months after the general election to be held in two years. The forms shall be stored in a secure location where the safety and confidentiality of the records can be protected. If the applicant's responses are stored electronically, the declination record shall be retained by the agency for the same period of time required for paper declination forms. The following schedule shall be followed:

Date declination signed	Election date	Earliest date to destroy
10/24/04 – 10/28/06	11/07/06	09/07/08
10/29/06 – 10/26/08	11/04/08	09/04/10
10/27/08 – 10/23/10	11/02/10	09/02/12
10/24/10 – 10/27/12	11/06/12	09/06/14
10/28/12 – 10/25/14	11/04/14	09/04/16

721—23.6(48A) Distribution of voter registration forms. Every person who receives an application for services or assistance from a designated voter registration agency shall be given, along with the application, a voter registration form and the declination form described in rule 23.3(48A).

721—23.7(48A) Applications, recertifications, renewals and changes of address received from applicant representatives. Agencies which permit applicants to be represented by another person shall offer the opportunity to register to vote to each applicant. The declination form and registration form shall be given to the applicant's representative. If the applicant registers to vote, the applicant shall sign the form. The declination form and registration form shall be returned to the agency.

721—23.8(48A) Recertification and renewal applications. Applicants who apply in person for recertification and renewal of agency services or assistance shall be offered the opportunity to register to vote in the same way the offer is made to applicants making initial applications for services or assistance.

If the agency accepts recertification and renewal applications by telephone or by mail, the agency shall mail the applicant the declination form and a voter registration form.

721—23.9(48A) Change of address notices.

23.9(1) *In person.* The agency shall offer the opportunity to register to vote to each applicant who submits a change of address notice in person. The applicant shall be provided with the declination form and the voter registration form.

23.9(2) *By telephone.* Agencies are strongly urged to offer the opportunity to register to vote to applicants who submit changes of address by telephone. The applicant may be asked whether the change of address is intended for voter registration purposes. If the applicant says yes, the applicant shall be mailed a voter registration form.

23.9(3) *By mail.* Change of address forms provided by the agency shall include the declination form and a voter registration form. If the change of address is reported without the use of the form, the agency shall provide the applicant with a written verification of the reported change of address which instructs the applicant how to obtain a voter registration form.

721—23.10(48A) Ineligible applicants. The opportunity to register to vote must be offered to every applicant. The applicant, not the agency, is responsible for determining the applicant's eligibility to register to vote. The agency shall accept a registration form even if it is submitted by an applicant the agency believes to be ineligible to register to vote.

Applicants who are not accepted for services or assistance by an agency shall be offered the opportunity to register to vote. Even if the applicant will not receive services or assistance from the agency, voter registration forms shall be processed and transmitted not later than the final working day of the week to the appropriate county commissioner of elections as required by Iowa Code section 48A.21.

721—23.11(48A) Other voter registration agencies. The offices of all Iowa county auditors shall provide voter registration services to applicants for services, such as licenses issued by the auditor's office. These offices are required to provide declination forms to each person who is offered the opportunity to register to vote when applying for services at the auditor's office.

These rules are intended to implement Iowa Code section 48A.19(3) and Section 1973gg-5 of the National Voter Registration Act of 1993.

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CHAPTER 24
UNOFFICIAL CANVASS OF VOTES

721—24.1(47) Unofficial canvass. The state commissioner of elections, in cooperation with the county commissioners of elections, shall conduct an unofficial canvass of election results after the closing of the polls on the day of a general election. The unofficial canvass shall report election results for national offices, statewide offices, the office of state representative, the office of state senator, and other offices or public measures at the discretion of the state commissioner. The purpose of the unofficial canvass is to provide the public with a convenient source of general election results before the official canvass.

721—24.2(47) Duties of the county commissioner of elections. The county commissioner of elections shall provide election results to the state commissioner after all precincts have reported election results to the county commissioner, and before the closing of the office as provided in Iowa Code section 50.11. If the county commissioner determiners that all precincts will not report election results, the county commissioner shall report the most complete results available before the closing of the office as provided in Iowa Code section 50.11. The county commissioner shall specify the number of precincts included in the report to the state commissioner.

721—24.3(47) Duties of the state commissioner of elections.

24.3(1) Before the general election, the state commissioner of elections shall provide a form and instructions for reporting unofficial election results.

24.3(2) The state commissioner shall tabulate unofficial election results, as the results are received from the county commissioners of elections, and shall make available to the public periodic reports of the results.

These rules are intended to implement Iowa Code section 47.1.

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CHAPTER 25
ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

721—25.1(17A,39A,47) General provisions.

25.1(1) *Scope of jurisdiction.* The administrative complaint procedure set forth in this chapter is established to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure is available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

25.1(2) *Timely resolution.* A final determination with respect to a complaint shall be issued within 90 days of the date the complaint is filed with the state commissioner of elections, unless the complainant consents to a longer period for making such determination. If a determination is not issued within this 90-day period and the complainant does not agree to allow a longer period for making the determination, the complaint shall be resolved within 60 days pursuant to the alternate dispute resolution procedure established in rule 721—25.34(17A).

25.1(3) *Definitions.* For purposes of this chapter, the following terms shall have the following meanings:

"Complainant" means the person who files a complaint under this chapter.

"Federal election" means a primary or general election at which a federal office appears on the ballot.

"Party" means the complainant, respondent, and any other person or persons allowed by the presiding officer to intervene in pending complaint proceedings.

"Presiding officer" means the state commissioner of elections or an alternate decision maker designated pursuant to rule 721—25.7(17A,39A,47).

"Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

"State or local election official" means the state commissioner of elections, any county commissioner of elections, or any person employed or appointed by either the state commissioner of elections or a county commissioner of elections whose responsibilities include or directly relate to the administration of any federal election.

"Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, codified at 42 United States Code 15481-15485.

721—25.2(17A,39A,47) Form of complaint. This complaint procedure is limited to allegations of violations of Title III in a federal election. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint under this chapter. The complainant may either submit a complaint on a form provided by the state commissioner of elections or in any other form that complies with this rule. All complaints shall be in writing, signed and notarized, and be sworn under oath. The complaint must identify the complainant by name and mailing address and include a clear and concise description of the alleged violation that is sufficiently detailed to apprise both the respondent and the presiding officer of the nature of the alleged violation. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint.

721—25.3(17A,39A,47) Filing, service, and initial review of complaint.

25.3(1) *Filing.* The complaint shall be filed with the state commissioner of elections and shall be accompanied by adequate proof of service of the complaint, as required by subrule 25.3(2).

25.3(2) *Service.* Service of a complaint upon each respondent shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the respondent or the respondent's duly authorized legal representative.

25.3(3) *Initial review of complaint.*

a. The director of elections within the office of the state commissioner of elections shall examine each complaint to determine whether it falls within the jurisdiction of these rules and may reject it if:

(1) It is not signed, notarized, or sworn under oath;

(2) It does not identify the complainant or include an adequate mailing address;

(3) It does not, on its face, allege a violation of Title III with regard to a federal election; or

(4) More than 90 days have elapsed since the final certification of the results of the federal election at issue.

b. A determination as to jurisdiction shall be made within five business days of the date of filing of the complaint.

c. If the complaint is rejected, the director shall issue a written statement specifying the reasons for the rejection and provide copies of the statement to the complainant and all respondents by regular mail.

d. If the complaint is accepted, the complaint and any accompanying documentation shall be forwarded to the presiding officer for further action in accordance with these rules.

721—25.4(17A,39A,47) Notice of proceedings. Upon receipt of a complaint from the director of elections, the presiding officer shall establish a schedule under which the complainant and respondent(s), as well as any other interested persons, may file any written submissions or documentary evidence concerning the complaint and under which a hearing on the complaint will be conducted, if requested. The presiding officer shall serve notice of the proceeding upon the complainant and the respondent(s). The notice shall include:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular section or sections of Title III which are involved;
3. A reference to the procedural rules governing conduct of the proceeding;
4. A short and plain statement of the matters asserted in the complaint;
5. Identification of all parties or known representatives of parties;
6. The deadline for submission of an answer by the respondent(s) or written documentation by any interested persons;
7. The deadline by which either party may request an evidentiary hearing; and
8. Any other information deemed appropriate.

721—25.5(17A,39A,47) Informal settlement. The presiding officer, or a designated staff member, may attempt to informally settle a complaint proceeding before or after a notice of the proceeding is issued. If a staff member is designated to initiate settlement discussions, the designee shall have authority to negotiate on behalf of the presiding officer, but shall not have authority to bind the presiding officer to particular terms of settlement. If the presiding officer and respondent(s) agree to settlement of a pending complaint, a consent order shall be issued. By electing to sign a consent order, the respondent(s) waives all rights to a hearing and all attendant procedures. The consent order shall have the force and effect of a final order of the presiding officer and shall be served and published as provided in rule 721—25.28(17A).

721—25.6(17A,39A,47) Answer.

25.6(1) Within ten days of the date of service of notice of the proceedings, each respondent shall file an answer to the allegations contained therein and serve a copy of the answer upon all parties to the proceedings, pursuant to rule 721—25.16(17A,39A,47).

25.6(2) The answer shall contain the following information:

a. The full name, address and telephone number of the respondent and the respondent's counsel, if any; and

b. A specific statement admitting or denying each allegation in the complaint.

25.6(3) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the

proceeding, including explanations, remarks or statements of mitigating circumstances, and any relevant documentation.

721—25.7(17A,39A,47) Presiding officer.

25.7(1) In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections.

25.7(2) In complaint proceedings in which one of the respondents is the state commissioner of elections or a person or persons employed or appointed by the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to Iowa Code section 47.8, except the state commissioner of elections or the state commissioner's designee.

25.7(3) Any party to a complaint proceeding who wishes to request that the presiding officer be an administrative law judge employed by the department of inspections and appeals must file a written request within five days after service of a notice of proceedings which identifies the presiding officer as the state commissioner of elections or voter registration commission. The state commissioner of elections or voter registration commission may deny the request only upon a finding that one or more of the following apply:

a. The presiding officer under whose authority the proceeding is to take place is not a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The proceeding involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to assist the presiding officer in resolving disputed factual issues.

e. The request was not timely filed.

f. The request is not consistent with a specified statute.

25.7(4) The originally designated presiding officer shall issue a written ruling specifying the grounds for the ruling within ten days after a request for an administrative law judge is filed. If the request is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision shall have a J.D. degree, unless waived by the originally designated presiding officer.

25.7(5) The state commissioner of elections or voter registration commission, when acting as presiding officer, may request that an administrative law judge perform certain functions as an aid to the presiding officer, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the state commissioner of elections or voter registration commission.

25.7(6) All rulings by an administrative law judge whether the judge is acting as presiding officer or assistant to the state commissioner or voter registration commission are subject to appeal to the originally designated presiding officer pursuant to rules 721—25.29(17A) and 25.30(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies.

25.7(7) Unless otherwise provided by law, the state commissioner or voter registration commission, when reviewing a proposed decision of an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

721—25.8(17A,39A,47) Proceedings based upon written submissions.

25.8(1) In order to expedite resolution of complaint proceedings, complaints shall be evaluated and a decision rendered based upon written submissions unless the complainant or respondent requests a hearing on the record or the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes.

25.8(2) The presiding officer will not issue a decision upon the written submissions prior to the expiration of the time within which the complainant and respondent may request a hearing on the record unless both the complainant and respondent file a written waiver of the right to hearing under these rules.

721—25.9(17A,39A,47) Written decisions, available remedies.

25.9(1) *Decision format.* All final determinations resolving complaint proceedings shall be in writing and shall include findings of fact and conclusions of law as required by Iowa Code section 17A.16(1).

25.9(2) *Violation found—remedies.* If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that a violation of Title III has been established, the presiding officer shall issue an order providing for an appropriate remedy. The remedy so provided shall be designed to ensure compliance with the requirements of Title III and may include an order to any respondent directing the respondent to take specified action or prohibiting the respondent from taking specified action with respect to a past, immediately pending, or future election. The remedy shall not include an award of monetary damages or attorney's fees.

25.9(3) *No violation found.* If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that no violation of Title III has been established, the presiding officer shall issue an order dismissing the complaint.

721—25.10(17A,39A,47) Hearings.

25.10(1) If a hearing is desired by the complainant, a request for a hearing on the record shall be included within the complaint or made by submitting a written request for hearing no later than ten days following service of the answer by the respondent.

25.10(2) If a hearing is desired by the respondent, a request for a hearing on the record shall be included within the answer.

25.10(3) Hearings shall be conducted pursuant to rules 721—25.23(17A) through 25.26(17A).

25.10(4) Notice of the time and place of hearing will be provided to each party by the presiding officer. When possible, a written notice will be served upon each party a minimum of seven days prior to the time of hearing. If the circumstances underlying the complaint necessitate expedited resolution prior to a pending election, the period of notice may be shortened and notice may be provided by facsimile, telephone, or E-mail.

721—25.11(17A,39A,47) Time requirements.

25.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

25.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

721—25.12(17A,39A,47) Waiver of procedures. Unless otherwise precluded by law, the parties in a complaint proceeding may waive any provision of this chapter. However, the presiding officer in the presiding officer's discretion may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

721—25.13(17A,39A,47) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the proceeding, will be considered when location is chosen. Objections, if any, shall be filed with the presiding officer and served on all parties at least three business days in advance of hearing.

721—25.14(17A,39A,47) Disqualification.

25.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a complaint proceeding if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated, in connection with that proceeding, the specific controversy underlying that proceeding, another pending factually related complaint proceeding, or a pending factually related controversy that may culminate in a complaint proceeding involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that complaint proceeding, the specific controversy underlying that complaint proceeding, or a pending factually related complaint proceeding or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the proceeding or any other significant personal interest that could be substantially affected by the outcome of the proceeding;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the proceeding, or an officer, director or trustee of a party; (2) is a lawyer in the proceeding; (3) is known to have an interest that could be substantially affected by the outcome of the proceeding; or (4) is likely to be a material witness in the proceeding; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that proceeding.

