

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1302 Docket No. 05.0009.0747

DATE RECEIVED 8-14-86
REVIEW DATE 8-22-86
DUE DATE 8-28-86

APPROVED 8/27/86
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 8-18-86
REVISOR DISAPPROVED
FILED W/SEC. STATE 8/27/86
RETURNED TO AGENCY 8/28/86

✓ Rule as adopted (4 copies)

N/A Notice to Solicit Outside Information/Opinion
Date published in State Register
Comments

N/A Petition for Adoption of a Rule

N/A Board's Authorizing Resolution

✓ Proposed rule
none Revisor's Certificate

✓ Notice of Intent to Adopt Rule
206.57 Statutory Authority
yes* Small business statement
none Expenditure of public money statement
none Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
June 18, 1986 Date 30/25 days before adoption

✓ Publication in State Register
June 30, 1986 Date 30/25 days before adoption

N/A Resolution Adopting

✓ ~~Findings of Fact, Conclusions~~ & Order Adopting
Date

N/A Written requests, submissions or comments

✓ Declaration of attorney
~~Peter Ackeberg~~ Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

✓ Order for Notice of intent to adopt Rules without Public Hearing

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: GRACE HAUKOOS
Director of Elections

DATE: 8/27/86

ATTN: PETER ACKERBERG
Special Assistant Attorney General

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: Permanent Rules Relating to Optical Scan Voting Systems

The above-referenced rule has been approved as to its legality by the Attorney General on August 27, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

JMM/rmk

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1302

Secretary of State

Adopted Permanent Rules Relating to Optical Scan Voting Systems

Rules as Adopted

8220.0750 PREPARATION OF COMPUTER PROGRAMS.

Computer programs must be prepared so as to tabulate accurately each voter's choices for all candidates, offices, and measures for which the voter is lawfully entitled to vote in conformity with the laws of Minnesota and parts 8220.0050 to 8230.4250.

Computer programs must include instructions requiring that machine-readable precinct identification be required on all ballot cards. Two identical header cards may precede the deck of ballot cards of each precinct. The program may provide that if two identical header cards do not appear in front of the ballot cards of a precinct, no counting of ballots for that precinct may take place.

A data processing card may follow the ballots of each precinct instructing the computer that all ballots of the precinct have been counted. The program may provide that if header cards contain instructions to the computer that all ballots of the preceding precinct have been counted, no separate end card is needed.

The vote tabulation portion of the computer program must be prepared as follows:

A. to H. [Unchanged.]

I. If the counting equipment can examine and return a ballot card to the voter before counting it, the computer program must check for and reject without counting any ballot card with an overvote or, at a partisan primary, with votes cast for candidates of more than one party. When the ballot card is returned to a voter, an error message must indicate the type of defect but not the specific office or question where the defective condition was found.

J. When a write-in vote is indicated by a machine-readable punch or mark, a punch or mark indicating a write-in is a vote for the purpose of determining if an overvote condition exists. Except where an overvote condition for the office exists, the computer program must record that a write-in has been indicated. The program must count and record valid votes on the ballot for all other offices and questions before a ballot with a write-in recorded is separated from ballots with no write-ins recorded. The program must report, by office, the total number of write-ins recorded.

8220.1250 DOCUMENTING TEST BALLOTS.

A documentation, record, chart, or listing must be prepared indicating the punches or marks recorded in the test ballots and whether the punches or marks are valid or invalid.

8220.1350 PRELIMINARY TESTING OF COMPUTER PROGRAMS.

Prior to the public accuracy test, the election jurisdiction providing the computer programs shall test the computers and programs to ascertain that they will correctly count the votes for all offices and measures. The computer programs must be tested on all precincts.

The election jurisdiction requesting the computer programs shall compare the edit listing against the ballots of all precincts to ascertain that the appropriate ballots are in each precinct, and the ballot position numbers for each candidate and proposal appearing on the ballot agree with those recorded on the edit listing for each precinct. Each election jurisdiction shall make a certificate as to the above matters and file it with the county auditor.

The test must be conducted using the test deck or ballot image prepared under the direction of the election jurisdiction, and the results must be compared against the predetermined results of the test deck or ballot image. For the purpose of this test, the test deck may be reproduced onto standard data processing cards.

All prom packs, memory packs, and similar devices

containing the election program must be secured with a metal seal and a certificate must be prepared indicating the seal number.

