

# ARKANSAS REGISTER

## Transmittal Sheet

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



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For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency State Board of Election Commissioners

Department \_\_\_\_\_

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### 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

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Date

**RULES ON  
POLL WATCHERS,  
VOTE CHALLENGES,  
AND  
PROVISIONAL  
VOTING**

**(Effective April 22, 2006; Revised May 7, 2022)**



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## Scope of Rules

These rules set forth the procedures for poll watchers, challenging votes, and for issuing, processing, and counting provisional ballots. These rules are in addition to and not a substitute for the laws of the State of Arkansas.

### § 901 Definitions

- (a) Absentee Ballot Processing Site – a place designated by the county board of election commissioners where election clerks for absentee ballots meet on election day or during the one-week period before election day for the purpose of processing absentee ballots.<sup>1</sup>
- (b) Ballot Style – a ballot’s combination of contests and issues to be voted upon that is unique to each precinct or part of a precinct.
- (c) Challenged Ballot Form – the applicable portions of a “provisional voter envelope” that are completed when a poll watcher challenges a voter, identifying the voter whose vote was challenged, the poll watcher, the reason for the challenge, the applicable provisional voter number from the list of provisional voters, poll, precinct, ballot style, and the date and time of the challenge under the signature of both the poll watcher and the challenged voter.
- (d) Counting Site – a location selected by the county board of election commissioners with respect to all elections for the processing and/or counting of votes.<sup>2</sup>
- (e) County Board of Election Commissioners – the three-member board in each of the 75 counties in this State responsible for conducting all elections within their respective county, including two members elected by the county committee of the majority party and one member elected by the county committee of the minority party or persons appointed by the state chair of either the majority or minority parties to fill a vacancy in that party’s position.<sup>3</sup>
- (f) Election Clerk – for the purpose of these rules, a person possessing the same qualifications as a poll worker who is designated by the county board of election commissioners to process, count, and canvass absentee ballots<sup>4</sup> under the supervision of the county board.
- (g)(1) Election Official - a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting.<sup>5</sup>

(2) Election Official - includes a person who serves as:

(A) A member of the county board of election commissioners;

(B) A person who is appointed by the county board of election commissioners to serve as:

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<sup>1</sup> A.C.A. §§ 7-5-414(a); 7-5-416(a)(1)

<sup>2</sup> A.C.A. § 7-1-101

<sup>3</sup> A.C.A. § 7-4-102(a)

<sup>4</sup> A.C.A. § 7-5-414

<sup>5</sup> A.C.A. § 7-1-101

- (i) an election coordinator;
- (ii) a person appointed to perform tasks related to the election which require the handling of ballots or other election materials or equipment;
- (iii) an election clerk;
- (iv) an election judge;
- (v) an election sheriff; or
- (vi) an absentee ballot clerk; or

(C) A person assigned by a county clerk to conduct early voting administered by the county clerk.

- (h) Electronic Poll Book – hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site. The functions of an electronic poll book may include voter lookup, voter verification, voter identification, precinct assignment, ballot assignment, a recording of when a voter presents himself or herself to an election official to request a ballot, and direction to the correct polling site. An electronic poll book may be used as the precinct voter registration list.<sup>6</sup>
- (i) Eligibility Affirmation – a written affirmation executed under penalty of perjury by a provisional voter in the presence of the poll worker at the poll stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote in that election.<sup>7</sup>
- (j) First-time Voter Registered by Mail – any registered voter, except those exempted by Arkansas Code Annotated § 7-5-201(e)(2), who has not previously voted in a federal election in the state and whose registration application arrived at the county clerk’s office or Secretary of State’s office by mail.<sup>8</sup> “First-time voters registered by mail” who do not provide identification when registering are flagged by the county clerk for the additional identification requirement. “First-time voters registered by mail” who provided a valid driver’s license number or the last four (4) digits of their social security number on their voter registration application form are considered as having provided identification if a state or local election official can match the driver’s license or social security number with an existing state identification record bearing the same number, name and date of birth as provided in the registration. Registration applications arriving in bulk by means other than the mail at the registrar’s office or delivered by leaders of voter registration drives are considered to have been delivered in person, not by mail, and are, therefore, not considered “first-time voters registered by mail” and not flagged by the county clerk for the additional identification requirement.
- (k) Polling Site – a location selected by the county board of election commissioners where votes are cast.<sup>9</sup>
- (l) Poll Watcher – any authorized representative of a candidate, any authorized representative of a group seeking passage or defeat of a measure on the ballot, and any authorized representative of a political party with a candidate on the ballot who is present at a polling site or an absentee