25.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is jurisdiction to initiate a proceeding, or exposure to factual information while performing other functions, including fact gathering for purposes other than investigation of the matter which culminates in a complaint proceeding. Factual information relevant to the merits of a complaint proceeding received by a person who later serves as presiding officer in that proceeding shall be disclosed if required by Iowa Code section 17A.17(3) and rule 721—25.26(17A).

25.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

25.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 25.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

25.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

25.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

721—25.15(17A,39A,47) Consolidation—severance.

25.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more complaint proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

25.15(2) *Severance.* The presiding officer may, for good cause shown, order any complaint proceedings or portions thereof severed.

721—25.16(17A,39A,47) Service and filing of pleadings and other papers.

25.16(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a complaint proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. Once a presiding officer has been assigned to a proceeding, copies of all motions or other written submissions shall also be served on the presiding officer.

25.16(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

25.16(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a complaint proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

25.16(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is received by the state commissioner of elections or the assigned presiding officer. If a document required to be filed within a prescribed period or on or before a particular date is received after such period or date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing.

25.16(5) *Proof of mailing.* Proof of mailing includes either a legible, nonmetered United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert name of presiding officer) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)_____ (Signature)_____

25.16(6) *Electronic service.* The presiding officer may by order permit service or filing of particular documents by facsimile, E-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order, facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

721—25.17(17A) Discovery.

25.17(1) Discovery procedures applicable in civil actions are applicable in complaint proceedings. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure. Discovery may be limited if the circumstances underlying the complaint necessitate expedited resolution of the allegations prior to a pending election.

25.17(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.17(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

25.17(3) Evidence obtained in discovery may be used in the complaint proceeding if that evidence would otherwise be admissible in that proceeding.

721—25.18(17A) Issuance of subpoenas in a complaint proceeding.

25.18(1) Subpoenas issued in a complaint proceeding may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the presiding officer upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

a. The nature of the issues in the proceeding reasonably justifies the issuance of the requested subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

25.18(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time, and location for production or inspection and copying;

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 25.18(1) have been satisfied.

25.18(3) Each subpoena shall contain, as applicable:

a. The caption of the proceeding;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time, and location for production or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive secretary or designee;

j. The date of issuance;

k. A return of service.

25.18(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the complaint proceeding. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.18(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the complaint proceeding who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the presiding officer a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

25.18(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer or administrative law judge may schedule oral argument or hearing by telephone or in person.

25.18(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the presiding officer in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 721—25.29(17A) and 25.30(17A), provided that all of the time frames are reduced by one-half.

25.18(8) If the person contesting the subpoena is not a party to the proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the complaint proceeding.

721—25.19(17A) Motions.

25.19(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

25.19(2) Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by ruling of the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

25.19(3) The presiding officer may schedule oral argument on any motion. If the presiding officer requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 721—25.29(17A).

25.19(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

25.19(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

25.19(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a complaint proceeding is subject to rehearing pursuant to rule 721—25.31(17A) and appeal pursuant to rule 721—25.30(17A).

721—25.20(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

25.20(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

25.20(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance, and may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors.

721—25.21(17A) Withdrawals. A complainant may withdraw a complaint prior to the hearing upon written notice filed with the presiding officer and served on all parties. Unless otherwise ordered by the presiding officer, a withdrawal shall be with prejudice.

721—25.22(17A) Intervention.

25.22(1) *Motion.* A motion for leave to intervene in a complaint proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. Any party may file a response within seven days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

25.22(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed at least ten days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the proceeding unless binding the intervenor would be inequitable or unjust. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

25.22(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

25.22(4) *Effect of intervention.* A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

721—25.23(17A) Hearing procedures. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The presiding officer may request that an administrative law judge assist in performing any of these functions.

25.23(1) *Examination of witnesses.* All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, if a court reporter is provided by one of the parties, and shall be subject to cross-examination. The presiding officer and the administrative law judge have the right to examine a witness at any stage of the witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

25.23(2) *Public hearing.* The hearing shall be open to the public.

25.23(3) *Record of proceedings.* Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the state commissioner of elections for at least five years from the date of decision.

25.23(4) *Order of proceedings.* Before testimony is presented, the record shall show the identity of the presiding officer, the identity of the administrative law judge, if any, the identity of the parties and their representatives, and the fact that all testimony is being recorded.

a. The presiding officer or designated person may read a summary of the complaint and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The complainant shall make a brief opening statement, which may include a summary of allegations within the complaint and the witnesses and documents to support such charges.

c. Each respondent shall be offered an opportunity to make an opening statement, including the names of any witnesses the respondent desires to call in defense. A respondent may elect to defer making the opening statement until just prior to the presentation of evidence by the respondent.

d. Evidence on behalf of the complainant shall be presented.

e. Evidence on behalf of the respondent(s) shall be presented.

f. Rebuttal evidence on behalf of the complainant, if any, shall be presented.

g. Rebuttal evidence on behalf of the respondent(s), if any, shall be presented.

h. Closing arguments first on behalf of the complainant, then on behalf of the respondent(s), and then rebuttal, if any, on behalf of the complainant shall be made.

The order of proceedings may be tailored to the nature of the complaint proceeding.

25.23(5) *Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

25.23(6) *Sequestering witnesses.* The presiding officer, on the presiding officer's own motion or upon the request of a party, may sequester witnesses.

721—25.24(17A) Evidence.

25.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

25.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

25.24(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

25.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties and the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

25.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

25.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

25.24(7) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

721—25.25(17A) Default.

25.25(1) If a party fails to appear or participate in a complaint proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

25.25(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a complaint proceeding become final action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of

a decision on the merits is timely initiated within the time provided by rule 721—25.30(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the complaint proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

25.25(3) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

25.25(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

25.25(5) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

25.25(6) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

25.25(7) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 721—25.32(17A).

721—25.26(17A) Ex parte communication.

25.26(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such proceeding in connection with any issue of fact or law in the proceeding except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with those engaged in personally investigating as defined in subrule 25.14(2), or advocating in either the proceeding under consideration or a pending factually related proceeding involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

25.26(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a complaint proceeding and continue for as long as the proceeding is pending.

25.26(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

25.26(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 721—25.4(17A,39A,47) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

25.26(5) Persons who jointly act as presiding officers in a pending complaint proceeding may communicate with each other without notice or opportunity for parties to participate.

25.26(6) The director of elections or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the director or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and comply with subrule 25.26(1).

25.26(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 721—25.20(17A).

25.26(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a complaint proceeding must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

25.26(9) Promptly after being assigned to serve as presiding officer at any stage in a complaint proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

25.26(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, or censure.

721—25.27(17A) Recording costs. Upon request, the presiding officer shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

721—25.28(17A) Final decisions, publication and party notification.

25.28(1) *Final decision.* When the state commissioner of elections or the voter registration commission presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the presiding officer shall be filed with the state commissioner of elections. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to all parties of record.

25.28(2) *Publication of decisions.* Final decisions in all complaint proceedings, including consent agreements and consent orders, are public records which shall be indexed and made available for public inspection by the office of the state commissioner of elections as required by Iowa Code section 17A.3(1)*"e."* In addition, all final decisions shall be published by posting on the Internet Web site maintained by the office of the state commissioner of elections.

721—25.29(17A) Interlocutory appeals. Upon written request of a party or on the presiding officer's own motion, the presiding officer may review a preliminary order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the presiding officer shall weigh the extent to which the presiding officer's granting of the interlocutory appeal would expedite final resolution of the proceeding and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

721—25.30(17A) Appeals and review.

25.30(1) *Proposed decision.* Decisions issued by an administrative law judge are proposed decisions. All complaint proceeding decisions must be issued by the state commissioner of elections or voter registration commission, as appropriate. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the state commissioner of elections or voter registration commission, as appropriate.

25.30(2) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the state commissioner of elections or voter registration commission within 15 days after issuance of the proposed decision.

25.30(3) *Review.* The state commissioner of elections or voter registration commission may initiate review of a proposed decision at any time within 15 days following the issuance of such a decision.

25.30(4) *Notice of appeal.* An appeal of a proposed decision is initiated by the filing of a timely notice of appeal with the state commissioner of elections or voter registration commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order which is being appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

25.30(5) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within seven days of service of the notice of appeal. The state commissioner of elections or voter registration commission may remand a proceeding to the administrative law judge for further hearing or may preside at the taking of additional evidence.

25.30(6) *Scheduling.* The state commissioner of elections or voter registration commission shall issue a schedule for consideration of the appeal.

25.30(7) *Briefs and arguments.* Unless otherwise ordered, within ten days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within ten days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state commissioner of elections or voter registration commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The state commissioner of elections or voter registration commission may shorten or extend the briefing period, as appropriate.

25.30(8) *Record.* The record on appeal or review shall be the entire record made before the administrative law judge.

721—25.31(17A) Applications for rehearing.

25.31(1) *By whom filed.* Any party to a complaint proceeding may file an application for rehearing from a final order.

25.31(2) *Contents of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the final decision on the existing record and whether, on the basis of the grounds enumerated in subrule 25.31(3), the applicant requests an opportunity to submit additional evidence.

25.31(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

25.31(4) *Time of filing.* The application shall be filed with the state commissioner of elections within 20 days after issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the state commissioner of elections.

25.31(5) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the state commissioner of elections shall serve copies of the application on all parties.

25.31(6) *Disposition.* An application for rehearing shall be deemed denied unless the presiding officer grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the state commissioner of elections.

25.31(7) *Proceedings.* If the presiding officer grants an application for rehearing, the presiding officer may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the presiding officer may issue a ruling without oral argument or hearing. The presiding officer may, on the request of a party or on the presiding officer's own motion, order or permit the parties to provide written argument on one or more designated issues. The presiding officer may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

721—25.32(17A) Stays of orders.

25.32(1) *When available.* Any party to a complaint proceeding may petition the presiding officer for a stay or other temporary remedy, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

25.32(2) *When granted.* In determining whether to grant a stay, the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

721—25.33(17A) No factual dispute complaint proceedings. If the parties agree that no dispute of material fact exists, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

721—25.34(17A) Alternate dispute resolution. If, as required by subrule 25.1(2), a final determination is not issued within 90 days of the date of the filing of a complaint and the complainant does not agree to allow a longer period for making the determination, the complaint shall be transferred to a board of arbitration, which shall resolve the complaint within 60 days from the date of transfer.

25.34(1) The board of arbitration shall be composed of the following three members: one member designated by the complainant, one member designated by the state commissioner of elections, and a third member jointly agreed to by the first two members.

25.34(2) The board of arbitration shall have access to the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive additional testimony, evidence, or other submissions. The board of arbitration shall determine the appropriate resolution of the complaint by a majority vote and shall issue a written decision as required by rule 721—25.9(17A,39A,47). The board's decision shall be considered the final decision upon the complaint for purposes of publication, rehearing and judicial review.

721—25.35(17A) Judicial review. Judicial review of the final decision may be sought in accordance with the terms of Iowa Code chapter 17A.

25.35(1) Consistent with Iowa Code section 17A.19(3) if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

25.35(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in rule 721—25.31(17A).

These rules are intended to implement 42 U.S.C. 15512(a)(1).

[Filed 10/24/03, Notice 6/11/03—published 11/12/03, effective 12/17/03]

CHAPTER 26
COUNTING VOTES

PART I—GENERAL PROVISIONS

721—26.1(49) Definitions.

"Blank ballot" means a ballot that contains no votes that can be detected by a tabulating device. See also "unvoted ballot."

"Hesitation mark" means a small mark made by resting a pen or pencil on the ballot.

"Optical scan voting system" includes a tabulating device that reads ballots by detecting voters' marks using reflected or absorbed light. An optical scan voting system may be used to count ballots either at the polling place (precinct count) or at a counting center (central count). Optical scan ballots are special paper ballots designed for use with an optical scan voting system.

"Overvote" means to vote for more than the permitted number of choices for any office or question on a ballot.

"Paper ballot" as used in this chapter means a ballot that is intended to be counted only after inspection by precinct election officials. "Paper ballot" in this context means a ballot provided at a precinct that does not have optical scan voting equipment.

"Prescribed mark" means the mark shown in the voting instructions as the appropriate way to mark a vote. "Prescribed mark" includes a close approximation of the mark.

"Question" as used in this chapter includes a public measure as defined by Iowa Code section 39.3(10) and a judicial retention question pursuant to Iowa Code section 46.21.

"Random mark" means a mark on a ballot (other than the prescribed mark) that is used inconsistently, either in or near the voting target or the names of candidates.

"Straight party vote" means a vote cast in the area of the ballot where political parties and nonparty political organizations are listed, pursuant to Iowa Code section 49.37(1).

"Stray mark" means a mark on a ballot that appears to be accidental or appears to be unrelated to the act of filling in the voting target.

"Tabulating device" means the portable apparatus that removes the special paper ballot from the secrecy envelope, examines and counts the votes recorded on the special paper ballot, and produces a paper printout of the results of the voting.

"Undervote" means to vote for fewer than the permitted number of choices for any office or question on a ballot.

"Unvoted ballot" means a ballot that has not been marked in any way. See also "blank ballot."

"Vote" means the voter's choice for an office or question on the ballot.

"Voting target" means the place designated on a ballot for the voter to mark the voter's choice.

"Write-in vote" means a vote cast pursuant to Iowa Code section 49.99 or 52.16.

[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.2(49) Counting votes on election day.