Rules as Proposed (all new material)

8230.4350 OPTICAL SCAN VOTING SYSTEMS

Subpart 1. **Applicability.** This part applies to optical scan voting systems, as defined in Minnesota Statutes, section 206.90, subdivision 1. Parts 8220.0050 to 8220.2850 apply to the use of optical scan voting systems. To the extent possible, parts 8220.3050 to 8230.4250 for use of punch-card voting systems apply to the use of optical scan voting systems, unless this part provides otherwise.

Subp. 2. **Ballot cards.** The name of the precinct and machine-readable precinct identification must be printed on each ballot card. Voting instructions must be printed at the top of the ballot card on each side that includes ballot information. The instructions must include an illustration of the proper mark to be used to indicate a vote. Detachable stubs or consecutive numbers are not required. Lines for the initials of at least two election judges must be printed on one side of the ballot card so that the judges' initials are visible when the ballot is enclosed in a secrecy sleeve.

Ballot cards must meet or exceed the specifications the equipment manufacturer has filed with the secretary of state. The election official responsible for preparing the ballots must supply to the ballot printer the manufacturer's recommended standards and specifications for ballot printing.

The equipment manufacturer must file with the secretary of state recommended procedures and standards for checking ballot specifications. Upon receipt of the ballots the election jurisdiction must immediately examine the ballot cards to determine that they meet the required specifications. The ballot cards must be packaged and stored in a manner to protect against moisture.

Subp. 3. **Supplies.** Each precinct must be supplied with secrecy sleeves that will shield voting marks from view while the voter deposits the ballot into the ballot box. Ballot boxes must be made of metal or high-impact plastic.

Ballot boxes used with counting equipment that reads the ballot as it is inserted into the ballot box may be separate or part of the equipment so long as the ballot is fed directly into a locked or sealed ballot box. At a general election, the ballot boxes must have two separate compartments into which the equipment can feed ballots. One compartment must receive ballots on which all votes have been counted and recorded, and the other compartment must receive the ballots on which all votes have been counted except for those offices for which a write-in indication has been recorded. An auxiliary ballot box, that may be separate or an additional compartment, must be supplied to be used if the equipment fails to function and to receive ballots that cannot be read by the equipment.

A writing instrument without an eraser that will produce marks that can be accurately read by the automatic tabulating equipment must be provided to each voter.

Subp. 4. **Testing.** Computer programs and counting equipment must be tested as required by Minnesota election laws and rules. In addition, as necessary to ensure accuracy of vote counting, diagnostic test capabilities of the equipment and additional test procedures recommended by the equipment manufacturer must be used. The equipment manufacturer must file with the secretary of state recommended test procedures and instructions.

Subp. 5. **Precinct counting equipment.** Precinct counting systems that read ballots as they are inserted into the ballot box may not be used for a central counting center, except that one ballot counter may be supplied for two precincts if one of the precincts has fewer than 200 registered voters. Separate prom packs must be used for each of the two precincts. Except as provided in this subpart, at least one ballot counter must be supplied to each precinct.

If the ballot counter will be used to count ballots of only one precinct, machine-readable ballot configuration identification may be printed on each ballot card in place of the precinct name and identification required by subpart 2. A ballot configuration means a unique ballot format prepared for use in one or more precincts in which all ballot information, including offices and questions to be voted on, candidate names, and rotation sequence, is identical.

If the locked ballot box cannot be detached from the ballot counter, the number of ballot counters supplied to the precinct must be sufficient so that the number of ballots expected to be counted on any counter will be at least ten percent less than the maximum capacity of the ballot box. The maximum capacity must be determined on the basis of the size of the ballot to be voted at the election.

The auditor or clerk must test each prom pack individually and, after testing, seal it with a numbered seal. Each ballot counter must be tested to ensure that the components are operating properly. The election judges shall verify that the ballot counter at the precinct has the correct seal number and certify the seal number on the summary statement.

Before opening the polls, the election judges shall initialize the ballot counter in accordance with the manufacturer's instructions. The judges shall verify that the initial counts for the voting positions are zero, that the public counter is set at zero, and that the ballot positions and other ballot information for each candidate and proposal printed on the initial tape agree with those on the ballot cards.

