

Secretary of State  
Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 1:00 p.m., Wednesday, September 13, 2023, in the first-floor conference room at Memorial Hall, 120 SW 10th Ave., Topeka, KS, regarding the adoption of two amended election regulations: Kansas Administrative Regulations 7-36-7 and 7-47-1.

K.A.R. 7-36-7, Processing advance voting ballot applications, was amended to make it consistent with changes to K.S.A. 25-2211, which set a cutoff for sending mail ballot applications to the Tuesday before the election. Additional edits to the regulation were made to improve clarity with no change in substance.

K.A.R. 7-47-1, Postelection audit implementation, was amended to include Constitutional Amendments elections in the post-election audit.

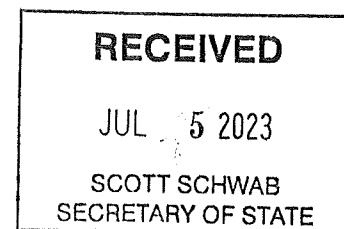
Adopting these regulations imposes no economic burdens on county election staff and imposes no environmental impact.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulations. Comments may be submitted prior to the hearing to Clay Barker, General Counsel, Office of the Secretary of State, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, or to [clay.barker2@ks.gov](mailto:clay.barker2@ks.gov). All interested parties will be given a reasonable opportunity at the hearing to present their views. Additionally, interested parties wanting to participate remotely may contact Clay Barker at [clay.barker2@ks.gov](mailto:clay.barker2@ks.gov) to obtain remote access information. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Clay Barker at 785-296-3483 or the Kansas Relay Center at 1-800-766-3777.

Copies of the full text of the regulations and economic impact statements 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](mailto:lara.murphy@ks.gov). The proposed regulations are also available on the Secretary of State's website at [www.sos.ks.gov](http://www.sos.ks.gov).

Scott Schwab  
Secretary of State



**7-36-7. Processing advance voting ballot applications.** This regulation shall govern the processing of each application for an advance voting ballot received by a county election officer if the applicant is registered to vote in that election officer's county and wants to receive the ballot by mail.

(a) If the application does not contain sufficient information or if the information is illegible, the county election officer shall contact the applicant by any reasonable means to obtain the information ~~before~~ no later than the Tuesday before the primary or general election.  
~~day, if practicable.~~

(b) If the application is not signed or the signature on the application is not consistent with the applicant's signature on the official voter registration list, the election officer shall comply with the procedures specified in K.A.R. 7-36-9.

(c) If the application

(1) does not contain the number of the applicant's current and valid Kansas driver's license number or nondriver's identification card number ~~or,~~

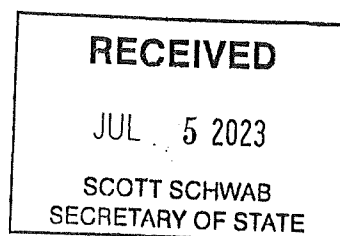
(2) does not contain a photocopy of any other identification specified in K.S.A. 25-2908, and amendments thereto, or

(3) if the Kansas driver's license number or nondriver's identification card number or photocopy is illegible, the county election officer shall attempt to contact the applicant ~~by any means~~ no later than the Tuesday before the primary or general election to obtain the missing

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or illegible information. The county election officer shall provide the applicant with the information required by K.S.A. 25-1122(e)(2), and amendments thereto.

(d) ~~The county election officer may collect an applicant's current and valid Kansas driver's license number or nondriver's identification card number or a photocopy of any other identification specified in K.S.A. 25-2908, and amendments thereto.~~ If the county election officer obtains the necessary identification number or photocopy and the identification number or photocopy is consistent with the voter registration list on or before the Tuesday before the primary or general election, the county election officer shall issue a regular advance voting ballot.

(e) If an applicant submits a photocopy of the qualifying photographic identification document and the document contains information that is illegible or inconsistent with the information on the voter registration list, the county election officer shall attempt to contact the applicant by any reasonable means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain a satisfactory photocopy of the qualifying photographic identification document.

(f) If on the Tuesday before the primary or general election it is not practicable to contact the applicant before the election or if the information, signature, or photocopy provided remains is incomplete or inconsistent with the voter registration list, the county election officer shall issue a provisional advance voting ballot.

