

## **SECRETARY OF STATE[721]**

### **Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 17A.4 and 47.1, the Secretary of State hereby amends the Notice of Intended Action published in the Iowa Administrative Bulletin on August 8, 2012, as ARC 0271C, proposing amendments to Chapter 21, "Election Forms and Instructions," and Chapter 28, "Voter Registration File (I-VOTERS) Management," Iowa Administrative Code.

The Secretary of State amends the Notice published on August 8, 2012, to propose removal of rule 721--21.100(39A,47), which in addition to being proposed under Notice of Intended Action was Adopted and Filed Emergency and published in the August 8, 2012, Iowa Administrative Bulletin in ARC 0272C. Removal of this rule is proposed because the rule was misinterpreted as attempting to provide a mechanism to circumvent Iowa Code sections 48A.14 through 48A.16 and caused concern that registered voters would be removed from the voter registration rolls following anonymous complaints. Although that was not the Secretary's intent when adopting the rule, the number of concerns that have been raised regarding that provision resulted in the Secretary's determination that the rule should be rescinded.

In order to ensure the integrity of Iowa elections and to protect the rights of voters, the Secretary of State also proposes to replace rule 721--28.5(47,48A), which also was Adopted and Filed Emergency in ARC 0272C and which establishes procedures for the Secretary of State to identify and communicate with non-citizens who may be registered to vote in Iowa, with a new rule 721--28.5(47,48A), which incorporates revisions to address concerns that were raised in the public comments submitted to the Secretary of State's office and during the Administrative Rules Review Committee meeting on September 11, 2012. New rule 721--28.5(47,48A) proposed in Item 2 of this Amended Notice of Intended Action extends the time frame for registrants to respond to a notice from the Secretary of State and adds specificity to clarify the procedure that will be followed by the Secretary of State's office when completing the match and communicating with registrants affected by the rule.

Any interested person may make written suggestions or comments on the proposed rule on or before January 3, 2013. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

The Secretary of State also gives Notice that a public hearing will be held on Thursday, January 3, 2013, from 2 p.m. – 4 p.m. in order to receive oral or written comments on rule 721--28.5(47,48A) published herein. The hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN at the following locations. At the hearing,

persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule?

Iowa Department of Public Health (origination site)

Lucas State Office Building

321 E. 12<sup>th</sup> St., 6<sup>th</sup> Floor

Des Moines, Iowa

North Iowa Area Community College - 1

Activity Center, Room 106

500 College Drive

Mason City, Iowa

Iowa Lakes Community College

Spencer Attendance Center, Fiber Optic Room 118

1900 North Grand Avenue

Spencer, Iowa

Kirkwood Community College

Room 117

1816 Lower Muscatine Road

Iowa City, Iowa

Scott Community College

Room 210

500 Belmont Road

Bettendorf, Iowa

Iowa Western Community College - 1

Looft Hall, Room 024

2700 College Road

Council Bluffs, Iowa

Western Iowa Tech Community College

Room D201

4647 Stone Avenue

Sioux City, Iowa

Iowa Central Community College  
Room Lib. 204  
One Triton Circle, Liberal Arts Building  
Fort Dodge, Iowa

Ottumwa National Guard Armory  
2858 N. Court Road  
Ottumwa, IA 52501

Department of Human Services  
Pinecrest Office Building  
1407 Independence Avenue  
Waterloo, Iowa

Keystone Area Education Agency  
Room #2  
2310 Chaney Road  
Dubuque, Iowa

Kirkwood Community College  
Room 123, Jones Hall  
6301 Kirkwood Boulevard SW  
Cedar Rapids, Iowa

Matilda J. Gibson Memorial Library  
200 W. Howard Street  
Creston, Iowa

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Secretary of State's office at (515)242-5071 and advise of specific needs.

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

These amendments are intended to implement Iowa Code chapters 39 through 53.

The following amendments are proposed.

ITEM 1. Rescind rule 721-21.100(39A,47).

ITEM 2. Rescind rule 721-28.5(47,48A) and adopt the following new rule 721—28.5(47,48A) in lieu thereof:

**721—28.5(47,48A) Noncitizen registered voter identification and removal process.**

**28.5(1)** *Matching of foreign national files and the voter registration list.* Matches between lists of foreign nationals obtained by the secretary of state from a federal or state agency and the voter registration list shall be based on predetermined search criteria, including a combination of a registrant's name, driver's license number, date of birth or last four digits of the registrant's social security number. The match may be completed as often as the secretary of state deems necessary, but not more than once a quarter.

**28.5(2)** *Confirming matches between the foreign national file and the voter registration list.* After producing a list of probable matches based on the predetermined search criteria listed in subrule 28.5(1), the secretary of state shall determine whether the registrant has obtained citizenship status subsequent to the date on which the record in the file obtained from the other federal or state agency was generated. This determination shall be made by obtaining access to the Systematic Alien Verification Entitlement (SAVE) program administered by the United States Department of Homeland Security or to an equivalent database administered by the United States Department of Homeland Security.

Following verification that a registrant is not a United States citizen, the secretary of state shall send the registrant a letter and a response form that the registrant may use to respond to the information received by the secretary of state. The letter shall inform the registrant of the source of the information received by the secretary of state (e.g., driver's license files from the Iowa Department of Transportation), provide the registrant with information regarding how to dispute the information obtained by the secretary of state, and provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list. A postage paid return envelope shall be included with the letter and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under subrule 28.5(3) for a minimum of sixty (60) days from the date the letter was originally mailed.

**28.5(3)** *Registered voter notification.* Upon receipt of information indicating that a noncitizen is registered to vote, the secretary of state shall take the following steps.

a. *Subsequent notice.* If the registrant does not respond to the initial letter from the secretary of state sent pursuant to subrule 28.5(2) within thirty (30) days from the date the letter was originally mailed, the secretary of state shall send the registrant a subsequent notice informing the registrant of

the source of the information received by the secretary of state (e.g., driver's license files from the Iowa Department of Transportation). The subsequent notice shall also provide the registrant with information regarding how to dispute the information obtained by the secretary of state, provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list, and list the penalty for being registered to vote while knowing oneself not qualified. A postage paid return envelope shall be included with the notice and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under paragraph 28.5(3)"b" for a minimum of sixty (60) days from the date the notice was originally mailed.

*b. County auditor notification.*

(1) If a voter receives a notice from the secretary of state pursuant to paragraph 28.5(3)"a" and fails to respond to the notice within thirty (30) days from the date the notice was originally mailed, the secretary of state shall notify the county auditor that the secretary of state has received information indicating the registrant may not be a citizen of the United States and may be illegally registered to vote. The county auditor shall notify the precinct election officials working at the polling places on election day that the secretary of state has indicated that a registrant appearing on the election register for an election may not be a United States citizen and shall be challenged by the precinct election officials if that registrant attempts to vote.

(2) The county auditor shall notify the secretary of state when any registrant who is the subject of one of these notices voluntarily requests cancellation of the registrant's record.

*c. Noncitizen registrant with active absentee ballot request.* If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has an active absentee ballot request on the voter's record, the county auditor shall attach the notice from the secretary of state regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The county auditor shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

*d. Noncitizen registrant with voting history on voter record.* If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has a previous voting history on the voter's record, the county auditor shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the county auditor and make a copy of the notice received by the county auditor pursuant to this rule. The foregoing list of documents shall be forwarded to the secretary of state within 30 days of receipt of the notice.

**28.5(4) Removing confirmed matches from the voter registration list.** A registered voter shall only

be removed from the voter registration list following the voter's request for removal or the completion of the legal process set forth in Iowa Code sections 48A.14 through 48A.16.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.