If the ballot counter is programmed to return to the voter a ballot having defects, the rejected ballot must be treated as a spoiled ballot and a new ballot must be issued to the voter after the spoiled ballot has been deposited in the spoiled ballot container. The election judges shall read the error message to the voter and may explain the conditions that cause a ballot to be rejected, but the judges shall not examine the voted ballot unless the voter requests assistance as provided in

Minnesota Statutes, section 204C.15.

If the ballot counter is programmed to return to the voter a ballot having defects, no means of overriding the rejection may be used that do not meet the conditions in items A to C.

A. The override must be protected against being inadvertently activated.

B. The override must not allow more than one ballot to be processed each time it is operated.

C. A message, to be initialed by the election judges who activated the override, must be printed on the results tape each time the override is operated.

As soon as voting has ended, the election judges shall process any ballots in the auxiliary ballot box and then secure the ballot counter against receiving any more ballots. The election judges shall produce a printed record of results and sign the certificate that is part of the printed record.

At a general election, after the ballot counter has been secured against receiving additional ballots, the election judges shall open the write-in compartment and count and record on the summary statement the valid write-in votes.

One unbroken tape that includes the initial zero report at the opening of the polls, messages printed during the hours of voting, and the first printout of results must be certified to the county canvassing board. In the event of equipment failure, the election judges and any technicians working on the equipment shall make entries on the tape of initials and time of occurrence to indicate the points at which the equipment failed and was returned to service. If the tape has been broken, the election judges shall seal the parts together and sign over the seal so that it cannot be broken without disturbing the continuity of the signatures. Additional copies of the record of results must be certified as required by the election jurisdiction.

Subp. 6. **Absentee ballots.** The election judges shall examine the absentee ballots as they are removed from the ballot envelope and separate any ballots with erasures, marked with a

carbonless writing instrument, or otherwise marked so they cannot be read by the counting equipment. The separated absentee ballots must be counted manually and the results added to the printed record of results or duplicated for tabulating as provided in part 8230.3850.

When printing instructions to be supplied with absentee ballots, the election jurisdiction may change item (6) on the instructions to absent voter in parts 8210.0500 and 8210.9920 to include the proper method for marking and folding the optical scan voting system ballot cards.

Subp. 7. **Ballots at counting center.** Except for ballots that must be counted manually, ballots for a precinct must be tabulated together. After tabulation of votes for candidates whose names appear on the ballot at a general election, at least two election judges of different political parties shall count the valid write-in votes on ballots with a write-in indication. The judges shall record the valid write-in votes on the summary statement.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 27 1986
Joan Anderson Growe
Secretary of State 3:10 PM

APPROVED AS TO FORM AND LEGALITY
8/27 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
ASSISTANT ATTORNEY GENERAL

Secretary of State

Proposed Permanent Rules Relating to Optical Scan Voting Systems

Rules as Proposed

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J. When a write-in vote is indicated by a machine-readable punch or mark, a punch or mark indicating a write-in is a vote for the purpose of determining if an overvote condition exists. Except where an overvote condition for the office exists, the computer program must record that a write-in has been indicated. The program must count and record valid votes on the ballot for all other offices and questions before a ballot with a write-in recorded is separated from ballots with no write-ins recorded. The program must report, by office, the total number of write-ins recorded.

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The auditor or clerk must test each prom pack individually and, after testing, seal it with a numbered seal. Each ballot counter must be tested to ensure that the components are operating properly. The election judges shall verify that the ballot counter at the precinct has the correct seal number and certify the seal number on the summary statement.

Before opening the polls, the election judges shall initialize the ballot counter in accordance with the manufacturer's instructions. The judges shall verify that the initial counts for the voting positions are zero, that the public counter is set at zero, and that the ballot positions and other ballot information for each candidate and proposal printed on the initial tape agree with those on the ballot cards.

If the ballot counter is programmed to return to the voter a ballot having defects, the rejected ballot must be treated as a spoiled ballot and a new ballot must be issued to the voter after the spoiled ballot has been deposited in the spoiled ballot container. The election judges shall read the error message to the voter and may explain the conditions that cause a ballot to be rejected, but the judges shall not examine the voted ballot unless the voter requests assistance as provided in

Minnesota Statutes, section 204C.15.

If the ballot counter is programmed to return to the voter a ballot having defects, no means of overriding the rejection may be used that do not meet the conditions in items A to C.

A. The override must be protected against being inadvertently activated.

B. The override must not allow more than one ballot to be processed each time it is operated.

C. A message, to be initialed by the election judges who activated the override, must be printed on the results tape each time the override is operated.