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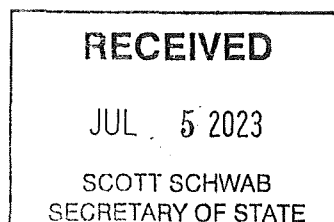
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(g) The county election officer shall present each provisional advance voting ballot to the county board of canvassers for a determination of validity. If the voter provided additional information, an updated signature, or an additional photocopy upon request by the county election officer and if the information, signature, or photocopy is consistent with the voter registration list, the ballot shall be counted unless the county board of canvassers determines the ballot is ~~determined to be~~ invalid for another reason. If the voter did not provide additional information, an updated signature, or an additional photocopy upon request by the county election officer or if the information, signature, or photocopy is inconsistent with the information on the voter registration list, the ballot shall not be counted. (Authorized by K.S.A. 25-1122 and K.S.A. 25-1131; implementing K.S.A. 25-1122, K.S.A. 25-1123, and K.S.A. 2022 Supp. 25-1124; effective Feb. 24, 2012; amended, T-7-5-26-22, May 26, 2022; amended Sept. 23, 2022; amended P-\_\_\_\_\_.)

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**7-47-1. Postelection audit implementation.** The requirements of this regulation shall not apply to local question elections, or 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 shall complete the training provided by the secretary of state. As specified in K.S.A. 25-3009 and amendments thereto, 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

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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 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.~~ 2022 Supp. 25-3009 and K.S.A. 2022 Supp. 25-2912; effective, T-7-6-26-19, June 26, 2019; effective Sept. 27, 2019; amended P- \_\_\_\_\_.)

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**Kansas Administrative Regulations  
Economic Impact Statement (EIS)**

Secretary of State

Agency

Clay Barker

Agency Contact

785-296-3483

Contact Phone Number

7-36-7

K.A.R. Number(s)

☒ Permanent

☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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## Section I

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

In 2022, paragraph b to this regulation was amended and a new regulation KAR 7-36-9 was adopted. This proposed amendment merely reconciles this regulation with KAR 7-36-9. The law in effect when the original regulation was written allowed mail ballot applications to be accepted up to the day before the election. The law was changed in 2018 to cut off acceptance of mail ballot applications a week before the election.

Eliminating the phrase "before election day" acknowledges that at some point it is no longer possible for the county election officer to accept a corrected mail ballot application and send out a mail ballot, and the deleted phrase could be interpreted to require county election officers to accept corrected mail ballots up to the day before election day.

All other changes were editing to ensure clarity to the reader.

## Section II

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

There is no applicable federal approach, and the proposed approach is similar to that used by most states that have advance mail ballot systems similar to Kansas'

## Section III

Agency analysis specifically addressing the 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(s) and regulation(s) and on the state economy as a whole;

No costs are associated with the proposed regulation amendment

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None

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

There is no cost, the proposed regulation merely clarifies timing of correcting advance mail ballot applications.

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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;

Not applicable

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

*Note: Do not account for any actual or estimated cost savings that may be realized.*

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

**Total Annual Costs – \$0**

(sum of above amounts)

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

[Click here to enter agency response.](#)

- ☐ Yes      If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing 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.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- 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

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Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None

- 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).

We conferred with county election officers and county legal advisors on the need to clarify the regulation.

## Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.  
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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**Kansas Administrative Regulations  
Economic Impact Statement (EIS)**

Secretary of State  
Agency

Clay Barker  
Agency Contact

785-296-3483  
Contact Phone Number

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K.A.R. Number(s)

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Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No    If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes    If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No    If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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## Section I

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

When the regulation was originally adopted a policy decision was made to not include constitutional amendments in the post-election audit. In the 2022 primary, given the attention focused on the constitutional amendment, the counties voluntarily included the amendment in their audits. The proposed regulation change would modify the original policy and make the vote for any future constitutional amendment a mandatory part of the post-election audit process for each county.

## Section II

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

There is no applicable federal approach, and the proposed approach is similar to that used by most states.

## Section III

Agency analysis specifically addressing the 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(s) and regulation(s) and on the state economy as a whole;

Whenever a constitutional amendment appears on the ballot it would require each county to also audit the results in 1% of precincts and in least one precinct. That would take additional staff time. The cost is unpredictable because constitutional amendments are infrequent, and costs would vary by the number of precincts in the audit and the number of voters in the randomly selected precinct(s).

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None

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

The cost of additional staff time is countered by the benefit of greater public confidence in the process.

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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;

There was no method to minimize costs – the audit either occurs or it does not. The method of the audit is fixed by law.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

*Note: Do not account for any actual or estimated cost savings that may be realized.*

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

**Total Annual Costs – \$0**

(sum of above amounts)

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

[Click here to enter agency response.](#)

- ☐ Yes      If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing 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.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

Additional staff costs: For a small county less than \$500 per election with a constitutional amendment. For a large county, less than \$2500 per election with a constitutional amendment.

- 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

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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.

The increase in expenditure was small and unpredictable.

- 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).

We consulted with county election officers on the need and burden of adding constitutional amendments to the existing post-election audit.

## Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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