26.2(1) *Optical scan—precinct count.* Ballots shall be counted at the polling place on election day using the equipment provided. The precinct election officials shall not examine ballots accepted and counted by the tabulating device. After the polls close, the precinct election officials shall:

a. Remove any ballots from the emergency ballot box and insert them into the tabulating device.

b. Examine ballots sorted by the tabulating device because they contain write-in votes and count the write-in votes following the standards in rule 26.20(49).

c. Examine ballots rejected by the tabulating device and abandoned by the voter only if the tabulating device has no override device that permits the officials to reset the tabulating device to accept blank or overvoted ballots. The officials shall follow the standards in rules 26.12(50) through 26.21(49).

26.2(2) *Optical scan—absentee and special voters precinct.* The ballots shall be counted at a single location on election day as required by Iowa Code section 53.23. When it is necessary to duplicate or

enhance a ballot because it is read as blank, the officials shall follow the standards in rules 26.12(50) through 26.21(49).

26.2(3) *Paper ballots.* Ballots shall be counted at the polling place on election day as provided in Iowa Code chapter 50 or 51, as applicable, according to the standards in Part III.
[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.3(50) Reporting overvotes and undervotes. The reports from computerized voting equipment and canvass summaries for precinct, county and state canvasses of votes shall include the number of overvotes and undervotes for each office and question on the ballot. Undervotes and overvotes shall not be reported on abstracts of votes prepared pursuant to Iowa Code sections 50.24 and 50.39.

EXAMPLE: For a special election, 100 people voted using an optical scan voting system. The printed report from the machine tally of votes should be in substantially the following form:

Number of voters = 100

City Official	
Candidate 1	24
Candidate 2	51
Candidate 3	12
Write-in votes	8
Overvotes	2
Undervotes	3

The vote tally portion of the abstract of votes for this office would read as follows:
For the office of city official, there were ninety-five (95) votes cast as follows:
Candidate 1 received twenty-four (24) votes.
Candidate 2 received fifty-one (51) votes.
Candidate 3 received twelve (12) votes.
Scattering received eight (8) votes.

721—26.4(50) Absentee and special voters precinct. The absentee and special voters precinct board shall tabulate ballots in the manner appropriate to the voting equipment, if any has been provided. When an optical scan voting system is used, the board shall follow the procedures in subrule 26.2(2).
[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.5 to **26.9** Reserved.

PART II—OPTICAL SCAN VOTING SYSTEMS

721—26.10(50) Systems affected. The following rules apply to all optical scan voting systems in use in Iowa.

721—26.11(50) Examples used. The examples used in this part all show the voting target as an oval on the left-hand side next to each candidate's name. The same principles demonstrated in the examples apply to other types of voting targets on optical scan ballots.

721—26.12(50) Wrong ballots. Optical scan voting equipment shall be programmed to reject ballots not coded for use in the precinct, as required by 721—subrule 22.201(1). If a recount board appointed pursuant to Iowa Code section 50.48 finds ballots that are coded for a precinct other than the precinct being tabulated, those ballots shall not be counted unless the commissioner or the commissioner's designee reports that the wrong ballots were delivered to the polling place. The recount board shall immediately report to the commissioner the number of these ballots. The recount board and the commissioner shall securely seal the ballots coded for another precinct and attach to the ballot package

a report of the findings. A copy of the report shall be forwarded to the county attorney as a possible violation of Iowa Code section 39A.2(1)*"b"*(2).

721—26.13(50) Ballot properly marked by the voter. No ballot properly marked by the voter shall be rejected:

1. Because of any discrepancy between the printed ballot and the nomination paper, or certificate of nomination, or certified abstract of the canvassing board.
2. Because of any error in stamping or writing the endorsement thereon by the officials charged with such duties.
3. Because of any error on the part of the officer charged with such duty in delivering the wrong ballots at any polling place.

721—26.14(50) Ballots with identifying marks. The precinct election officials shall reject a ballot if the ballot includes an identifying mark. The following marks shall be considered to be identifying marks:

1. A comment or statement that indicates the identity of the voter either individually or as a member of a group.
2. Initials, a printed name or a signature placed on the ballot in any place other than on the lines intended for write-in votes or intended for the initials of the election official who issued the ballot.

If the ballot has an identifying mark, the precinct election officials shall mark the ballot "Defective due to identifying mark." The precinct officials in precincts where optical scan voting equipment is used shall tally the votes on all ballots with identifying marks. All of the precinct election officials shall sign the tally. They shall include the tally of ballots with identifying marks in the tally list. The officials shall return the ballots with identifying marks to the commissioner in the envelope or container for disputed ballots as required by Iowa Code section 50.5.

721—26.15(49) Voter's choice. A vote for any office or question on a ballot shall not be rejected solely because a voter failed to follow instructions for marking the ballot.

26.15(1) If the choice of the voter is clear from the marks for any office or question, the vote shall be counted as the voter has indicated.

26.15(2) If for any reason it is impossible to determine the choice of the voter for any office or question, the vote for that office or question shall not be counted.

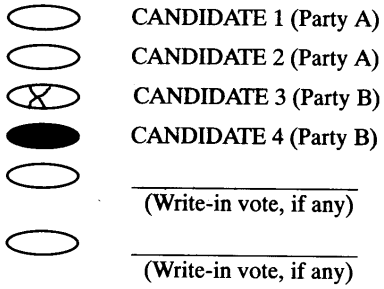
721—26.16(49) Determination of voter's choice.

26.16(1) If a voter uses both the prescribed mark and other marks, only the prescribed marks shall be counted as votes.

EXAMPLE: The voter has used both the prescribed mark and a cross in the voting targets within the same office.

For Board of Supervisors

(Vote for no more than two.)



This example shows a vote for CANDIDATE 4. It is not clear from the voter's mark whether the mark in the oval for CANDIDATE 3 is intended as a vote.

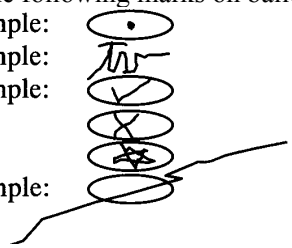
26.16(2) If a voter does not use the mark prescribed in the voting instructions but consistently uses some other mark, the mark shall be counted as a vote if the mark is:

a. In the voting target, or

b. In close proximity to a candidate's name or to a voting target associated with a candidate's name or with a "yes" or "no" choice for a ballot question.

721—26.17(49) Marks not counted. The following marks on ballots shall not count as votes:

1. Hesitation marks. Example:
2. Identifying marks. Example:
3. Random marks. Example:
   (Marks for which there is no consistent pattern.)
4. Stray marks. Example:



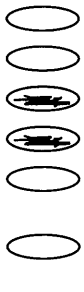
721—26.18(49) Acceptable marks. If the voter uses or places marks on the ballot in a consistent manner as described in subrule 26.16(2), the marks shall be counted as votes. The following marks shall count as votes:

1. The prescribed mark as shown in the voting instructions as the correct manner of marking a vote.
2. A mark that is a close approximation of the prescribed mark but that strays outside the voting target or does not completely fill the voting target. (See Example A of this rule.)
3. Any mark inside the voting target if the mark is consistently used instead of the prescribed mark. This includes a cross, check mark, asterisk, plus sign, diagonal, horizontal, or vertical line or any mark that is substantially contained within the voting target. (See Example B of this rule.)
4. Any mark of the type described in "3" above that is near the name of a candidate or voting target. (See Examples C and D of this rule.)
5. A circle around the voting target for all choices. (See Example E of this rule.)
6. A circle around or a line drawn under the name of the candidate for all choices. (See Example F of this rule.)
7. Names of candidates not crossed out, if the voter has crossed out the names of all candidates except the number (or fewer) to be elected for each office. (See Example G of this rule.)

EXAMPLE A: Close approximations. The voter has consistently marked the ballot by scribbling in the voting targets. The marks do not completely blacken the voting target and one mark strays outside the voting target.

For Board of Supervisors

(Vote for no more than two.)



CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 3 and a vote for CANDIDATE 4. The same principle applies for other voting marks. If the mark used is a close approximation of the prescribed mark, it shall be counted as a vote provided that all other applicable standards are met.

EXAMPLE B: Acceptable mark in the voting target. The voter has consistently marked each choice by putting a check mark in the voting target.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

Martha Stone
(Write-in vote, if any)

This example shows a vote for CANDIDATE 3 and a vote for the write-in choice, Martha Stone.

EXAMPLE C: Acceptable mark placed near the voting target. The voter has consistently marked each choice by putting a check mark in the space between the voting target and the candidate's name.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 2 and a vote for CANDIDATE 3.

EXAMPLE D: Acceptable mark placed near a candidate's name. The voter has consistently marked each choice by putting a check mark behind the candidate's name.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE E: Choices circled. The voter has consistently marked each choice by circling the voting target.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
_____
(Write-in vote, if any)
_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE F: Choices underlined. The voter has consistently marked each choice by underlining the name of the candidate.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
_____
(Write-in vote, if any)
_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

EXAMPLE G: Choices not crossed out. The voter has consistently marked each choice by crossing out the names of candidates not chosen.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
~~CANDIDATE 2 (Party A)~~
~~CANDIDATE 3 (Party B)~~
CANDIDATE 4 (Party B)
_____
(Write-in vote, if any)
_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 4.

721—26.19(49) Counting straight party or organization votes. Precinct count and central count tabulating devices shall be programmed to count straight party votes according to this rule. Precinct election officials and recount boards shall count straight party votes according to this rule.

26.19(1) When a voter has marked a voting target for one political party or one nonparty political organization, each candidate on the ballot for that party or organization shall receive one vote.

26.19(2) Overvote. If a voter has marked the voting target next to the name of more than one political party or organization, only votes cast for individual candidates shall be counted.

26.19(3) Overriding a straight party vote. If the voter has marked a straight party vote and has also marked a voting target for a candidate or for a write-in line for a partisan office, the straight party vote shall not apply to that office. The vote shall be counted as the voter has marked that individual office.

26.19(4) More than one candidate to be elected. If the voter may vote for more than one candidate for an office, a straight party vote does not apply to that office if the voter marks one or more voting targets next to the names of candidates listed under that office title or if the voter marks one or more voting targets next to write-in lines. The vote shall be counted as the voter has marked that individual office.

EXAMPLE for 26.19(2): Straight party overvote. The voter has marked a straight party vote for Party A and for Organization D.

STRAIGHT PARTY VOTING

POLITICAL PARTY A

POLITICAL PARTY B

POLITICAL ORGANIZATION C

POLITICAL ORGANIZATION D

This example shows an overvote. Count only votes cast separately for candidates listed on the ballot.

EXAMPLE A for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 4. No votes shall be counted for either of the two candidates from Party A. The vote for CANDIDATE 4 overrides the straight party vote.

EXAMPLE B for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)

CANDIDATE 2 (Party A)

CANDIDATE 3 (Party B)

CANDIDATE 4 (Party B)

_____
(Write-in vote, if any)

_____
(Write-in vote, if any)

This example shows a vote for CANDIDATE 2. No vote shall be counted for CANDIDATE 1, who is also a candidate for Party A. The separate vote for one candidate of Party A overrides the straight party vote.

EXAMPLE C for 26.19(3) and 26.19(4): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
_____
(Write-in vote, if any)
_____
(Write-in vote, if any)

This example shows a vote for "blank." No vote shall be counted for either of the two Party A candidates: CANDIDATE 1 or CANDIDATE 2. The separate vote for a write-in choice overrides the straight party vote.

EXAMPLE D for 26.19(3), 26.19(4) and 26.20(3): Overriding a straight party vote. The voter has marked a straight party vote for Party A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
Candidate 1
(Write-in vote, if any)
Candidate 2
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 2. Although the write-in vote duplicates the voter's straight party vote, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2. The precinct election officials shall include one vote for CANDIDATE 1 and one vote for CANDIDATE 2 in the write-in tally.

721—26.20(49) Write-in votes.

26.20(1) The precinct election officials and recount board members shall count a write-in vote only if the voting target is marked.

26.20(2) If a voter writes the name of the same person more than once in the proper places on a ballot for an office to which more than one person is to be elected, all but one of those votes for that person for that office are void and shall not be counted.

26.20(3) If a write-in vote duplicates an otherwise correctly cast vote for a candidate whose name appears on the ballot, the write-in vote shall be counted. The ballot has been read as overvoted for this office, and all other votes have been counted by the tabulator.

26.20(4) Write-in votes cast for the office of president and vice president, or for governor and lieutenant governor, shall be tabulated as a single vote for a pair of candidates.

26.20(5) Names. The officials tabulating write-in votes shall disregard misspellings or variations in names or abbreviations for write-in candidates and shall count the variations in the form of the name for a single person if the officials can determine for whom the write-in votes were cast. Write-in votes for fictitious characters shall be tabulated as written.

EXAMPLE A for 26.20(1): Write-in voting target not marked. The voter has not marked the voting target for the write-in votes. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
Candidate 1
(Write-in vote, if any)
Candidate 2
(Write-in vote, if any)

This example does not show a vote. Iowa Code section 49.99 requires voters to mark the voting target for write-in votes on optical scan ballots. If the voting target for a write-in vote is not marked, the vote does not count.

EXAMPLE B for 26.20(1): Write-in voting target not marked. The voter has written in the names on the write-in lines but has not marked the voting targets. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
Candidate 9
(Write-in vote, if any)
Candidate 8
(Write-in vote, if any)

This example shows one vote for CANDIDATE 1 and one vote for CANDIDATE 2. Iowa Code section 49.99 requires voters to mark the voting target for write-in votes on special paper ballots or the votes do not count. These write-in votes have no effect.

EXAMPLE C for 26.20(1): Overvote. The voter has marked the write-in voting target, but has not written a name on the line. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
(Write-in vote, if any)
(Write-in vote, if any)

This example shows an overvote. No votes shall be counted for this office. The voter's choice here can be interpreted in more than one way.

