

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency State Board of Election Commissioners

Department _____

Contact Chris Madison E-mail chris.madison@arkansas.gov Phone 501-682-1447

Statutory Authority for Promulgating Rules Ark. Const. Amend. 51 §13(b)(7) 7-4-103(f)(5); Act 249 of 2021

Rule Title: Rules for the Verification of Voter Registration

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

01/23/2022

02/22/2022

04/20/2022

11/03/2021

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Chris Madison

chris.madison@arkansas.gov

04/_____/2022

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act, (ACA 25-15-201 et. seq.)

Signature

501-682-1447

chris.madison@arkansas.gov

Phone Number

E-mail Address

Legal Counsel

Title

04/_____/2022

Date

**RULES
FOR
THE VERIFICATION OF VOTER
REGISTRATION**
(Effective October 28, 2017; Revised May 7, 2022)



**State Board of Election Commissioners
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Scope of Rules

These rules will set forth the procedures for processing and administering the requirement that voters verify their voter registration before they are permitted to vote. These rules are in addition to, and not a substitute for, the laws of the State of Arkansas and rules promulgated by the Secretary of State.

§801 Definitions

- (a) Additional Identification Requirement – documentary identification separate from that which is required to verify voter registration that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include a copy of current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.¹
- (b) Administrator – the administrative head of a long-term care or residential care facility licensed by the state.
- (c) Documentation of Residency – a statement by the administrator of a residential care facility or long-term care facility which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. This documentation shall only be accepted if it is on the form provided by the Secretary of State²
- (d) Long-Term Care or Residential Care Facility – a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care, and which is licensed by the State of Arkansas.
- (e) Photo Identification:
 - (1) A document or identification card that satisfies all of the following conditions:
 - A. Shows the name of the person to whom the document was issued;
 - B. Shows a photograph of the person to whom the document was issued;
 - C. Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
 - D. If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.

¹ A.C.A. § 7-5-201(e)

² A.C.A. § 7-5-905

(2) Documents or Identification cards that comply with the above requirements for photo identification include, without limitation, the following:

- A. A driver's license;
- B. A photo identification card;
- C. A concealed handgun carry license;
- D. A United States passport;
- E. An employee badge or identification document issued to any person by an accredited postsecondary educational institution in the State of Arkansas;
- F. A United States Military identification document;
- G. A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and
- H. A voter identification card as provided under A.C.A. §7-5-324 and rules propounded by the Secretary of State³

(f) Verification of Voter Registration - The process by which an individual seeking to vote presents a photo identification to an election official for the purpose of confirming that the individual physically present at the poll is the same individual to whose voter registration the vote cast will be credited.

§ 802 Verification of Voter Registration Required When Voting at the Polls

(a) All voters, except those who reside in a long-term care or residential care facility, must verify their voter registration in order to cast a regular ballot at the polls during early voting and on election day.⁴

(b) A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility⁵. This documentation shall be provided on a standardized form adopted by the Secretary of State.⁶

³ Ark. Const. amend. 51, §13(b); A.C.A. §7-1-101(38)

⁴ Ark. Const. amend. 51, §13(b)(2)(B)

⁵ Ark. Const. amend. 51, §13

⁶ A.C.A. § 7-5-905

§ 803 Verification of Voter Registration by Election Officials

(a) The photo identification shall be used to verify the name and appearance of the voter. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter's address on the list to the address stated by the voter.

(b) The election official verifying the voter registration of a voter shall:

- (1) Verify that the name on the photo identification is consistent with the name in the Precinct Voter Registration List, allowing for abbreviations and nicknames;
- (2) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury, and other physical characteristics;
- (3) If the election official is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;
- (4) If the name appearing on the voter's photo identification varies in part from the name in the Precinct Voter Registration List or the name as stated by the voter, an election official should issue a regular ballot only if the variation can be explained as an abbreviation of a given name, the inclusion of a nick name on the photo identification where the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List, a lawful change in the voter's name due to marriage or divorce, or other similar circumstances which satisfy the election official that the voter is the person depicted in the photograph so long as the name still bears substantial similarity to the voter's name on the Precinct Voter Registration List and all variations are explained;
- (5) If the variation is due to a change in the voter's name and the name reflected in the Precinct Voter Registration List is the voter's old name, the voter should only be issued a ballot after the voter completes a voter registration application form for the purpose of updating the voter's information;
- (6) If the election official determines that the photo identification presented does not depict the voter or the name of the voter in the Present Voter Registration List is insufficiently similar to the name appearing on the photo identification, the question of whether the voter is permitted to cast a regular ballot shall be referred to the election judge of that polling site who shall resolve any marginal cases of identity in favor of the voter; and
- (7) If the election judge agrees that the photo identification does not depict the voter or that the name that appears on the photo identification is insufficiently similar to the name on the Precinct Voter Registration List, the voter will have failed to verify his or her voter registration and the poll worker shall offer the voter a provisional ballot.

(c) The election judge at any polling site is the election official who is in charge of that polling site regardless of the title used locally to reference this election official.