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<sup>6</sup> A.C.A. §§ 7-1-101; 7-5-107

<sup>7</sup> A.C.A. § 7-5-308

<sup>8</sup> A.C.A. §§ 7-1-101; 7-5-201(e)

<sup>9</sup> A.C.A. § 7-1-101

ballot processing site to observe and ascertain the identity of persons presenting themselves to vote at the polls or to observe and ascertain the identity of absentee voters for the purpose of challenging any voter in person or for the purpose of challenging any absentee vote. A candidate may be present at an absentee ballot processing site to observe and ascertain the identity of absentee voters for the purpose of challenging any absentee vote. A candidate or an authorized representative of a candidate or political party may also be present at all counting sites for the purpose of witnessing the counting of ballots by election officials. A candidate may be present in person during early voting only for the purpose of observing whether-votes are fairly and accurately cast.<sup>10</sup>

- (m) Poll Watcher Authorization Form – an affidavit, in the form specified by law, designating and authorizing a poll watcher. The “poll watcher authorization form” must be filed with the county clerk and a file-marked copy presented to an election official immediately upon entering the polling site, absentee ballot processing site, or counting site. Candidates in person at early voting, attending a counting site or an absentee ballot processing site must present identification, but are not required to present a Poll Watcher Authorization Form.<sup>11</sup>
- (n) Poll Worker – an election official designated by the county board of election commissioners to be an election clerk, election judge or election sheriff at a polling site.
- (o) Precinct – the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes.<sup>12</sup>
- (p) Precinct Voter Registration List – a computerized list provided by the county clerk and used by poll workers in each polling place for every election conducted in the state indicating the name and date of the election; identifying the precinct’s number and county in which located; and containing the name, address, and date of birth of each registered voter, including those who have been designated inactive, within the precinct with a space for each voter’s signature.<sup>13</sup> In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, sub-district, county, municipality, ward, and school zone in which each voter is qualified to vote. An electronic poll book may be used as the precinct voter registration list.<sup>14</sup>
- (q) Provisional Ballot – a ballot cast and/or considered by special procedures to record a vote when there is some question concerning a voter’s eligibility or compliance with certain constitutional and statutory requirements. Provisional ballots are counted upon verification of a voter’s eligibility or compliance with those legal requirements.<sup>15</sup>
- (r) Provisional Voter Envelope – an envelope used by poll watchers for voter challenges and by poll workers for voter qualification issues containing information relating to provisional voters, including a provisional voter’s eligibility affirmation, the reason for voting provisional, the ballot style voted, a space for the county clerk’s certification of the provisional voter’s registration status, and a space for the disposition of the provisional ballot upon review by the county board of election commissioners. The form for the “provisional voter envelope” is

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<sup>10</sup> A.C.A. §§ 7-5-312; 7-5-316(a); 7-5-413(d); 7-5-416(a)(4); 7-5-527(b); 7-5-615(a)

<sup>11</sup> A.C.A. § 7-5-312(d),(e)

<sup>12</sup> A.C.A. § 7-1-101

<sup>13</sup> A.C.A. § 7-5-107

<sup>14</sup> A.C.A. §§ 7-5-110; 7-5-107(a)(2)

<sup>15</sup> Ark. Const. amend. 51, §13; A.C.A. §§ 7-1-101; 7-5-304(c); 7-5-306(b); 7-5-308; 7-5-312(h); 7-5-412(b); 7-5-416(b)(1)(F)(iii); 7-5-417(a); 7-5-418(d)

determined by the State Board of Election Commissioners and approved in a public meeting. The CBEC shall ensure the information contained on the approved form appears on the provisional voter envelope.

- (s) Unverified Provisional Ballot – any ballot which has been cast as a provisional ballot due to the failure of a voter to verify his or her voter registration under Amendment 51, §13 when required to do so by law.
- (t) 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. Refer to SBEC Rules for the Verification of Voter Registration for additional information regarding this process and the meaning of photo identification as referred to in this process.<sup>16</sup>
- (u) General Provisional Ballot – A ballot that has been cast as a provisional ballot for any reason other than the voter was required to verify his or her voter registration under Amendment 51, §13 and failed to do so.