EXAMPLE for 26.20(2): Two write-ins for the same person. The voter has written in the name of the same person on both write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
Candidate 7
(Write-in vote, if any)
Candidate 7
(Write-in vote, if any)

This example shows one vote for Candidate 7. Iowa Code section 49.99 provides that only one vote be counted if a voter writes the name of the same person more than once in the proper places on a ballot for an office to which more than one person is to be elected.

EXAMPLE for 26.20(3): Write-in vote duplicates other votes. The voter has written on the write-in lines the names of the candidates for whom the voter has also marked the voting targets next to the printed names. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)
Candidate 1
(Write-in vote, if any)
Candidate 2
(Write-in vote, if any)

This example shows a vote for CANDIDATE 1 and a vote for CANDIDATE 2. Although the write-in votes duplicate the votes for candidates on the ballot, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2.

EXAMPLE A for 26.20(4): Write-in vote for team on the ballot. The voter has written in the names of the candidates for president and vice president whose names also appear on the ballot.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 21
Write-in vote for President, if any
Candidate 22
Write-in vote for Vice President, if any

This example shows a vote for the Party B team of Candidate 21 for president and for Candidate 22 for vice president. The voter has clearly chosen this team of candidates.

EXAMPLE B for 26.20(4): Identifying mark with write-in vote for team on the ballot. The voter has written in the names of the candidates for president and vice president whose names also appear on the ballot and has identified the political affiliation of the voter.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 21
Write-in vote for President, if any

Candidate 22
Write-in vote for Vice President, if any

By the New Party

This is not a vote. The political identification next to the write-in lines is an identifying mark, as defined in rule 26.14(50). **Do not count any votes on this ballot pursuant to Iowa Code section 39A.4(1)*"a"*(6) or 49.92.** Follow the procedure in rule 26.14(50).

EXAMPLE C for 26.20(4): Write-in vote for part of a team. The voter has written in the name of the presidential candidate of one party and the vice presidential candidate of another.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 19
Write-in vote for President, if any

Candidate 22
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 19 for president and for Candidate 22 for vice president. This does not count as a vote for the president/vice president team of either Party A or Party B.

EXAMPLE D for 26.20(4): Write-in vote for part of a team. The voter has written in the name of the presidential candidate of one party and the name of another person for vice president.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 19
Write-in vote for President, if any

Candidate 45
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 19 for president (who is also the presidential candidate for Party A) and for Candidate 45 for vice president. This does not count as a vote for the president/vice president team of Party A.

EXAMPLE E for 26.20(4): Write-in vote for president and vice president. The voter has written in votes for president and vice president.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 44
Write-in vote for President, if any

Candidate 45
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 44 for president and for Candidate 45 for vice president.

EXAMPLE F for 26.20(4): Write-in vote for president and vice president. The voter has written in votes for president and vice president.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
Party A

CANDIDATE 21, of State
CANDIDATE 22, of State
Party B

CANDIDATE 23, of State
CANDIDATE 24, of State
Organization C

CANDIDATE 25, of State
CANDIDATE 26, of State
Organization D

Candidate 44
Write-in vote for President, if any

Candidate 50
Write-in vote for Vice President, if any

This example shows a vote for the team of Candidate 44 for president and for Candidate 50 for vice president. Even though other write-in votes have been counted for Candidate 44 for president with a different vice presidential teammate, this team is listed and counted separately.
[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.21(49) Corrections by voter. A vote for an office or question shall be counted if the voter has marked the ballot in a manner that will be counted as an overvote by automatic tabulating equipment but the voter has indicated in a clear fashion that the voter has made a mistake. The correction shall be honored if the correction does not include an identifying mark in violation of Iowa Code section 39A.4(1)*"a"*(6) or 49.92.

EXAMPLE A: Correction. The voter has crossed out the mark for one candidate and has written in the names of two persons on the write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors
(Vote for no more than two.)

CANDIDATE 1 (Party A)
CANDIDATE 2 (Party A)
CANDIDATE 3 (Party B)
CANDIDATE 4 (Party B)

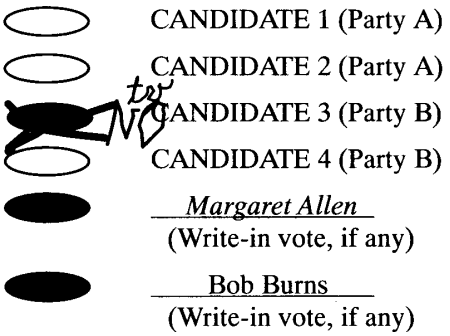
Margaret Allen
(Write-in vote, if any)

Bob Burns
(Write-in vote, if any)

This example shows a vote for Margaret Allen and a vote for Bob Burns. The voter has clearly crossed out the mark for CANDIDATE 3.

EXAMPLE B: Identifying mark. The voter has corrected a mistake by crossing out a marked voting target and has also initialed the correction.

For Board of Supervisors
(Vote for no more than two.)

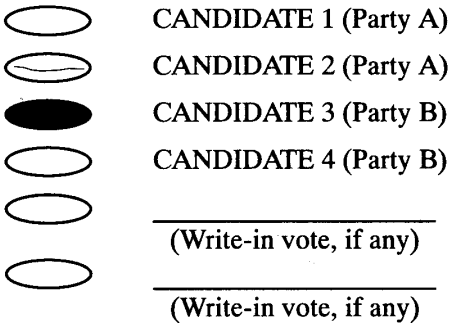


This example does not show a vote. The initials next to the correction identify the voter. **Do not count any votes on this ballot pursuant to Iowa Code section 39A.4(1)*"a"*(6) or 49.92.** Follow the procedure in rule 26.14(50).

EXAMPLE C: Erasure. The voter has attempted to erase one marked voting target and has marked another voting target. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)



This example shows a vote for CANDIDATE 3. The voter has attempted to erase the mark for CANDIDATE 2. Count this as a vote for CANDIDATE 3.

721—26.22 to **26.49** Reserved.

PART III—PAPER BALLOTS

721—26.50(49) Standards. The precinct election officials shall count paper ballots according to the standards for optical scan ballots with the exception that write-in votes shall be counted according to the standards in 26.51(49).

721—26.51(49) Write-in votes. The precinct election officials shall count write-in votes on paper ballots without regard to whether the voter has made a mark opposite the candidate's name.

721—26.52 to **26.59** Reserved.

PART IV—VOTING MACHINES

721—26.60(49) Abandoned ballots. Rescinded IAB 4/20/11, effective 5/25/11.

721—26.61(49) Counting emergency paper ballots. Rescinded IAB 4/20/11, effective 5/25/11.

721—26.62(52) Write-in votes on certain voting machines. Rescinded IAB 8/1/07, effective 7/13/07.

721—26.63 to **26.99** Reserved.

PART V—RECOUNTS

721—26.100(50) Requester. Any person who received votes for an office, including the person who received the most votes, may request a recount. If a person who is an apparent winner of an election requests a recount, the person who received the next highest number of votes for that office shall assume the functions of the "apparent winner" as designated in Iowa Code section 50.48. These functions include:

1. Receiving notice of the recount.
2. Designating a member of the recount board.
3. Calculation of bond.

721—26.101(50) Recounts for candidates who run as a team. For the offices of president and vice president of the United States, and for governor and lieutenant governor, either of the two candidates may sign a request for a recount or designate a member of the recount board.

721—26.102(50) Bond. In an election for a jurisdiction that includes more than one county, only one bond is required for each candidate who requests a recount for that office. For state and federal offices, the bond shall be filed with the state commissioner of elections. For other elections, the bond shall be filed with the commissioner responsible for the election under Iowa Code section 47.2(2). If more than one candidate for a multicounty office requests a recount, the bond requirement shall be calculated for each candidate.

721—26.103(50) Recount board. A three-person board shall conduct the recount.

26.103(1) The person requesting the recount shall name one board member in the written request. If more than one person files a request for a recount of the same office in the same county, the board member shall be the designee of the first person who filed.

26.103(2) The apparent winner shall name one board member at or before the time the board is required to convene. If more than one person is to be elected to the office in question, the designation shall be made by the apparent winner who received the fewest votes.

26.103(3) The board members designated pursuant to subrules 26.103(1) and 26.103(2) shall mutually agree upon the third member of the board.

721—26.104(50) Responsibilities of the recount board. Recount boards do not resolve procedural or legal questions about the conduct of the election or the qualifications of voters. The responsibility of a recount board is to tabulate all votes for the office in question on ballots that were counted by the precinct election officials at the election.

26.104(1) *Ballots to be recounted.* All ballots that were accepted for counting shall be recounted.

a. This includes disputed ballots returned separately pursuant to Iowa Code section 50.5.

b. This does not include spoiled ballots.

c. This does not include absentee or provisional ballots that were rejected before the ballot envelope was opened.

26.104(2) *Ballot packages.* The recount board shall open only the sealed ballot containers from the precincts specified in the request to be recounted or from the precincts specified by the recount board. Ballots from precincts that are not included in the recount shall be kept sealed or kept separate from those being recounted.

26.104(3) *Standards.* A voter's definite choices shall be counted even if the recount board determines that the voter's choices differ from the votes as counted by the tabulating device. The recount board shall follow the standards for counting votes as prescribed by Iowa Code sections 49.92 to 49.99 and this chapter.

26.104(4) *Sealing ballot packages.* When the recount is completed, the ballots must be sealed in the same manner that ballots are required to be sealed on election night. The envelope or container must

have across its opening a seal that is signed by all members of the recount board. The seal shall be applied so that the ballot package cannot be opened without breaking the seal.
[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.105(50) Duties of commissioner and commissioner's staff.

26.105(1) *Ballot security.* The county commissioner (or the commissioner's designee) shall be responsible for the security of the ballots and shall supervise their handling. The commissioner shall ensure that the ballots are protected from alteration, damage or loss.

26.105(2) *Optical scan tabulation duties.* In counties with electronically tabulated optical scan ballots, the recount board may request that the ballots be recounted by machine, may count the ballots by hand, or may do both. The county commissioner or members of the commissioner's staff shall operate the tabulation equipment for machine recounts. The same program used on election day shall be used in the recount unless the program is believed or known to be flawed.
[**ARC 9468B**, IAB 4/20/11, effective 5/25/11]

721—26.106(50) Access to meeting. Recounts, like all canvasses of votes, are open to the public. However, observers may not participate in the recount. Because a recount is a purely ministerial function, rather than a policy-making one, recounts are not subject to the notification requirements of the Iowa open meetings law. (See Iowa Code section 21.2 for the definition of "meeting.")

721—26.107(50) Report of the recount board. The report of the recount board shall be filed with the county commissioner no later than 18 days after the board of supervisor's canvass of the votes for the election in question or 11 days after city primary elections or the regular city election in cities with runoff election provisions.

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

[Filed 8/27/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]
[Filed emergency 10/12/04—published 11/10/04, effective 10/20/04]
[Filed emergency 10/4/06 after Notice 8/30/06—published 10/25/06, effective 10/4/06]
[Filed emergency 7/13/07—published 8/1/07, effective 7/13/07]
[Filed ARC 9468B (Notice ARC 9292B, IAB 12/29/10), IAB 4/20/11, effective 5/25/11]

CHAPTER 27
HELP AMERICA VOTE ACT GRANTS

721—27.1(47,80GA,SF2298) Purpose. The Help America Vote Act (Pub. Law 107-252, Sec. 261-265) and 2004 Iowa Acts, Senate File 2298, provide funds to replace lever voting equipment, upgrade voting equipment, provide training to election officials, provide additional information to voters and improve election accessibility for individuals with disabilities. The purpose of these rules is to establish a grant program for providing funds to the counties of Iowa for the above purposes.

721—27.2(47,80GA,SF2298) Definitions.

"Act" means Public Law 107-252, the Help America Vote Act of 2002.

"Secretary" means the secretary of state created pursuant to Article 4, section 22, of the Constitution of the State of Iowa.

721—27.3(47,80GA,SF2298) Eligibility and requirements.

27.3(1) Any Iowa county is eligible to receive funds.

27.3(2) For each grant program, the secretary will develop the requirements and criteria for awards and publish the information on the secretary's Web site www.sos.state.ia.us. In addition, the secretary will also notify each county of grant programs.

721—27.4(47,80GA,SF2298) Application process. The secretary shall establish the application and review deadlines for each grant program. Notice of the deadlines and application forms shall be sent to each county and shall also be available on the secretary's Web site. Applications shall be submitted to HAVA Grants, Secretary of State's Office, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

721—27.5(47,80GA,SF2298) Application contents. Applications shall be submitted on forms developed and made available by the secretary. Contents of the application shall include:

1. Description of the proposed project.
2. Budget to complete the project.
3. Local funds or effort on the project.
4. Other information as requested by the secretary.

721—27.6(47,80GA,SF2298) Application review. The secretary shall review the applications and make awards based on the criteria as announced and published on the secretary's Web site.

721—27.7(47,80GA,SF2298) Award process. The secretary will award grants to counties. Upon award to a county, the secretary shall send a grant agreement to the county. The county auditor, the chair of the county board of supervisors, or other designated county representative shall sign the agreement and return it to the secretary. The grant award agreement will outline procedures for payment of grant funds. The grant recipient county must submit all documentation as required by the secretary.

721—27.8(47,80GA,SF2298) Reports. Annually and at the completion of each project, each grant recipient shall make a report to the secretary. The report shall include the expenditures made on the project and shall also include an assessment of the impact of the project.

721—27.9(47,80GA,SF2298) Access to records. Representatives of the secretary, the state auditor, and appropriate federal authorities shall have access to all books, accounts, and documents belonging to or in use by the grant recipient and pertaining to the receipt of assistance through this program.