As soon as voting has ended, the election judges shall process any ballots in the auxiliary ballot box and then secure the ballot counter against receiving any more ballots. The election judges shall produce a printed record of results and sign the certificate that is part of the printed record.

At a general election, after the ballot counter has been secured against receiving additional ballots, the election judges shall open the write-in compartment and count and record on the summary statement the valid write-in votes.

One unbroken tape that includes the initial zero report at the opening of the polls, messages printed during the hours of voting, and the first printout of results must be certified to the county canvassing board. In the event of equipment failure, the election judges and any technicians working on the equipment shall make entries on the tape of initials and time of occurrence to indicate the points at which the equipment failed and was returned to service. If the tape has been broken, the election judges shall seal the parts together and sign over the seal so that it cannot be broken without disturbing the continuity of the signatures. Additional copies of the record of results must be certified as required by the election jurisdiction.

Subp. 6. **Absentee ballots.** The election judges shall examine the absentee ballots as they are removed from the ballot envelope and separate any ballots with erasures, marked with a

APPROVED IN THE REVISOR OF STATUTES

carbonless writing instrument, or otherwise marked so they cannot be read by the counting equipment. The separated absentee ballots must be counted manually and the results added to the printed record of results or duplicated for tabulating as provided in part 8230.3850.

When printing instructions to be supplied with absentee ballots, the election jurisdiction may change item (6) on the instructions to absent voter in parts 8210.0500 and 8210.9920 to include the proper method for marking and folding the optical scan voting system ballot cards.

Subp. 7. **Ballots at counting center.** Except for ballots that must be counted manually, ballots for a precinct must be tabulated together. After tabulation of votes for candidates whose names appear on the ballot at a general election, at least two election judges of different political parties shall count the valid write-in votes on ballots with a write-in indication. The judges shall record the valid write-in votes on the summary statement.

APPROVED IN THE REVISOR OF STATUTES

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Secretary of State

Election Division

Proposed Rules Relating to Use of Optical Scan Electronic Voting Systems.

Notice of Intent to Adopt Rules Without a Public Hearing.

Notice is hereby given that the Secretary of State proposes to adopt the above-entitled rules without a public hearing. The Secretary has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.21 to 14.28

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Election Division and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the Secretary of State will proceed according to the provisions of Minnesota Statutes, sections 14.13 to 14.18.

Person who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Grace Haukoos

Election Division Director

180 State Office Building

St. Paul, MN 55155-1299

(612)296-9217

Authority for the adoption of these rules is contained in Minnesota Statutes, section 206.57. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Election Division upon request.

You are advised, pursuant to Minnesota Statutes, section 14.115 "Small business consideration in rulemaking", that the proposed rules will not have an impact on small business in Minnesota. Also, pursuant to Minnesota Statutes, section 14.11 "Special Notice of Rulemaking", the adoption of these rules will not have any impact upon agricultural land nor cost local public bodies any money for two years immediately following the adoption of these rules within the meaning of that law.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Person who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Election Division.

The rules proposed for adoption are as follows:

C12.058.3

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In the matter of the Proposed Rules of the Secretary of State Relating to the Use of Optical Scan Electronic Voting Systems.

STATEMENT OF NEED AND REASONABLENESS

The need to adopt part 8230.4350 and amend parts 8220.0750, 8220.1250, and 8220.1350 arises because M.S. §206.57 requires the Secretary of State to certify voting equipment for use at elections in this state and provides for the Secretary of State to adopt rules for the examination and use of such voting machines and electronic voting systems. Laws of 1986 c 381 enacted new statutory provisions specifically related to optical scan electronic voting system. Pursuant to M.S. §206.57, subd. 3, certification has been recommended for two models of optical scan voting equipment and these systems will be in use at the 1986 state primary and general elections.

The amendments to part 8220.0750 are necessary to provide programming standards and instructions for equipment features not present in previous electronic voting systems. The amendments to 8220.1250 and 8220.1350 are necessary to extend the provisions to include ballots used with optical scan voting systems.

Part 8230.4350, subpart 1, follows the manner of Laws of 1986, chapter 381 in providing for use of optical scan electronic voting systems by exception to present provisions for punch card electronic voting systems.

Subpart 2 is necessary to specify the consistent printing, checking and storage of ballots so they can be correctly counted by the various optical scan electronic voting systems. Subpart 3 is necessary to ensure the security and proper marking of the ballots. Subpart 4 is necessary to ensure correct programming

and counting.