## **§ 902 Failure to Verify Voter Registration or Provide Voter Identification**

### **(a) Early Voting and Election Day Voting**

A person voting at the poll during early voting or on election day who did not verify his or her voter registration or, if a resident of a long-term care or residential care facility licensed by the state, did not provide documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot. However, a first-time voter who registered by mail and has been flagged as having to comply with additional identification requirements must only comply with the requirements of A.C.A. 7-5-201(e)(2).<sup>17</sup>

### **(b) Additional Identification Requirement for Flagged First-Time Voters Who Registered by Mail**

A first-time voter voting at the polls during early voting or on election day who was flagged on the precinct voter registration list for compliance with the additional identification requirement and who did not provide required identification shall be offered a provisional ballot.<sup>18</sup> Voters that fall into this category are not required to verify their voter registration under Amendment 51 §13.<sup>19</sup> Rather, the voter must provide current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows the name and address of the voter in order to cast a regular ballot. If these voters fail to provide one of the forms of identification, they will be required to vote a provisional ballot.<sup>20</sup>

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<sup>16</sup> A.C.A. § 7-1-101(38)

<sup>17</sup> Ark. Const. amend. 51, §13; A.C.A. § 7-5-201(e)

<sup>18</sup> A.C.A. §§ 7-5-201(e)(1)(A); 7-5-305(8)(B)(iii)

<sup>19</sup> Ark. Const. amend. 51, §13(b)(6)

<sup>20</sup> A.C.A. § 7-5-201(e); 7-5-305(8)(B)(iii)

(c) Absentee Voters Generally

The absentee ballot of a voter who fails to verify his or her voter registration under the requirements of Amendment 51 by submitting a copy of the required document or identification card pursuant to SBEC Rules for the Verification of Voter Registration shall be considered as a provisional ballot.<sup>21</sup>

(d) Absentee Voters that are Flagged First-Time Voters Who Registered by Mail

The absentee ballot of a first-time voter whose name is flagged on the precinct voter registration list for additional identification and who does not submit with the absentee ballot 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 shall be considered as a provisional ballot.<sup>22</sup>

### § 903 Precinct Voter Registration List

(a) Voter's Name Missing

When a voter provides his or her name, address, and date of birth to a poll worker, and the voter's name is not on the precinct voter registration list, the poll worker must:

- (1) Contact the county clerk's office to verify the voter's registration status, and
- (2) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the poll worker that the voter is listed as a registered voter of the precinct),<sup>23</sup> or
- (3) Allow the voter to cast a **REGULAR** ballot (if the county clerk informs the poll worker that the voter transferred his or her registration from another county not later than four (4) days before the election and that the voter is at the correct poll in the new county of registration),<sup>24</sup> or
- (4) Send the voter to his or her correct polling site where the voter may cast a **REGULAR** ballot (if the county clerk informs the poll worker that the voter is listed as a registered voter at a different precinct in the county), or
- (5) Allow the voter to cast a **PROVISIONAL** ballot at the disputed polling site (if the county clerk informs the poll worker that the voter is listed as a registered voter at a different precinct in the county, but the voter insists that he or she is at the correct polling site), or
- (6) Allow the voter to cast a **PROVISIONAL** ballot (if the county clerk is unable to verify the voter's registration, but the voter contends that he or she is both registered in the precinct in which he or she desires to vote and is eligible to vote).<sup>25</sup>

(b) "Voted Absentee" Notation

- (1) Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration record and the precinct voter

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<sup>21</sup> Ark. Const. amend. 51, §13(b)(3)

<sup>22</sup> A.C.A. § 7-5-201(e)(1)(B)

<sup>23</sup> A.C.A. § 7-5-306(a)

<sup>24</sup> Ark. Const. amend. 51, §10

<sup>25</sup> A.C.A. §§ 7-5-306(b); 7-5-418(d)



registration list to indicate that an absentee ballot has been delivered to the voter under the procedures in this section.<sup>26</sup>

(2) Any person to whom an absentee ballot is delivered, according to the precinct voter registration list, but who chooses to vote by early voting or to vote at his or her polling site on election day, shall be permitted to cast a provisional ballot at the poll.<sup>27</sup>

(c) Marked as Having Already Voted In-Person

(1) If the precinct voter registration list indicates that a voter has already been marked as having voted in person in that election and the voter asserts, they have not voted in that election then the poll worker shall permit the voter to cast a provisional ballot.

(2) In the event a provisional ballot is cast due to a voter having been marked as already voted in the precinct voter registration list, the county board of election commissioners shall report this occurrence to the State Board of Election Commissioners within 30 days of the election.

(3) The county board of election commissioners should count the provisional ballot cast under this section unless:

(A) The county board of election commissioners determines that the voter cast more than one ballot in that election: or

(B) The county board of election commissioners is otherwise prohibited from counting the provisional ballot under this rule.