These rules are intended to implement 2004 Iowa Acts, Senate File 2298, Iowa Code section 47.1 and the Help America Vote Act, Public Law 107-252.

[Filed emergency 8/20/04—published 9/15/04, effective 8/20/04]
[Filed 10/21/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]

CHAPTER 28
VOTER REGISTRATION FILE (I-VOTERS) MANAGEMENT

721—28.1(47,48A) State registrar's responsibility. The state registrar of voters is responsible for the implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration file of every legally registered voter in the state. This file is known as I-VOTERS. These rules regulate access to the file by county registrars and others and set forth protocols for adding, changing or deleting file information.

721—28.2(48A) Access and fees.

28.2(1) The state registrar and county registrars shall grant access to the I-VOTERS database consistent with the Iowa Code and the security plan for the system. Authorized users of the system shall be issued secure password-protected access that is monitored by the state registrar. Access may be denied or revoked by the state registrar for violation of the security policy.

28.2(2) Fees shall be assessed by the state registrar and county registrars for voter registration information provided to the public or to authorized requesters consistent with Iowa Code chapter 48A and the rules of the voter registration commission. The state registrar shall establish appropriate forms for voter registration information requests. Fees collected by the state registrar shall be deposited in the state general fund. Fees collected by county registrars shall be deposited in the appropriate county fund.

28.2(3) Statewide or congressional district voter registration information from I-VOTERS may be obtained only from the state registrar. Voter registration information from I-VOTERS other than statewide or congressional district information may be obtained from the state registrar or a county registrar. A county registrar may provide from I-VOTERS voter registration information for a district or other jurisdiction that is located in whole or in part within the registrar's county.

721—28.3(48A) Duplicate and multiple voter registration record deletion process.

28.3(1) The state registrar shall provide a search function within the I-VOTERS software to search for likely duplicate or multiple voter registration records. County registrars shall have the capability to activate this function.

28.3(2) During each calendar quarter, the county registrar shall activate the search function described in 28.3(1) and review the list of likely duplicate or multiple voter registration records. The county registrar shall resolve duplicate or multiple records for the same voter. No voter shall have more than one voter record. The voter record associated with the most recent registration or other voter-initiated activity shall be considered the voter's current record. The voter shall be registered in the county of current record, and the voter record in any other county shall be merged with the record in the current county. Individual voter history and other voter data shall be transferred to the voter's record in the current county of registration.

28.3(3) The state registrar shall periodically engage in interstate checking of voter registration records with cooperating states for the purpose of identifying duplicate or multiple voter registration records. A list of likely matches of records based upon predetermined search criteria shall be timely sent to each county registrar.

28.3(4) Within 15 days of the receipt of a list produced by the state registrar in accordance with 28.3(3), the county registrar shall review the list of likely duplicate or multiple voter registration records and determine the accuracy of the search results. If the voter is found to be registered to vote in another state more recently than in Iowa, the commissioner shall make the voter's status "inactive" and the voter shall be mailed a National Voter Registration Act-compliant confirmation notice. The notice shall contain a statement in substantially the following form:

> Information received by this office indicates that you are no longer a resident at the address printed on the reverse side of this card. If this information is not correct, and you still live at that address, please complete and mail the attached postage-paid card at least 10 days before the primary or general election, or at least 11 days before any other election at which you wish

to vote. If the information is correct and you have moved within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county, please contact a local official in your new location for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in [name of county] County, Iowa. If you do not return the card and you do not vote in an election in [name of county] County, Iowa, on or before (date of second general election following the date of the notice), your name will be removed from the list of voters in that county.

28.3(5) County registrars shall cooperate with each other to ensure that voter records are properly merged into the current county file.

[**ARC 9989B**, IAB 2/8/12, effective 1/17/12]

721—28.4(48A) Cancellations and restorations of voter registration due to felony conviction.

28.4(1) Based upon information provided to the state registrar by the state or federal judicial branch and by the governor, the state registrar shall maintain a list of convicted felons and a list of convicted felons whose voting rights have been restored. Periodically, these lists shall be matched with I-VOTERS. Based upon predetermined search criteria, a list of likely matches of ineligible voters shall be produced for each county and provided to each county registrar.

28.4(2) Within 15 days of the receipt of the list produced by the state registrar in accordance with 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results and cancel the registrations of those voters found to be ineligible to vote. Notice shall be sent to the voter at the voter's address in the voter registration file pursuant to Iowa Code section 48A.30(2). The notice shall provide the voter an opportunity to have the county registrar review any relevant information that establishes the voter's eligibility to vote. When inclusion of a voter's name on the list of likely matches is found to be inaccurate, the registrar shall mark the record as a "no match" and provide that information to the state registrar.

28.4(3) New applicants for registration entered into I-VOTERS by a county registrar shall be electronically matched against the list of convicted felons in the file, and applicants disqualified due to felony conviction shall not be registered as voters. The county registrar shall notify the registration applicant of the applicant's disqualification in the same manner as provided for in subrule 28.4(2) above.

These rules are intended to implement Iowa Code section 47.7(2) and chapter 48A.

[Filed emergency 6/1/06 after Notice 4/26/06—published 6/21/06, effective 7/1/06]

[Filed Emergency ARC 9989B, IAB 2/8/12, effective 1/17/12]

CHAPTER 29
Reserved

DIVISION III
UNIFORM COMMERCIAL CODE

CHAPTER 30
UNIFORM COMMERCIAL CODE

[Prior to 7/13/88, see Secretary of State [750], Ch 1]

721—30.1(554) General provisions.

30.1(1) *Policy statement.* The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to these rules, the filing officer does none of the following:

a. Determine the legal sufficiency or insufficiency of a document.

b. Determine that a security interest in collateral exists or does not exist.

c. Determine that information in the document is correct or incorrect, in whole or in part.

d. Create a presumption that information in the document is correct or incorrect, in whole or in part.

30.1(2) *Definitions.* The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

"Active" means a UCC record that has not reached the one-year anniversary of its lapse date.

"Amendment" means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.

"Assignment" means an amendment that purports to reflect an assignment of all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation" means an amendment that purports to continue the effectiveness of a financing statement.

"Correction statement" means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.

"File number" means the unique identifying information assigned to an initial financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. The filing number bears no relation to the time of filing and is not an indicator of priority.

"Filing office" and *"filing officer"* mean the office of the secretary of state. The address of the office is Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa 50319.

"Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

"Inactive" means a UCC record that has reached the first anniversary of its lapse date.

"Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

"Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by 2000 Iowa Acts, chapter 1149, sections 83, 85, and 89.

"Organization" means a legal person who is not an individual as defined above.

"Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under 2000 Iowa Acts, chapter 1149, section 85, subsection 1, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides

the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under 2000 Iowa Acts, chapter 1149, section 85, subsection 2, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

"Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

"UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

"UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (NOTE: This definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in 2000 Iowa Acts, chapter 1149, section 2, subsection 1, paragraph *"ad."*)

30.1(3) *Singular and plural forms.* Singular nouns shall include the plural form, and plural nouns shall include the singular form, unless the context otherwise requires.

30.1(4) *Place to file.* The filing office is the office for filing UCC documents relating to all types of collateral except for timber to be cut, as-extracted collateral (2000 Iowa Acts, chapter 1149, section 2, subsection 1, paragraph *"f"*) and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. Regardless of the nature of the collateral, the filing office is the office for filing all UCC documents where the debtor is a transmitting utility.

30.1(5) *Filing office identification.* In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its Internet and other electronic "addresses" through usual and customary means.

a. On-line information service. The filing officer offers on-line information services at http://www.sos.state.ia.us.

b. Electronic mail. Electronic mail cannot be used for filing UCC documents or for requesting searches of the records of financing statements.

30.1(6) *Office hours.* Although the filing office maintains regular office hours (8 a.m. to 4:30 p.m. Monday through Friday, except holidays), it receives transmissions electronically and by telefacsimile 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

30.1(7) *UCC document delivery.* UCC documents may be tendered for filing at the filing office as follows:

a. Personal delivery at the filing office's street address. The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

b. Courier delivery at the filing office's street address. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

c. Postal service delivery to the filing office's mailing address. The file time for a UCC document delivered by this method is the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

d. Telefacsimile delivery to the filing office's fax filing telephone number. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

In order for delivery of UCC documents by telefacsimile to be accepted, remitter must have a preapproved charge account as provided in 30.1(11)*"d"* or an acceptable credit card as provided by 30.1(11)*"e."*

e. Electronic filing. UCC documents may be transmitted electronically using the XML standard approved by the International Association of Corporation Administrators as described in 30.3(3). UCC documents may also be transmitted electronically through on-line entry as described in 30.3(4). The file time for a UCC document delivered by this method is the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

30.1(8) *Search request delivery.* UCC search requests may be delivered to the filing office by any of the means by which UCC documents may be delivered to the filing office, except as provided in 30.1(7)*"e."* Requirements concerning search requests are set forth in 30.5(2). UCC search requests upon a debtor named on an initial financing statement may be made by an appropriate indication on the face of the initial financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the initial financing statement.

30.1(9) *Approved forms.* Forms for UCC documents that conform to the requirements of this rule will be accepted by the filing office. Other forms will not be accepted by the filing office.

a. Approved forms. Only those forms approved for the relevant UCC document by the International Association of Corporation Administrators (the UCC National Forms) will be acceptable. Copies of these forms are available on the secretary of state's Web site at http://www.sos.state.ia.us or by request to the secretary of state's office.

NOTE: The debtor's taxpayer identification number (TAX ID #), social security number (SSN), and employer identification number (EIN) are not required, and will be readily available to the public if entered on UCC documents.

b. Form—UCC search. The information request form approved by the International Association of Corporation Administrators will be acceptable. Other request forms will also be acceptable, provided they contain the information required by 30.5(2).

c. Electronic filings. A UCC document transmitted electronically pursuant to the International Association of Corporation Administrators' XML standard and the procedures set forth in 30.3(3) or pursuant to on-line data entry procedures set forth in 30.3(4) will be acceptable.

30.1(10) *Filing fees.*

a. Filing fee. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format (including faxes) is $10. If there are additional pages, the fee is $20. But the fee for filing and indexing a UCC document communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be $5.

b. UCC search fee. The fee for a UCC search request communicated verbally, on paper or in a paper-based format is $5.

c. UCC search—copies. The fee for paper copies of UCC documents is $1 per page.

30.1(11) *Methods of payment.* Filing fees and fees for public records services rendered by the secretary of state may be paid to the secretary of state by the following methods.

a. Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

b. Checks. Checks made payable to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

c. Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

d. Accounts receivable. Payment for services shall be in accordance with 721—2.3(17A).

e. Credit card. The filing office may accept payments using credit cards issued by approved credit card issuers.

30.1(12) *Overpayment and underpayment policies.*

a. Overpayment. The filing officer shall refund the amount of an overpayment exceeding $10 to the remitter. The filing officer shall refund an overpayment of $10 or less only upon the written request of the remitter.

b. Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall return the document to the remitter as provided in 30.2(5). A refund of a partial payment may be included with the document or delivered under separate cover.

30.1(13) *Public records services.* Public records services are provided on a nondiscriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

a. Individually identified documents. Copies of individually identified UCC documents are available in the following forms.

(1) Paper.

(2) TIF files.

b. Bulk copies of documents. Bulk copies of UCC documents are available in a TIF format on CD-ROM or DVD.

c. Data from the information management system. A list of available data elements from the UCC information management system and the file layout of the data elements are available from the filing officer upon request. Data from the information management system is available as follows.

(1) Full extract. A bulk data extract of information from the UCC information management system is available on a weekly basis.

(2) Format. Extracts from the UCC information management system are available via downloads from the filing office or CD-ROM.

d. Direct on-line services. On-line services make UCC data and images available.

30.1(14) *Fees for public records services.* Fees for public records services are established as follows.

a. Paper copies of individual documents.

(1) Regular delivery method—$1 per page.

(2) Fax delivery—$2 per page.

b. Bulk copies of documents.

(1) Subscription basis—4 cents per page plus $25 per week (delivered on CD-ROM).

(2) Document image master file—4 cents per document.

c. Data from the information management system—full extract.

(1) Download—$300.

(2) CD-ROM—$325.

30.1(15) *New practices and technologies.* The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical or other technologies and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based Article 9 filing system utilizing any of such technologies.

721—30.2(554) Acceptance and refusal of documents.

30.2(1) *Duty to file.* Provided that there is no ground to refuse acceptance of the document under 30.2(2), a UCC document is filed upon its receipt by the filing officer with the filing fee, and the

filing officer shall promptly assign a file number to the UCC document and index it in the information management system.

30.2(2) *Grounds for refusal of UCC document.* The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

a. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

b. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number (if it has one) or a statement that it does not have one.

c. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address, and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

d. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

e. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by 2000 Iowa Acts, chapter 1149, sections 83, 85, and 89, is an initial financing statement.

f. Timeliness of continuation. A continuation shall be refused if it is not received during the six-month period concluding on the day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

g. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in 30.1(11).

h. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

i. XML refusal. UCC documents communicated by XML may be refused as provided in 30.3(3) for reasons not applicable to other communications methods.

30.2(3) *Grounds not warranting refusal.* The sole grounds for the filing officer's refusal to accept a UCC document for filing are enumerated in 30.2(2). The following are examples of defects that do

not constitute grounds for refusal to accept a document. They are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

a. *Errors.* The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

b. *Incorrect names.*

(1) The UCC document appears to identify a debtor incorrectly.