Subpart 5 is necessary to provide specific procedures for use of optical scan systems used in the precinct and to implement provisions of M.S. §206.90 for use of this equipment. Subpart 6 is necessary to ensure absentee ballots will be counted accurately. Subpart 7 specifies procedures for counting write-in votes at a counting center.

Pursuant to M.S. §14.115, subd. 7, the proposed rules do not directly affect small businesses and do not provide any compliance or reporting requirements for small businesses. The proposed rules have no impact on agricultural land in the state, pursuant to M.S. §14.11, subd. 2, and the adoption of these rules will not cost local public bodies any money for two years immediately following the adoption of these rules, within the meaning of M.S. §14.11, subd. 1.

C12.050

In the Matter of the Proposed Adoption

of the Rules of the Secretary of State

Governing Optical Scan Voting Systems

AFFIDAVIT OF

MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Sandra Olson, being first duly sworn deposes and says:

That on the 5th day of August, 1986 at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to Attorney General by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have registered their names with the Secretary of State for that purpose.

Joseph Mansky

C14.033

JOSEPH MANSKY
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JUNE 12, 1991

~~for work done on these days except when payment is received. Emergency employees are not eligible for holiday pay. The following days are holidays~~ Holidays for employees not represented by an exclusive representative shall include the following days:

A. to H. [Unchanged.]

I. Christmas Day, December 25; and

J. Any other day adopted as county-wide policy by the appointing authority.

Appointing authorities may designate one or both of the following as holidays: Christopher Columbus Day, the second Monday in October; and the Friday after Thanksgiving.

Payment for the above specified holidays shall be determined by the appointing authority.

Subp. 2. ~~Monday~~ **Sunday, Saturday holidays.** When New Year's Day, Independence Day, Veteran's Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When New Year's Day, Independence Day, Veteran's Day, or Christmas Day falls on Saturday the preceding Friday shall be a holiday.

Subp. 3. to 5. [See repealer.]

REPEALER. Minnesota Rules, parts 9575.1070, subparts 3, 4, and 5; and 9575.1080, subpart 3 are repealed.

Secretary of State
Election Division

Proposed Permanent Rules Relating to Optical Scan Voting Systems

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Secretary of State proposes to adopt the above-entitled rules without a public hearing. The Secretary has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.21 to 14.28.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Election Division and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the Secretary of State will proceed according to the provisions of Minnesota Statutes, sections 14.13 to 14.18.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Grace Haukoos
Election Division Director
180 State Office Building
St. Paul, MN 55155-1299
(612) 296-9217

Authority for the adoption of these rules is contained in Minnesota Statutes, section 206.57. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Election Division upon request.

You are advised, pursuant to Minnesota Statutes, section 14.115 "Small business consideration in rulemaking", that the proposed rules will not have an impact on small business in Minnesota. Also, pursuant to Minnesota Statutes, section 14.11 "Special Notice of Rulemaking", the adoption of these rules will not have any impact upon agricultural land nor cost local public bodies any money for two years immediately following the adoption of these rules within the meaning of that law.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Election Division.

The rules proposed for adoption are as follows:

Rules as Proposed

8220.0750 PREPARATION OF COMPUTER PROGRAMS.

Computer programs must be prepared so as to tabulate accurately each voter's choices for all candidates, offices, and measures for which the voter is lawfully entitled to vote in conformity with the laws of Minnesota and parts 8220.0050 to 8230.4250.

Computer programs must include instructions requiring that machine-readable precinct identification be required on all ballot cards. Two identical header cards may precede the deck of ballot cards of each precinct. The program may provide that if two identical header cards do not appear in front of the ballot cards of a precinct, no counting of ballots for that precinct may take place.

A data processing card may follow the ballots of each precinct instructing the computer that all ballots of the precinct have been counted. The program may provide that if header cards contain instructions to the computer that all ballots of the preceding precinct have been counted, no separate end card is needed.

The vote tabulation portion of the computer program must be prepared as follows:

A. to H. [Unchanged.]

I. If the counting equipment can examine and return a ballot card to the voter before counting it, the computer program must check for and reject without counting any ballot card with an overvote or, at a partisan primary, with votes cast for candidates of more than one party. When the ballot card is returned to a voter, an error message must indicate the type of defect but not the specific office or question where the defective condition was found.

