

State of Kansas
Secretary of State

Notice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted at 9:00 a.m. Wednesday, September 4, 2019 in the second floor auditorium at Memorial Hall, 120 S.W. 10th Ave., Topeka, Kansas, to provide for the adoption of Kansas Administrative Regulation 7-47-1. This regulation pertains to the postelection audit process.

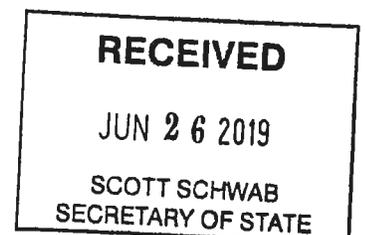
This 60-day notice of public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulation. Comments may be submitted prior to the hearing to Jameson Beckner, Assistant Director of Elections, Office of the Secretary of State, Memorial Hall, Room 130, 120 S.W. 10th Ave., Topeka, 66612-1594, or to jameson.beckner@ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Jameson Beckner at (785) 296-0080 or the Kansas Relay Center at 1-800-766-3777.

K.A.R. 7-47-1 details the process for implementing the postelection audit as outlined in K.S.A. 25-3009.

There is no economic impact anticipated because of this regulation.

Copies of the full text of the regulation and economic impact statement may be obtained at the address above for the Office of the Secretary of State, or by contacting Lara Murphy, Director of Administrative Regulations and Publications, at (785) 296-0082 or lara.murphy@ks.gov. The proposed regulation is also available on the Secretary of State's website at <https://sos.kansas.gov>.



Article 47. Audits

7-47-1. Audit implementation. The requirements of this regulation shall not apply to local question elections, mail-ballot elections pursuant to K.S.A. 25-431 through 25-441 and amendments thereto, or statewide constitutional amendments.

(a) As used in K.S.A. 25-3009 and amendments thereto, the term "unofficial election night returns" shall include ballots cast and counted on election day, ballots cast in advance and counted on election day, and ballots cast by means of the uniformed and overseas citizens absentee voting act (UOCAVA) procedures and counted on election day. This term shall not include any ballots cast that are challenged or marked as provisional or any ballots that are cast in advance and received after election day.

(b) Training shall be provided by the secretary of state to each county election officer. Each county election officer shall provide training to the election board, as specified in K.S.A. 25-3009 and amendments thereto, conducting the postelection audit. The training shall include the identification of voter intent specific to the vote-casting technologies in use across Kansas.

(c)(1) An auditable race and precinct shall be a race and precinct meeting the requirements in K.S.A. 25-3009, and amendments thereto, for an audit to be conducted. The random selection of races and precincts shall take place in a public setting, and the procedure to randomize the selection of races and precincts shall be determined solely by each county election officer and the secretary of state. Upon completion of the audit, each election board shall transmit to the secretary of state and the county election office the results of the audit no later than 48 hours before the meeting of the county board of canvassers.

(2) In even-year elections, within 24 hours of the closing of the final polling location in Kansas, the list of randomly selected races to be audited shall be transmitted by the secretary of state to each county election officer. Each county election officer shall examine each race in the order specified until an

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auditable race is determined. Each county election officer shall then randomly select one percent of the total county precincts from the subset of auditable precincts. If no contested race exists, the election board shall audit the first race listed.

(3) In odd-year elections, each county election officer shall randomly select the races and then each precinct to be audited.

(d) Ballot images may be used for the manual audit if imaging technology exists during the tabulation process on election night. (Authorized by and implementing K.S.A. 2018 Supp. 25-3009; effective, T-_____, _____; effective P-_____.)

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Secretary of State

Agency

Jameson Beckner

Agency Contact

785-296-0080

Contact Phone Number

7-47-1 - Permanent

K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

Implementing the provisions of KSA 25-3009 regarding audits of election results.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

N/A

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

None.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

None.

C. Businesses that would be directly affected by the proposed rule and regulation;

None.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There is no cost to this regulation. The proposed regulation will allow for transparency in how audits of elections are conducted.

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E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

No economic impact is anticipated resulting from the provisions of this regulation.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$0

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Evaluating the cost of similar requirements to the state and local units of government over the preceding years determined that no cost would be accrued due to this regulation.

Training is already on-going in conjunction with the Kansas County Clerks and Election Officials Association (KCCEOA), weekly conference calls, and email instructions. Any audit training could simply be incorporated into such existing training. Minimal staff time would be added as a result of this reg and could be incorporated into existing business hours.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

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H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The KSOS gathered a group of 15 county election officials from across the state to assist in drafting the proposed regulation. These counties consisted of various sizes, political affiliation, and election equipment vendors. Additionally, the KSOS presented an overview of the proposed regulation at the Kansas County Clerks and Election Officials Association (KCCEOA) conference. Discussion of the proposed process, costs, and other factors were discussed at length at the conference. It was determined that there was no cost specifically associated with this regulation.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

N/A

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