(2) The UCC document appears to identify a secured party or a secured party of record incorrectly.

c. *Extraneous information.* The UCC document contains additional or extraneous information of any kind.

d. *Insufficient information.* The UCC document contains less than the information required by Article 9 of the UCC, provided that the document contains the information required in 30.2(2)*"a"* through 30.2(2)*"e."*

NOTE: The debtor's taxpayer identification number (TAX ID #), social security number (SSN), and employer identification number (EIN) are not required, and will be readily available to the public if entered on UCC documents.

e. *Collateral description.* The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

f. *Excess fee.* The document is accompanied by funds in excess of the full filing fee.

30.2(4) *Time limit.* The filing officer shall determine whether criteria exist to refuse acceptance of a UCC document for filing not later than the second business day after the date the document would have been filed had it been accepted for filing and shall index a UCC document not so refused within the same time period.

30.2(5) *Procedure upon refusal.* If the filing officer finds grounds under 30.2(2) to refuse acceptance of a UCC document, the filing officer shall return the document, if written, to the remitter and will refund the filing fee. The filing office shall send a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document) and a brief description of the reason for refusal to accept the document under 30.2(2). The notice shall be sent to a secured party or the remitter as provided in 30.4(2)*"e"* no later than the second business day after the filing office receives the document. The refund may be delivered with the notice or under separate cover.

30.2(6) *Acknowledgment.*

a. At the request of a filer or remitter who files a paper or paper-based UCC document, the filing officer shall either:

(1) Send to said filer or remitter an image of the record of the UCC document showing the file number assigned to it and the date and time of filing; or

(2) If such filer or remitter provides a copy of such UCC document, note the file number and the date and time of filing on the copy and deliver or send it to said filer or remitter.

b. For UCC documents not filed in paper or paper-based form, the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date and time of filing.

30.2(7) *Other notices.* Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. THE RESPONSIBILITY FOR THE LEGAL EFFECTIVENESS OF FILING RESTS WITH FILERS AND REMITTERS AND THE FILING OFFICE BEARS NO RESPONSIBILITY FOR SUCH EFFECTIVENESS.

30.2(8) *Refusal errors.* If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused under 30.2(2), the filing officer will file the UCC document as provided in these rules with a filing date and time assigned when such filing would have occurred had it not been wrongfully rejected. The filing officer will also file a statement (and such demonstration of error shall constitute the secured party's authorization to do so)

that states that the effective date and time of filing is the date and time the UCC document was originally tendered for filing, and that sets forth such date and time.

721—30.3(554) UCC information management system.

30.3(1) *Policy statement.* The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which are active. This rule describes the UCC information management system.

30.3(2) *General provisions—UCC information management system.*

a. Primary data elements. The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

1. Each initial financing statement is identified by its file number as defined in 30.1(2). Identification of the initial financing statement is stamped on written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

2. A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of financing statement. In the information management system, each financing statement has a status of active or inactive.

(6) Page count. The total number of pages in a UCC document is maintained in the information management system.

(7) Lapse indicator. An indicator is maintained by which the information management system identifies whether a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in 30.4(5).

b. Names of debtors who are individuals. For the purpose of this paragraph, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.

(1) Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

(2) Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in 30.4(8), when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

(3) Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are appropriate.

In either case, as provided in 30.4(8), the suffixes will be entered into the information management system exactly as received.

(4) Truncation—individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields, except for on-line filing (30.3(4)*"b"*), are as follows.

1. First name: 50 characters.
2. Middle name: 50 characters.
3. Last name: 50 characters.
4. Suffix: 15 characters.

c. Names of debtors that are organizations. This rule applies to the name of an organization that is a debtor or a secured party on a UCC document.

(1) Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

(2) Truncation—organization names. The organization name field in the UCC database is fixed in length. The maximum length, except for on-line filing (30.3(4)*"b"*), is 100 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

d. Estates. Although they are not human beings, estates are treated as if the decedent were the debtor under 30.3(2)*"b."*

e. Trusts. If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor, and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If other information is included in, or as part of, the name of the debtor, the information will be entered as if it were a part of the name under 30.4(8) and 30.4(9).

f. Initial financing statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

g. Amendment. Upon the filing of an amendment, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

1. Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

2. Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC documents that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

3. Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

4. Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except that the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

5. Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

6. Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

7. Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

h. Assignment of powers of secured party of record.

(1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

i. Continuation.

(1) Continuation of lapse date. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

(2) Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

j. Termination.

(1) Status of parties. The filing of a termination shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.

k. Correction statement.

(1) Status of parties. The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.

l. Procedure upon lapse. If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date, but no action is then taken by the filing office.

On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

30.3(3) *XML documents.*

a. Definitions. For the purpose of rules relating to the electronic transmission of UCC documents, the following terms shall have the meaning provided in this rule.

"XML" means extensible markup language.

"XML document" means a UCC document transmitted from a remitter to the filing officer by XML techniques authorized under this rule.

b. XML authorized. A remitter may be authorized for XML transmission upon the written authorization of the filing officer. A request to be authorized to transmit XML documents shall be in writing and delivered to the filing officer. Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the requirements for XML transmission, including format, address for transmission, and other necessary specifications.

(1) The filing officer shall authorize a remitter to engage in XML transmissions if:

1. The remitter holds an account for the billing of fees by the filing officer,

2. The remitter has entered into an agreement, in form and substance satisfactory to the filing officer, with the filing office, and

3. The filing officer determines, after appropriate testing of transmissions in accordance with the filing officer's specifications, that the remitter is capable of transmitting XML documents in a manner that permits the filing officer to receive, index, and retrieve the XML documents.

(2) The filing officer may suspend or revoke the authorization when, in the filing officer's sole discretion, it is determined that a remitter's transmissions are incompatible with the filing officer's XML system.

c. IACA standard adopted. The XML format for filing a UCC document, as adopted by the International Association of Corporation Administrators and in effect from time to time, is adopted in this state as a format for electronic transmission of UCC documents, although the filing officer shall, periodically and at the request of an authorized XML remitter, identify which versions and releases of the XML format are then in use by and acceptable to the filing office.

d. Implementation guide. The filing office publishes an implementation guide that prescribes in further detail the use of the XML format in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth in 30.1(2) above.

30.3(4) *Direct on-line filing and search procedures.*

a. Direct on-line filing and search services are available to any person with Internet access to the UCC Web site. On-line filing services require a preapproved account, in accordance with 30.1(11)*"d."*

b. Document filing procedures. Initial financing statements and amendments may be filed via the UCC Web site, which allows for entry of information required on the approved UCC forms specified in 30.1(9). The on-line filing procedure does not allow for the maximum length of characters as defined in 30.3(2)*"b"*(4) and 30.3(2)*"c."* Therefore, on-line filing should be used only if the filer is able to key all information without truncation. A record which is created by the filer in this manner is subject to all of the provisions of the UCC, as if it were a paper document submitted to the filing office. However, attachments may not be submitted. Filing instructions are provided on the Web site.

c. Search request procedures. A certified search naming a particular debtor may be obtained via the UCC Web site. A request that is created by the filer in this manner is subject to all of the provisions of the UCC as if it were a paper search request submitted to the filing office. Images of individual financing statements may be obtained on line. Instructions are provided on the Web site.

721—30.4(554) Filing and data entry procedures.

30.4(1) *Policy statement.* This rule describes the filing procedures of the filing officer upon and after receipt of a UCC document. Except as provided in these rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who

create reports in response to search requests type search criteria exactly as set forth on the search request. No effort is made to detect or correct errors of any kind.

30.4(2) *Document indexing and other procedures before archiving.*

a. *Date and time stamp.* The date and time of receipt are noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system.

b. *Cash management.* Transactions necessary to payment of the filing fee are performed.

c. *Document review.* The filing office determines whether a ground exists to refuse the document under 30.2(2).

d. *File stamp.* If there is no ground for refusal of the document, the document is stamped or deemed filed and a unique identification number and the filing date are stamped on the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

e. *Correspondence.*

(1) Acknowledgment of filing. If there is no ground for refusal of the document, an acknowledgment of filing is prepared as provided in 30.2(6) and communicated as follows:

1. UCC document tendered in person. Acknowledgment of filing is given to the remitter by personal delivery or sent by regular mail to the remitter or the secured party (or the first secured party if there is more than one) named on the UCC document.

2. UCC document tendered by courier or postal service delivery. Acknowledgment of filing is sent by regular mail to the remitter or to the secured party (or the first secured party if there is more than one).

3. UCC document tendered by telefacsimile delivery. Acknowledgment of filing is sent by regular mail (or, if requested, by telefacsimile) to the remitter or to the secured party (or the first secured party if there is more than one).

4. UCC document transmitted electronically using XML standard. Acknowledgment of filing is returned electronically.

5. UCC document transmitted by on-line entry. Acknowledgment of filing is returned electronically.

(2) Notice of refusal. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in 30.2(5) and communicated as follows:

1. UCC document tendered in person. Notice of refusal is given to the remitter by personal delivery or sent by regular mail to the remitter or the secured party (or the first secured party if there is more than one) named on the UCC document.

2. UCC document tendered by courier or postal service delivery. Notice of refusal is sent by regular mail to the remitter or to the secured party (or the first secured party if there is more than one).

3. UCC document tendered by telefacsimile delivery. Notice of refusal is sent by regular mail (or, if requested, by telefacsimile) to the remitter or to the secured party (or the first secured party if there is more than one).

4. UCC document transmitted electronically using XML standard. Notice of refusal is returned electronically.

5. UCC document transmitted by on-line entry. Notice of refusal is returned electronically.

f. *Data entry.* Data entry and indexing functions are performed as described in this rule.

30.4(3) *Filing date.* The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not open on that date, the filing date is the next date the filing office is open, except that, in each case, UCC documents received after 4:30 p.m. shall be deemed received on the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after the filing date.

30.4(4) *Filing time.* The filing time of a UCC document is determined as provided in 30.1(7).

30.4(5) *Lapse date and time.* A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month

as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth year following the year of the filing date.

30.4(6) *Errors of the filing officer.* The filing office may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing officer shall proceed as follows: A record relating to the relevant initial financing statement will be placed in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

30.4(7) *Errors other than filing office errors.* An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by a correction statement.

30.4(8) *Data entry of names—designated fields.* A filing should designate whether a name is that of an individual or an organization and, if an individual, also designate the first, middle and last names and any suffix. With regard to designated fields, the following shall apply.

a. *Organization names.* Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

b. *Individual names.* On the form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

c. *Designated fields required.* The filing office specifies in 30.1(9) the use of forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help ensure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through direct data entry or through XML will be required to use designated name fields.

30.4(9) *Data entry of names—no designated fields.* A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization will be refused by the filing office.

30.4(10) *Verification of data entry.* The filing officer uses the following procedures to verify the accuracy of data entry tasks. Double key entry is employed for data entered in the following fields.

1. Time and date of filing.
2. Document identification number.
3. Document type.
4. Debtor name fields.
5. City address of debtor.

30.4(11) *Initial financing statement.* A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time of filing.

a. The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each debtor name and city is included in the searchable index and not removed until one year after the financing statement lapses.

b. The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.

c. The record is indexed according to the name of the debtor(s) and is maintained for public inspection.

d. A lapse date is established for the financing statement and the lapse date is maintained as part of the record, unless the initial financing statement indicates that it is filed against a transmitting utility.

30.4(12) *Amendment.* A record is created for the amendment that bears the file number for the amendment and the date and time of filing.

a. The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.

b. The name and address of each additional debtor and secured parties are entered into the UCC information management system in the record of the financing statement. Each additional debtor name and city is added to the searchable index and not removed until one year after the financing statement lapses.

c. If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

30.4(13) *Correction statement.* A record is created for the correction statement that bears the file number for the correction statement and the date and time of filing. The record of the correction statement is associated with the record of the related initial financing statement in a manner that causes the correction statement to be retrievable each time a record of the financing statement is retrieved.

30.4(14) *Global filings.*

a. The filing officer may accept for filing a single UCC document for the purpose of amending more than one financing statement, for one or both of the following purposes:

(1) Amendment to change secured party name;

(2) Amendment to change secured party address.

b. A blanket filing shall consist of a written document describing the requested amendment on a form approved by the filing office, and a machine-readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of blanket filing specifications is available from the filing officer upon request. Acceptance of a blanket filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

30.4(15) *Archives—general.* This subrule relates to the maintenance of inactive financing statements and the ability of those archives to be searched.

a. *Paper UCC documents.*

(1) Storage. Paper UCC documents are scanned into the UCC information management system.

(2) Retention. Paper is not retained.

b. *Databases.* The UCC information management system is backed up to magnetic tape every business day.

30.4(16) *Archives—data retention.* Data in the UCC information management system relating to financing statements that have lapsed is retained for at least five years from the date of lapse.

30.4(17) *Archival searches.* Archival searches may be available through arrangements with the filing office in its sole discretion.

30.4(18) *Notice of bankruptcy.* The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, financing statements will lapse as scheduled unless properly continued.

721—30.5(554) Search requests and reports.

30.5(1) *General requirements.* The filing officer maintains for public inspection a searchable index for all records of active UCC documents that provides for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement to which the record relates and which associates with one another each initial financing statement and each filed UCC document relating to the initial financing statement.

30.5(2) *Search requests.* Search requests shall contain the following information.

a. *Name searched.* A search request should set forth the full correct name of a debtor or the name variant desired to be searched and must specify whether the debtor is an individual or an organization.

(1) Individual. The full name of an individual shall consist of a first name, a middle name or initial, and a last name, although a search request may be submitted with no middle name or initial and, if only a single name is presented (e.g., "Cher"), it will be treated as a last name, and a search will disclose only those UCC documents where only the last name was entered.