J. When a write-in vote is indicated by a machine-readable punch or mark, a punch or mark indicating a write-in is a vote for the purpose of determining if an overvote condition exists. Except where an overvote condition for the office exists, the computer program must record that a write-in has been indicated. The program must count and record valid votes on the ballot for all other offices and questions before a ballot with a write-in recorded is separated from ballots with no write-ins recorded. The program must report, by office, the total number of write-ins recorded.

8220.1250 DOCUMENTING TEST BALLOTS.

A documentation, record, chart, or listing must be prepared indicating the punches or marks recorded in the test ballots and whether the punches or marks are valid or invalid.

8220.1350 PRELIMINARY TESTING OF COMPUTER PROGRAMS.

Prior to the public accuracy test, the election jurisdiction providing the computer programs shall test the computers and programs to ascertain that they will correctly count the votes for all offices and measures. The computer programs must be tested on all precincts.

The election jurisdiction requesting the computer programs shall compare the edit listing against the ~~ballot labels~~ ballots of all precincts to ascertain that the appropriate ~~labels~~ ballots are in each precinct, and the ballot position numbers for each candidate and proposal appearing on the ballot ~~labels~~ agree with those recorded on the edit listing for each precinct. Each election jurisdiction shall make a certificate as to the above matters and file it with the county auditor.

The test must be conducted using the test deck or ballot image prepared under the direction of the election jurisdiction, and the results must be compared against the predetermined results of the test deck or ballot image. For the purpose of this test, the test deck may be reproduced onto standard data processing cards.

All prom packs, memory packs, and similar devices containing the election program must be secured with a metal seal and a certificate must be prepared indicating the seal number.

Rules as Proposed (all new material)

8230.4350 OPTICAL SCAN VOTING SYSTEMS

Subpart 1. **Applicability.** This part applies to optical scan voting systems, as defined in Minnesota Statutes, section 206.90, subdivision 1. Parts 8220.0050 to 8220.2850 apply to the use of optical scan voting systems. To the extent possible, parts 8220.3050 to 8230.4250 for use of punch-card voting systems apply to the use of optical scan voting systems, unless this part provides otherwise.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 2. **Ballot cards.** The name of the precinct and machine-readable precinct identification must be printed on each ballot card. Voting instructions must be printed at the top of the ballot card on each side that includes ballot information. The instructions must include an illustration of the proper mark to be used to indicate a vote. Detachable stubs or consecutive numbers are not required. Lines for the initials of at least two election judges must be printed on one side of the ballot card so that the judges' initials are visible when the ballot is enclosed in a secrecy sleeve.

Ballot cards must meet or exceed the specifications the equipment manufacturer has filed with the secretary of state. The election official responsible for preparing the ballots must supply to the ballot printer the manufacturer's recommended standards and specifications for ballot printing.

The equipment manufacturer must file with the secretary of state recommended procedures and standards for checking ballot specifications. Upon receipt of the ballots the election jurisdiction must immediately examine the ballot cards to determine that they meet the required specifications. The ballot cards must be packaged and stored in a manner to protect against moisture.

Subp. 3. **Supplies.** Each precinct must be supplied with secrecy sleeves that will shield voting marks from view while the voter deposits the ballot into the ballot box. Ballot boxes must be made of metal or high-impact plastic.

Ballot boxes used with counting equipment that reads the ballot as it is inserted into the ballot box may be separate or part of the equipment so long as the ballot is fed directly into a locked or sealed ballot box. At a general election, the ballot boxes must have two separate compartments into which the equipment can feed ballots. One compartment must receive ballots on which all votes have been counted and recorded, and the other compartment must receive the ballots on which all votes have been counted except for those offices for which a write-in indication has been recorded. An auxiliary ballot box, that may be separate or an additional compartment, must be supplied to be used if the equipment fails to function and to receive ballots that cannot be read by the equipment.

A writing instrument without an eraser that will produce marks that can be accurately read by the automatic tabulating equipment must be provided to each voter.

Subp. 4. **Testing.** Computer programs and counting equipment must be tested as required by Minnesota election laws and rules. In addition, as necessary to ensure accuracy of vote counting, diagnostic test capabilities of the equipment and additional test procedures recommended by the equipment manufacturer must be used. The equipment manufacturer must file with the secretary of state recommended test procedures and instructions.