§ 804 Additional Identification Requirement for Certain First-Time Voters

Certain first-time voters who register by mail and who, when registering to vote do not provide the required identification documentation, will be flagged on the Precinct Voter Registration List for additional identification documentation when voting at the polls during early voting, on election day, or by voting using an absentee ballot. A flagged voter who presents a valid photo identification that is also current (i.e., not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid photo identification that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter must also show a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.⁷

§ 805 Failure to Verify Voter Registration or Present other Required Documentation at the Polls

- (a) A person voting at the polls during early voting or on election day who did not verify their voter registration or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide documentation of residency from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.⁸
- (b) A first-time voter who registered by mail who did not present the additional identification, if required under §803, shall be offered a provisional ballot.⁹

§ 806 Identification Required When Voting Absentee

- (a) The absentee voter must submit verification of their voter registration when they return their absentee ballot to the clerk's office.¹⁰ A photocopy of any document that qualifies as photo identification under these rules shall be sufficient to satisfy the photo identification requirement when verifying the voter's registration.
- (b) If a resident of a long-term or residential care facility licensed by the State of Arkansas does not submit photo identification in order to verify their voter registration, that resident's ballot will still be counted as a regular ballot if the voter submits documentation of residency from the administrator of the facility attesting that the person is a resident of the facility.¹¹

⁷ A.C.A. § 7-5-201(e)

⁸ Ark. Const. amend. 51, §13(b)(2); A.C.A. § 7-5-305(a)(8)(B)

⁹ Ark. Const. amend. 51, §13(b)(6); A.C.A. § 7-5-201(e)

¹⁰ Ark. Const. amend. 51, §13(b)(3); A.C.A. § 7-5-323

¹¹ Ark. Const. amend. 51, §13(b)(3)(B)(iii)

(c) Active-duty members of the uniformed services and merchant marine voters and their spouses and dependents who are away from the county because of the active-duty status of a uniformed service or merchant marine member are exempt from the identification requirement for absentee ballots.¹²

(d) The ballot of a voter who failed to verify their voter registration and who is not otherwise entitled to have his or her absentee ballot counted without verification under this section shall be considered a provisional ballot.¹³

§ 807 Curing Provisional Ballots Created by the Failure to Verify the Voter's Registration

(a) Voters at the Polls

(1) A provisional ballot cast because a voter failed to verify their voter registration when voting at the polls during early voting or on election day shall be counted and included in the certified results of the election if:

(A) The voter's ballot is not successfully challenged for any other reason; and

(B) The voter subsequently verifies their voter registration to either the county clerk or the county board of election commissioners by noon on the Monday following the election.

(2) The voter may verify his or her voter registration to the county board by presenting photo identification at any meeting of the county board held before noon on the Monday following the election.

(3) The voter may verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

(b) Absentee Voters

(1) The ballot of an absentee voter that was made provisional for failure to verify that person's voter registration when returning his or her absentee ballot shall be counted and included in the certified results of the election if:

(A) The absentee voter's ballot is not found deficient for any other reason; and

(B) The absentee voter verifies his or her voter registration in person to either the county clerk or the county board of election commissioners by noon on the Monday following the election the voter's required identification.

¹² Ark. Const. amend. 51, §13(b)(3)(B)(i)-(ii)

¹³ Ark. Const. amend. 51, §13(b)(3)(A)

- (2) The absentee voter may verify his or her voter registration to the county board by presenting photo identification to the county board at any meeting of the county board held before noon on the Monday following the election.
- (3) The absentee voter may alternatively verify his voter registration to the county clerk by presenting the photo identification to the county clerk before noon on the Monday following the election.

§ 808 Assessment of Validity of Photo Identification Submitted Postelection

- (a) When verifying the voter registration of a voter who cast a provisional ballot at the poll or whose absentee ballot was deemed provisional based on the voter's failure to verify his or her voter registration, the county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, given reasonable allowances for changes in hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.
- (b) The county clerk or the county board verifying the voter's registration shall make a photocopy of the photo identification and retain the copy with the voter's provisional ballot envelope.

§809 County Clerk to Provide Verification of Voter Registration to Election Commission

If a voter verifies his or her voter registration to the county clerk after the election, the county clerk who conducts the verification shall provide the copy of the voter's photo identification to the county board before the county board certifies the election.

ARKANSAS STATE LIBRARY



Agency Certification Form For Depositing Rules At the Arkansas State Library



DOCUMENT SERVICES, ARKANSAS STATE LIBRARY
900 West Capitol Avenue, Suite 100
Little Rock, AR 72201
501-682-2550
aslib-govdocs@ade.arkansas.gov

For Office Use Only		
Classification Number:		
Name of Agency:		Division/Department/Office:
Contact Person:		Telephone:
Statutory Authority for Promulgating Rules:		
Title of Rule:		
Rule Status	Date Adopted by Agency	Effective Date
<small>(Use drop down to select different status)</small>	MM/DD/YYYY	10 Days After Filing Other: _____ <small>(if other, specify date)</small>
Rule above is proposed and will be replaced by final version		
Financial and/or Fiscal Impact Statement Attached		
<h3>Certification of Authorized Officer</h3> <p>I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.</p> <p>Signature: _____ Date: _____</p> <p>Title: _____</p>		

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT State Board of Election Commissioners

DIVISION N/A

PERSON COMPLETING THIS STATEMENT Daniel J. Shults, Director

TELEPHONE 501-682-1834 **FAX** 501-682-1782 **EMAIL:** Daniel.shults@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rules for the Verification of Voter Registration

- | | | |
|---|--------------|-------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact? | Yes | No X |
| 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? | Yes X | No |
| 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? | Yes X | No |

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
 Total	 <u>\$0.00</u>

Next Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
 Total	 <u>\$0.00</u>

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
Total	<u>\$0.00</u>

Next Fiscal Year

General Revenue	<u>\$0.00</u>
Federal Funds	<u>\$0.00</u>
Cash Funds	<u>\$0.00</u>
Special Revenue	<u>\$0.00</u>
Other (Identify)	<u>\$0.00</u>
Total	<u>\$0.00</u>

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ \$0.00

Next Fiscal Year

\$ \$0.00

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ \$0.00

Next Fiscal Year

\$ \$0.00

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes

No **X**

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.