(2) Organization. The full name of an organization shall consist of the name of the organization as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

b. *Requesting party.* The name and address of the person to whom the search report is to be sent, if applicable.

c. *Fee.* The appropriate fee shall be enclosed, payable by a method described in 30.1(11).

d. *Search request with filing.* If a filer requests a search at the time a UCC document is filed, by checking the box on the form set forth in 30.1(9)*"a,"* the name to be searched will be the debtor name as set forth on the form, the requesting party will be the remitter of the UCC document, and the search request will be deemed to request a search that would be effective to retrieve all financing statements filed on or prior to the date the UCC document is filed.

30.5(3) *Optional information.* A UCC search request may contain any of the following information.

a. A request that copies of documents referred to in the report be included with the report. The request may limit the copies requested by limiting them by reference to the address of the debtor, the city of the debtor, the date of filing (or a range of filing dates) or the identity of the secured party(ies) of record on the financing statements located by the related search.

b. A request that the search of a debtor name be limited to debtors in a particular city. A report created by the filing officer in response to such a request shall contain the following statement:

"A search limited to a particular city may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search."

c. Instructions on the mode of delivery requested, if other than by ordinary mail, which request will be honored if the requested mode is then made available by the filing office.

30.5(4) *Rules applied to search requests.* Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search. Human judgment does not play a role in determining the results of the search. Only the following rules are applied to conduct searches.

a. There is no limit to the number of matches that may be returned in response to the search criteria.

b. No distinction is made between uppercase and lowercase letters.

c. Punctuation marks and accents are disregarded.

d. Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated by the International Association of Corporation Administrators, and adopted from time to time, are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

e. The word "the" at the beginning of the search criteria is disregarded.

f. All spaces are disregarded.

g. For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.

h. After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC

information management system, the search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested, as modified.

30.5(5) *Search responses.* Reports created in response to a search request shall include the following.

a. *Filing officer.* Identification of the filing officer and the certification of the filing officer required by the UCC.

b. *Report date.* The date the report was generated.

c. *Name searched.* Identification of the name searched.

d. *Certification date.* The certification date applicable to the report; i.e., the date and time through which the search is effective and reveals all relevant UCC documents filed on or prior to that date.

e. *Identification of initial financing statements.* Identification of each unlapsed (or active, if requested) initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

f. *History of financing statement.* For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or prior to the certification date.

g. *Copies.* Copies of all UCC documents revealed by the search and requested by the searcher.

721—30.6(554) Other notices of liens.

30.6(1) Policy statement. The purpose of this rule is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC documents and that are included on request with the reports described in 30.5(4) and 30.5(5).

30.6(2) Records of liens maintained by the filing office which are created pursuant to statutes other than the UCC are maintained in the information management system and indexed and searched in the same manner under these rules.

These rules are intended to implement 2000 Iowa Acts, chapter 1149, and Iowa Code chapters 17A and 554.

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CHAPTER 31
REGISTRATION OF POSTSECONDARY SCHOOLS

721—31.1(80GA,HF2559) Postsecondary registration fees. The secretary of state shall collect a nonrefundable registration fee of $4,000 with each application to register a postsecondary institution for four years. The secretary of state shall collect a nonrefundable $1,000 fee when a registered school seeks a substantive change in program offerings, location, or accreditation.

This rule is intended to implement 2004 Iowa Acts, House File 2559, section 7.

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CHAPTERS 32 to 39
Reserved

DIVISION IV
CORPORATIONS

CHAPTER 40
CORPORATIONS

[Prior to 7/13/88, see Secretary of State[750] Ch 2]

721—40.1(490,499,504A) Filing of documents. Documents pertaining to profit corporations, nonprofit corporations, and cooperative associations shall be delivered for filing to the office of Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319.

40.1(1) A copy of a signature, however made, is acceptable with regard to documents delivered to the secretary of state for filing pursuant to Iowa Code chapter 490.

40.1(2) A document delivered to the secretary of state for filing pursuant to the Iowa business corporation Act, Iowa Code chapter 490, may be delivered by telecopier to (515)242-5953.

40.1(3) A document delivered by telecopier may be delivered at any time of day. The date and time of receipt printed on the document by the telecopier constitutes the date and time endorsement required by Iowa Code section 490.125(2).

40.1(4) A document delivered by telecopier shall be printed on paper measuring 8½″ by 11″, unless a copy of a larger document, reduced to 8½″ by 11″ paper, is acceptable to the filing party. The document received by the secretary of state via telecopier shall constitute the copy that is filed and returned to the corporation pursuant to Iowa Code section 490.125(2).

40.1(5) A document delivered by telecopier shall be accompanied by a cover sheet that provides the name, address, and telephone number of the filing party, and instructions as to the manner by which the filing fee will be paid. The filing fee may be billed to an account maintained by the filing party pursuant to rule 721—2.3(17A). The filing fee may be paid by any other means authorized by the secretary of state.

40.1(6) If a telecopier is used to deliver a document that is subject to the multiple copy requirement of Iowa Code section 490.130, the additional copy or copies shall be delivered by telecopier contemporaneously with the copy of the document to be filed.

40.1(7) A document delivered by telecopier for filing may be rejected if the print quality of the document is deemed by agency personnel to be unacceptable for microfilming purposes. The secretary of state will notify the filing party by telephone or regular mail of the rejection of a document pursuant to this subrule. The secretary of state will accept for filing the original copy of the document, effective on the date of the transmission by telecopier, if the original document is received in the office of the secretary of state within ten days of date of the notification of the rejection.

This rule is intended to implement Iowa Code chapter 490.

721—40.2(490,499,504A) Reinstatement of corporations.

40.2(1) A corporation subject to Iowa Code chapter 490 that was administratively dissolved after July 1, 1992, and prior to July 1, 1993, may reinstate pursuant to section 490.1422 prior to the expiration of two years from the date of the administrative dissolution, or prior to July 1, 1995, whichever occurs first.

40.2(2) A cooperative association subject to Iowa Code chapter 499 that forfeited its corporate rights under section 499.51 prior to July 1, 1993, may reinstate pursuant to section 499.78 prior to July 1, 1995.

40.2(3) A nonprofit corporation subject to Iowa Code chapter 504A, whose certificate of incorporation was canceled pursuant to section 504A.87 prior to July 1, 1993, and whose period for reinstatement had not expired as of July 1, 1993, may apply to the secretary of state for reinstatement pursuant to section 504A.87A prior to the expiration of five years from the date of the cancellation of the certificate of incorporation, or prior to July 1, 1995, whichever occurs first.

This rule is intended to implement Iowa Code sections 490.1422, 504A.87A, and 499.78.

721—40.3(487,490,504A) Names distinguishable upon corporate records.

40.3(1) Except as provided in these rules, a name is considered distinguishable upon the records of the secretary of state if it contains one or more different letters or numerals, or if it contains a different

sequence of letters or numerals. A single space used to divide a sequence of letters or numerals into separate words is considered to be a letter for the purpose of this subrule. Differences between singular and plural forms of words are distinguishable. Differences between numerals, Roman numerals, and words representing numerals are distinguishable. The following characters are considered as letters for the purpose of this subrule: $ (dollar sign); + (plus sign); % (percent sign); ¢ (cent sign).

40.3(2) The following words and abbreviations, when positioned as the last word or abbreviation in the corporate name, are not considered in determining whether a name is distinguishable upon the records of the secretary of state:

1. Corporation
2. Company
3. Incorporated
4. Limited
5. Corp.
6. Co.
7. Inc.
8. Ltd.

40.3(3) The presence or absence of the words "limited partnership," or the abbreviation "L.P." in any limited partnership name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(4) The presence or absence of the words "professional corporation" or the abbreviation "P.C." in the name of any professional corporation, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(5) The presence or absence of the words "registered limited liability partnership," or the abbreviation "L.L.P." in any limited liability partnership name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(6) The presence or absence of the words "limited liability company," or the abbreviation "L.L.C." or "L.C." in any limited liability company name, when positioned at the end of the name, is not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(7) to **40.3(10)** Reserved.

40.3(11) Differences in punctuation and special characters are not considered in determining whether a name is distinguishable upon the records of the secretary of state. Punctuation and special characters include, but are not limited to:

’	(apostrophe)	[	(left bracket)
]	(right bracket)	:	(colon)
,	(comma)	—	(dash)
-	(hyphen)	!	(exclamation point)
(	(left parenthesis)	)	(right parenthesis)
.	(period)	?	(question mark)
’	(single quote mark)	”	(double quote mark)
;	(semicolon)	/	(slash)
*	(asterisk)	@	(at sign)
\	(back slash)	{	(left brace)
}	(right brace)	^	(caret)
=	(equal sign)	>	(greater than sign)
<	(less than sign)	#	(number sign)
~	(tilde)	_	(underline)

40.3(12) Reserved.

40.3(13) Differences in capitalization are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(14) Differences between an ampersand (&) and the word "and" are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.3(15) Reserved.

40.3(16) In determining whether a name is distinguishable upon the records of the secretary of state, names found in the following records will not be considered:

1. Fictitious names.
2. Assumed names of nonprofit corporations.
3. Names of corporations (profit or nonprofit) whose certificates of incorporation have been canceled.
4. Names of corporations (profit or nonprofit) whose certificates of authority have been revoked.
5. Expired or terminated assumed names.
6. Expired name reservations.
7. Expired name registrations.

This rule is intended to implement Iowa Code sections 487.102(4), 490.401, 504A.6, and 504A.67.

721—40.4(490,491,496C,497,498,499,504A) Payment and refund of fees.

40.4(1) The office of secretary of state requires a payment of all fees in full at the time of filing of any corporate document or request for copies.

40.4(2) Filing under any of the corporation or cooperative chapters may be effected only upon the receipt of the correct filing fee. Failure to include the filing fee or partial payment of the filing fee will result in the return of the filing to the sender with instructions to include the correct filing fee.

40.4(3) In the event that a filing fee overpayment is made, the amount in excess of the correct filing fee shall be returned to the filing party. No adjustment is required if the amount of overpayment is one dollar or less.

40.4(4) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 490.122, subsection 1, paragraphs *"a"* and *"s."*

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 490.122, subsection 1, paragraphs *"a"* and *"s,"* if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the corporate entity must make a written request with the business services division of the secretary of state's office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 490.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

40.4(5) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 504A.85, subsections 1 and 9.

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 504A.85, subsections 1 and 9, if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the corporate entity must make a written request with the business services division of the secretary of state's office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 504A.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

721—40.5(491,496A,499,504A,548) Document to county recorder.

40.5(1) Any corporate document that is required by law to be filed in the office of the county recorder will be forwarded directly to the office of the county recorder in the county where the corporation's registered office is located.

40.5(2) Reserved.

721—40.6(548) Registration and protection of marks.

40.6(1) *Classification.* The following general classes of goods and services are established, but do not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon which the mark is being used which fall within different classes of goods or services.

The said classes are as follows:

Class	Title GOODS
1	Raw or partly prepared materials
2	Receptacles
3	Baggage, animal equipments, portfolio and pocketbooks
4	Abrasives and polishing materials
5	Adhesives
6	Chemicals and chemical compositions
7	Cordage
8	Smokers' articles, not including tobacco products
9	Explosives, firearms, equipments and projectiles
10	Fertilizers
11	Inks and inking materials
12	Construction materials
13	Hardware and plumbing and steam-fitting supplies
14	Metals and metal castings and forgings
15	Oils and greases
16	Paints and painters' materials
17	Tobacco products
18	Medicines and pharmaceutical preparations
19	Vehicles
20	Linoleum and oiled cloth
21	Electrical apparatus, machines and supplies
22	Games, toys and sporting goods
23	Cutlery, machinery and tools, and parts thereof
24	Laundry appliances and machines
25	Locks and safes
26	Measuring and scientific appliances
27	Horological instruments
28	Jewelry and precious-metal ware
29	Brooms, brushes and dusters
30	Crockery, earthenware and porcelain
31	Filters and refrigerators
32	Furniture and upholstery
33	Glassware

34	Heating, lighting and ventilating apparatus
35	Belting, hose, machinery packing and nonmetallic tires
36	Musical instruments and supplies
37	Paper and stationery
38	Prints and publications
39	Clothing
40	Fancy goods, furnishings and notions
41	Canes, parasols and umbrellas
42	Knitted, netted and textile fabrics, and substitutes thereof
43	Thread and yarn
44	Dental, medical and surgical appliances
45	Soft drinks and carbonated waters
46	Foods and ingredients of foods
47	Wines
48	Malt beverages and liquors
49	Distilled alcoholic liquors
50	Merchandise not otherwise classified
51	Cosmetics and toilet preparations
52	Detergents and soaps
Class	Title SERVICES
100	Miscellaneous
101	Advertising and business
102	Insurance and financial
103	Construction and repair
104	Communication
105	Transportation and storage
106	Material treatment
107	Education and entertainment

40.6(2) *Assistance in applications.* The secretary of state cannot give legal advice as to the nature and extent of the protection afforded by law nor advise as to the registrability of a specific mark except as questions may arise in connection with pending applications.

40.6(3) *Incomplete or defective applications.* An application will not be filed unless the application and accompanying facsimiles or specimens are in proper form, comply with the statutory requirements and are accompanied by the statutory fee. Specimens which are metal need not be submitted, a facsimile being preferable in order to avoid filing problems. Documents not filed will be returned with a statement of the reasons therefor.

40.6(4) *Registration dates.* The registration date is the date on which the mark is actually posted in the registration indices of the office of the secretary of state, after the application has been examined and found acceptable.

40.6(5) *Form of application.* The application shall be on a current form supplied by the secretary of state, be completed in the English language and plainly written or typed. If the mark or any part thereof is not in the English language, it must be accompanied by a sworn translation.

40.6(6) *Withdrawal of application.* Prior to actual registration of the mark, the applicant, by written request, may withdraw the application.

40.6(7) *Plurality of goods in single application.* A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the

goods or services be stated and the mark is used or has been actually used on or in connection with all of the goods or in connection with all of the services specified.