Subp. 5. **Precinct counting equipment.** Precinct counting systems that read ballots as they are inserted into the ballot box may not be used for a central counting center, except that one ballot counter may be supplied for two precincts if one of the precincts has fewer than 200 registered voters. Separate prom packs must be used for each of the two precincts. Except as provided in this subpart, at least one ballot counter must be supplied to each precinct.

If the ballot counter will be used to count ballots of only one precinct, machine-readable ballot configuration identification may be printed on each ballot card in place of the precinct name and identification required by subpart 2. A ballot configuration means a unique ballot format prepared for use in one or more precincts in which all ballot information, including offices and questions to be voted on, candidate names, and rotation sequence, is identical.

If the locked ballot box cannot be detached from the ballot counter, the number of ballot counters supplied to the precinct must be sufficient so that the number of ballots expected to be counted on any counter will be at least ten percent less than the maximum capacity of the ballot box. The maximum capacity must be determined on the basis of the size of the ballot to be voted at the election.

The auditor or clerk must test each prom pack individually and, after testing, seal it with a numbered seal. Each ballot counter must be tested to ensure that the components are operating properly. The election judges shall verify that the ballot counter at the precinct has the correct seal number and certify the seal number on the summary statement.

Before opening the polls, the election judges shall initialize the ballot counter in accordance with the manufacturer's instructions. The judges shall verify that the initial counts for the voting positions are zero, that the public counter is set at zero, and that the ballot positions and other ballot information for each candidate and proposal printed on the initial tape agree with those on the ballot cards.

If the ballot counter is programmed to return to the voter a ballot having defects, the rejected ballot must be treated as a spoiled ballot and a new ballot must be issued to the voter after the spoiled ballot has been deposited in the spoiled ballot container. The election judges shall read the error message to the voter and may explain the conditions that cause a ballot to be rejected, but the judges shall not examine the voted ballot unless the voter requests assistance as provided in Minnesota Statutes, section 204C.15.

If the ballot counter is programmed to return to the voter a ballot having defects, no means of overriding the rejection may be used that do not meet the conditions in items A to C.

A. The override must be protected against being inadvertently activated.

B. The override must not allow more than one ballot to be processed each time it is operated.

C. A message, to be initialed by the election judges who activated the override, must be printed on the results tape each time the override is operated.

As soon as voting has ended, the election judges shall process any ballots in the auxiliary ballot box and then secure the ballot counter against receiving any more ballots. The election judges shall produce a printed record of results and sign the certificate that is part of the printed record.

At a general election, after the ballot counter has been secured against receiving additional ballots, the election judges shall open the write-in compartment and count and record on the summary statement the valid write-in votes.

One unbroken tape that includes the initial zero report at the opening of the polls, messages printed during the hours of voting, and the first printout of results must be certified to the county canvassing board. In the event of equipment failure, the election judges and any technicians working on the equipment shall make entries on the tape of initials and time of occurrence to indicate the points at which the equipment failed and was returned to service. If the tape has been broken, the election judges shall seal the parts together and sign over the seal so that it cannot be broken without disturbing the continuity of the signatures. Additional copies of the record of results must be certified as required by the election jurisdiction.

Subp. 6. **Absentee ballots.** The election judges shall examine the absentee ballots as they are removed from the ballot envelope and separate any ballots with erasures, marked with a carbonless writing instrument, or otherwise marked so they cannot be read by the counting equipment. The separated absentee ballots must be counted manually and the results added to the printed record of results or duplicated for tabulating as provided in part 8230.3850.

When printing instructions to be supplied with absentee ballots, the election jurisdiction may change item (6) on the instructions to absent voter in parts 8210.0500 and 8210.9920 to include the proper method for marking and folding the optical scan voting system ballot cards.

Subp. 7. **Ballots at counting center.** Except for ballots that must be counted manually, ballots for a precinct must be tabulated together. After tabulation of votes for candidates whose names appear on the ballot at a general election, at least two election judges of different political parties shall count the valid write-in votes on ballots with a write-in indication. The judges shall record the valid write-in votes on the summary statement.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Department of Human Services

Adopted Rules Relating to Licensing of Family Day Care and Group Family Day Care

The rule proposed and published at *State Register*, Volume 10, Number 31, pages 1573-1588, January 27, 1986 (10 S.R. 1573) is adopted with the following modifications:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA

In the Matter of the Proposed Adoption
of Rules of the Secretary of State
Relating to Optical Scan Voting Systems

ORDER ADOPTING RULES

Notice of the Secretary's intent to adopt the above-entitled rules without a public hearing was published in the State Register on June 30, 1986 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1 on June 18, 1986. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that the rules identified as parts 8220.0750, 8220.1250, 8220.1350, and 8230.4350 are adopted this 1st day of August, 1986 pursuant to authority vested in me by Minnesota Statutes, section 206.57.

Joan Anderson Growe
Secretary of State

C14.030

In the Matter of the Proposed Adoption of Rules of the Secretary of State Governing the Use of Optical Scan Voting Systems

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, PETER M. ACKERBERG, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are listed below.

Dated: August 12, 1986.

Peter M. Ackerberg

PETER M. ACKERBERG

RECEIVED
AUG 13 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the Secretary of State Proposed Rules Relating to Use of Optical Scan Electronic Voting Systems.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on file with and maintained for the purpose of receiving notice of the proposed adoption of rules by the Secretary of State is accurate and complete as of 9 :00 A .M., this 18th day of June, 1986.

Grace Louise Hawkins

Director of Elections

C12.058.1

JOSEPH [illegible]
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JULY 12, 1991

Joseph Mansley

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the Secretary of State Relating to Use of Optical Scan Electronic Voting Systems.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on file with and maintained for the purpose of receiving notice of the submission of rules by the Secretary of State to the Attorney General is accurate and complete as of 9 :00 A.M., this 5th day of August, 1986.

Grace Louise Hawkins
Director of Elections

C14.032

JOSEPH MANSKY
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JUNE 12, 1991

Joseph Mansky

STATE OF MINNESOTA

SECRETARY OF STATE

In the Matter of the Proposed Adoption
of Rules of the Secretary of State
Relating to Optical Scan Voting
Systems

NOTICE OF SUBMISSION TO THE
ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.05 to 14.36:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, August 5, 1986, for review as to form and legality. Pursuant to part 2000.0700, subpart 2, the Attorney General will not approve the rules for eight calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 515 Transportation Bldg., St. Paul, MN 55155, telephone (612)296-8954. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

No changes were made after publication of the proposed rule in the State Register.

C14.031

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In the Matter of the Proposed Adotion

of the Rules of the State

Governing

AFFIDAVIT OF

MAILING

STATE OF MINNESOTA)

)ss.

COUNTY OF RAMSEY)

Sandra Olsen, being first duly sworn deposes and says:

That on the 18 day of June, 19 86 at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Secretary of State for the purpose of receiving notice of the proposed adoption of rules by the Secretary of State.

Grace Louise Hawkins

C12.058.2

GRACE LOUISE HAWKINS
NOTARY PUBLIC
FREEBORN COUNTY, MN
MY COMMISSION EXPIRES
JUNE 22, 1987

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STATE OF MINNESOTA

Secretary of State

In the Matter of the Proposed Adoption of Rules of the Secretary of State Relating to Use of Optical Scan Electronic Voting Systems.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 16 day of June, 1986 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Secretary of State for that purpose and be published in the State Register.

STATE OF MINNESOTA

Elaine Y. Voss

Deputy Secretary of State

C12.058

JOAN ANDERSON GROWE
Secretary of State
ELAINE VOSS
Deputy Secretary of State

State of Minnesota

OFFICE OF THE SECRETARY OF STATE

St. Paul 55155

180 STATE OFFICE BUILDING
Corporation Division: 612/296-2803
UCC Division: 612/296-2434
Election Division: 612/296-2805
Office of the Secretary: 612/296-3266
Office of Deputy Secy.: 612/296-2309

August 5, 1986

TO: Office of the Attorney General
Peter Ackerberg
515 Transportation Bldg.

FROM: Grace Haukoos
Director of Elections

RECEIVED

AUG 6 1986

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

SUBJECT: SUBMISSION OF RULES TO ATTORNEY GENERAL

The Secretary of State proposed rules relating to the use of optical scan voting systems in the State Register of Monday June 30, 1986. No comments were received during the 30 day comment period and no changes have been made in the rule as proposed.

Enclosed are materials for your review:

1. Copy of Notice of Intent to Adopt Rules as published in the State Register
2. Copy of Proposed Permanent Rule Relating to Optical Scan Voting Systems
3. Statement of Need and Reasonableness
4. Order Adopting Rule
5. Copies of Affidavits of Mailing

Please advise if your office needs additional material.

C14.034