40.6(8) *Single class in one application.* A single application to register a mark for both goods and services or for goods or services in different classes will be rejected. Applications must be restricted to goods or services comprised in a single class.

40.6(9) *Conflicts.* Whenever application is made for registration of a mark or trade name which so resembles a mark registered in this state or a mark previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive, a conflict shall be declared to exist and registration denied.

40.6(10) *Conflicts between applications.* Conflicts between pending applications will be resolved on the basis of the claimed date of first use. The secretary of state may require affidavits and other proof of first use.

40.6(11) *Record change on automatic transfer.* In the event of mergers or consolidations of corporations, a certified copy of such documents may be accepted to transfer ownership of marks.

If the name of the owner of record of a mark is changed, and request for a change of the records is made, then written proof of such change can be made by sworn affidavit showing the manner or mode by which the change of ownership was made.

40.6(12) *Change of address.* If the registered owner of a mark changes the address set forth on the registration, then written notice of such change of address must be given to the secretary of state. Such notice must clearly identify the mark or marks involved and must request that the change of address be noted on the records of the registration on file.

721—40.7(80GA,SF2274) Revised nonprofit corporation Act fees. The following are the fees for the revised nonprofit corporation Act, 2004 Iowa Acts, Senate File 2274.

40.7(1) The secretary shall collect the following fee when the documents described below are delivered to the secretary's office for filing.

Articles of incorporation	$20
Application for use of indistinguishable name	$5
Application for reserved name	$10
Notice of transfer of reserved name	$10
Application for registered name	$2 per month or part thereof
Application for renewal of registered name	$20
Corporation's statement of change of registered agent or registered office or both	No Fee
Agent's statement of change of registered office for each affected corporation not to exceed a total of	No Fee
Agent's statement of resignation	No Fee
Amendment of articles of incorporation	$10
Restatement of articles of incorporation with amendments	$20
Articles of merger	$20
Articles of dissolution	$5
Articles of revocation of dissolution	$5
Certificate of administrative dissolution	No Fee
Application for reinstatement following administrative dissolution	$5
Certificate of reinstatement	No Fee

Certificate of judicial dissolution	No Fee
Application for certificate of authority	$25
Application for amended certificate of authority	$25
Application for certificate of withdrawal	$5
Certificate of revocation of authority to transact business	No Fee
Biennial report	No Fee
Articles of correction	$5
Application for certificate of existence or authorization	$5
Any other document required or permitted by the Act	$5

40.7(2) The secretary of state shall collect a fee of $5 each time process is served on the secretary under this chapter.

40.7(3) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. $1 per page for copying.

b. $5 per page for the certificate.

721—40.8(488,489,490) Biennial reports. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

40.8(1) A limited partnership or foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 488.210.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is $45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is $30. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(2) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is $45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is $30. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(3) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 490.1622.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is $45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by a secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is $30. This fee must be paid by check, credit card, or secretary of state charge account.

[**ARC 9861B**, IAB 11/16/11, effective 10/26/11; **ARC 9971B**, IAB 1/11/12, effective 2/15/12]

721—40.9(490) Online filing requirements. The following requirements apply to the electronic filing of documents and the certification of electronic documents.

40.9(1) Registered agents who file documents electronically must provide an e-mail address to the secretary of state.

a. If a registered agent does not have an e-mail address, the agent shall provide the e-mail address of another individual or entity designated to receive electronic correspondence on behalf of the registered agent.

b. The registered agent shall notify the secretary of state within 60 days that the e-mail address provided in compliance with this rule has been changed or discontinued.

c. An e-mail address disclosed in compliance with this rule shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the secretary of state.

d. The secretary of state may use e-mail for official correspondence with an entity, except when law requires delivery by United States mail.

40.9(2) For filings requiring an online account, an applicant must follow the terms and conditions on the secretary of state's Internet Web site for each electronic filing.

40.9(3) All correspondence related to an electronic filing shall be handled electronically in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D.

40.9(4) Documents filed electronically shall be accompanied by the appropriate fee. This fee must be paid by check, credit card, or secretary of state charge account.

[**ARC 9970B**, IAB 1/11/12, effective 2/15/12; **ARC 0040C**, IAB 3/21/12, effective 2/23/12]

These rules are intended to implement Iowa Code chapters 490, 491, 496A, 499, 504A and 548.

[Filed 12/11/70]

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[Filed Emergency ARC 0040C, IAB 3/21/12, effective 2/23/12]

◊ Two or more ARCs

CHAPTER 41
FORMS OF ANNUAL AGRICULTURAL REPORTS

Rescinded IAB 5/31/89, effective 7/19/89

CHAPTER 42
ATHLETE AGENT REGISTRATION

721—42.1(9A,17A) Fees. The fee for the initial application for certificate of registration as an athlete agent is $300. The fee for a renewal application for certificate of registration is $150.

721—42.2(9A,17A) Surety bond. An athlete agent shall have on file with the secretary of state, before the issuance or renewal of a certificate of registration, a surety bond executed by a surety company authorized to do business in this state, in the sum of $25,000.

The bond shall be executed on the form prescribed by the secretary of state. The prescribed bond form may be obtained by writing to the Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319, or by calling (515)281-5204.

721—42.3(9A,17A) Agent contract. An agent contract to be entered into by a registered athlete agent and a student athlete who has not previously signed a contract of employment with a professional sports team shall be on a form approved by the secretary of state. If the form of the contract is in compliance with any players association form contract, the secretary of state shall approve the contract. Forms may be submitted to the secretary of state for approval by forwarding the forms to: Secretary of State, Athlete Agent Registration, Lucas State Office Building, Des Moines, Iowa 50319.

721—42.4(9A,17A) General information. Further information pertaining to the Registration of Athlete Agents Act and all application forms may be obtained by contacting the Secretary of State, Corporations Division, Lucas State Office Building, Des Moines, Iowa 50319, (515)281-5204 during regular office hours, 8 a.m. to 4:30 p.m. Monday through Friday except legal holidays.

These rules are intended to implement Iowa Code chapter 9A.

[Filed emergency 7/8/88—published 7/27/88, effective 7/8/88]
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]

CHAPTER 43
NOTARIAL ACTS

721—43.1(9E) Certificate of notarial acts. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer (for example, notary public, judge, clerk of court) and may include the official stamp or seal of office. A certificate of a notarial act is sufficient if it substantially meets the requirements of this rule, or other applicable law. The form of the certificate may consist of:

1. The short form set forth in rule 721—43.2(9E);
2. A form otherwise prescribed by the law of this state;
3. A form prescribed by laws or regulations applicable in the place in which the notarial act was performed; or
4. Any description of the actions of the notarial officer sufficient to meet the requirements of the designated notarial act.

By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determination required by Iowa Code section 9E.9.

721—43.2(9E) Short forms. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by rule 721—43.1(9E).

1. Acknowledgment in an individual capacity:

State of _____
County of _____
This instrument was acknowledged before me on _____ (date)
by _____.
(name(s) of person(s))
(Seal, if any) _____
(Signature)
NOTARY PUBLIC
(or title of other officer authorized to perform notarial acts)

2. Acknowledgment in a representative capacity:
State of _____

County of _____
This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) or (name of party on behalf of whom instrument was executed).
(Seal, if any) _____
(Signature)
NOTARY PUBLIC
(or title of other officer authorized to perform notarial acts)

3. Verification upon oath or affirmation:

State of _____
County of _____
Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).
(Seal, if any) _____
(Signature)
NOTARY PUBLIC

(or title of other officer authorized to perform notarial acts)

4. Witnessing or attesting a signature:

State of _____
County of _____
Signed or attested before me on (date) by
_____
_____
_____
(names of persons)
(Seal, if any) _____
(Signature)
NOTARY PUBLIC
(or title of other officer authorized to perform notarial acts)

5. Attestation of a copy of a document:

State of _____
County of _____
I certify that this is a true and correct copy of a document in the possession of _____
_____.
Dated _____
(Seal, if any) _____
(Signature)
NOTARY PUBLIC
(or title of other officer authorized to perform notarial acts)

721—43.3(9E) Notarial acts in other jurisdictions of the United States. A notarial act has the same effect in this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

1. A notary public of that jurisdiction;
2. A judge, clerk or deputy clerk of court of that jurisdiction; or
3. Any other person authorized by law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions of the United States under federal authority as provided in rule 721—43.4(9E) have the same effect as if performed by a notarial officer of this state.

The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

The signature and indicated title of an officer relisted in rule 721—43.3(9E), item 1 or 2, conclusively establish the authority of a holder of that title to perform a notarial act.

721—43.4(9E) Notarial acts under federal authority. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

1. A judge, clerk, or deputy clerk of a court;
2. A commissioned officer on active duty in the military service of the United States;
3. An officer of the foreign service or consular officer of the United States; or
4. Any other person authorized by federal law to perform notarial acts.

The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

The signature and indicated title of an officer listed in 721—43.4(9E), item 1, 2, or 3, conclusively establish the authority of a holder of that title to perform a notarial act.

721—43.5(9E) Foreign notarial acts. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

1. A notary public or notary;
2. A judge, clerk, or deputy clerk of a court of record; or
3. Any other person authorized by the law of that jurisdiction to perform notarial acts.

An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

An official stamp or seal of an officer listed in rule 721—43.5(9E), item 1 or 2, is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

If the title of office and indication of authority to perform notarial acts appear either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

721—43.6(9E) Revocation of notary appointment. The secretary of state may revoke a notary appointment for cause. In the event that a formal complaint is received by the secretary of state, an investigation shall be conducted to determine if there is sufficient cause for revocation. The secretary of state's office shall provide forms to complainants and notaries as required under this rule. Every direction of every instruction shall be complied with and each question or portion of every form answered in the same manner as if the forms and instruction were embodied in this rule.

43.6(1) The notary complaint and the notary's response to the complaint are subject to the following procedures:

a. A formal complaint must be submitted to the secretary of state on a complaint form supplied by the secretary of state's business services office. Each submitted complaint form must comply with the form instructions and include the basis for the complaint. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint. Incomplete complaint forms shall be returned to the complainant with a brief explanation stating the basis for rejection.

b. The notary who is the subject of the complaint shall be notified by the secretary of state within 15 days from the receipt of the complaint. The secretary of state shall provide a copy of the complaint and a notary response form.

c. The notary may submit a completed response form for the purposes of the complaint investigation within 15 days of receipt of the copy of the complaint and response form. A completed notary response form must be submitted by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. The notary response form shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark. If the notary does not respond within 15 days, the assistant director of business services may still conduct the investigation and reach a decision based on the information available.

d. The complainant and notary shall be duly notified of the decision and the assistant director's basis for the decision.

43.6(2) If the investigation reveals sufficient cause for revocation, the secretary of state shall send a notice of revocation to the notary by certified mail, return receipt requested. The notice shall state

the cause of the revocation and shall inform the person of the right to a hearing on the revocation in accordance with the requirements set forth in Iowa Code section 17A.12(2).

43.6(3) Delivery of the notice of revocation as referred to in subrule 43.6(2) shall constitute commencement of the contested case proceeding. Contested case hearings shall be afforded to all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Every contested case shall comply with the requirements for informal and formal disposition outlined in Iowa Code section 17A.12 and shall follow the contested case hearing procedures set forth in Iowa Code section 17A.12 and in rule 721—3.6(17A).

43.6(4) A written appeal form requesting a contested case hearing shall be obtained from the office of the secretary of state and submitted within 15 days from the date of receipt by the notary who is the subject of the complaint of the decision of the assistant director of business services. A written appeal form must be submitted in writing by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. A request for hearing shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark.

a. If no appeal form is submitted to the secretary of state's office, the notary appointment is effectively revoked in accordance with Iowa Code sections 9E.3 and 9E.7. The assistant director of business services may proceed in the manner outlined in paragraph 43.6(4)*"c."*

b. If an appeal form is received, notice of the contested case hearing shall be prepared by the assistant director of business services and mailed by certified mail, return receipt requested, to the notary who is the subject of the complaint. The notice shall be sent at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties and shall follow the notice requirements set forth in rule 721—3.5(17A). If the notary fails to appear or participate in a contested case proceeding after proper service of notice, the assistant director of business services shall proceed in the manner outlined in paragraph 43.6(4)*"c."*

c. A default decision may be granted or the assistant director of business services may proceed with the hearing and make a decision in the absence of the notary who is the subject of the complaint. The notary shall be duly notified of the decision and of the assistant director's basis for the decision. A decision by the assistant director may be vacated in accordance with Iowa Code section 17A.12(3). The decision is considered final unless a further appeal is initiated by the notary within 20 days of the date of notification or mailing of the decision.

43.6(5) Any notary who is the subject of the complaint may file an application for rehearing, stating the specific grounds and the relief sought within 20 days after the issuance of any final decision by the assistant director of business services in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application.

a. The director of business services shall review the application for rehearing and notify all the parties of record if a rehearing has been granted. If a rehearing has been granted, the director of business services shall conduct the rehearing.

b. An application for rehearing shall be deemed to have been denied unless the secretary of state grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

43.6(6) A notary who is the subject of the complaint and who is aggrieved or adversely affected by a final decision of the secretary of state may seek judicial review of that decision by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides or has its principal place of business. Proceedings for judicial review shall be followed as provided in Iowa Code section 17A.19(2).

[**ARC 9969B**, IAB 1/11/12, effective 2/15/12]

These rules are intended to implement Iowa Code chapter 9E.

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CHAPTER 44
REGISTRATION OF WASTE TIRE HAULERS

Rescinded IAB 1/18/06, effective 2/22/06; see 567—Chapter 116

CHAPTER 45
CIVIL PENALTIES FOR WASTE TIRE HAULERS

Rescinded IAB 1/18/06, effective 2/22/06