## **§ 904 Poll Watchers**

(a) Official Recognition/Credentials

(1) Poll watchers representing a candidate, group, or political party must file a “poll watcher authorization form” with the county clerk of the county in which the polling site, absentee ballot processing site, or counting site is located and present a file-marked copy of the valid form to the election officials immediately upon entering the polling site, absentee ballot processing site, and/or counting site.<sup>28</sup>

(2) A poll watcher may list multiple sites on one poll watcher authorization form or write the word “all” in lieu of listing each polling site, if the poll watcher intends to be a poll watcher at multiple polling sites in the county.

(3) A candidate may not be present in person at the polls on election day as a poll watcher. A candidate may be present in person as a poll watcher during the counting and tabulation of ballots and the processing of absentee ballots.<sup>29</sup>

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<sup>26</sup> A.C.A. § 7-5-409(g)

<sup>27</sup> A.C.A. §§ 7-5-201(f); 7-5-305(a)(11); 7-5-411(b)

<sup>28</sup> A.C.A. § 7-5-312(d)

<sup>29</sup> A.C.A. § 7-5-312(a)(1),(e)

(4) A candidate may be present in person at early voting locations only for the purpose of observing whether or not votes are fairly and accurately cast, but a candidate may not challenge voters as a poll watcher during early voting and may speak only to a designated poll worker.<sup>30</sup> A candidate who is present in person at an early voting location for the purpose of observing may not speak to voters or disrupt the orderly conduct of the election. A candidate who is a public official and who is present in person at an early voting location for the purpose of observing shall not wear on his or her person any uniform, badge, or other apparel or equipment that identifies the candidate as a public official.

(5) A candidate who is present in person at an early voting location for the purpose of observing or during the counting and tabulation of ballots and the processing of absentee ballots as a poll watcher is not required to present a “poll watcher authorization form” but must present some form of identification to an election official immediately upon entering the site.

(6) Only one (1) authorized poll watcher per candidate, group, or party at any one (1) time may be officially recognized as a poll watcher at each location within a polling site where voters identify themselves to election officials and at each location within the absentee ballot processing site where absentee ballots are processed.<sup>31</sup>

(7) Only one (1) authorized poll watcher per candidate or party at any one (1) time may be officially recognized as a poll watcher at the counting of ballots at the polling site, central counting location, or absentee ballot counting location.<sup>32</sup>

(8) Poll watcher rights and responsibilities must be posted in plain view at each polling site, absentee ballot processing site, and counting site.<sup>33</sup>

(b) Challenges

(1) Authorized poll watchers who are officially recognized at a polling site may stand close enough to the place where voters check in to vote so as to hear the voter’s name and may challenge an ineligible voter upon notifying a poll worker of the challenge before the voter signs the precinct voter registration list and upon completing a “challenged ballot form.”<sup>34</sup>

(2) A poll watcher may challenge a voter only on the grounds that the voter is not eligible to vote in the precinct or that the voter has already voted in the election.<sup>35</sup>

(3) When election clerks appointed by the county election commission to process, count, and canvass absentee ballots read the name and voting precinct of an absentee voter, any qualified poll watcher may challenge the vote in the same manner provided by law for personal voting challenges, and the election clerks must consider the absentee ballot as a provisional ballot.<sup>36</sup>

(c) Inspection of Absentee Voter Statements and Ballots

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<sup>30</sup> A.C.A. § 7-5-413(d)

<sup>31</sup> A.C.A. § 7-5-312(b),(e)

<sup>32</sup> A.C.A. § 7-5-312(c),(e)

<sup>33</sup> A.C.A. § 7-5-312(f)

<sup>34</sup> A.C.A. § 7-5-312(e),(g),(h)

<sup>35</sup> A.C.A. § 7-5-312(g)

<sup>36</sup> A.C.A. §§ 7-5-414; 7-5-417(a)

(1)(A) The poll watcher shall be allowed to inspect a voter statement during the canvassing and counting of absentee ballots.<sup>37</sup> The canvassing process shall be conducted so that a poll watcher is able to generally view the paperwork as it is being processed. Election officials must require the poll watcher to stand or otherwise be in a position permitting them to hear the information read aloud and generally view the documents. The poll watchers are not required to be able to read the full text of every document and may be required to remain at a sufficient distance to ensure the integrity of the canvassing process.

(B) Poll watchers may not be permitted closer than three (3) feet from the canvassing process, unless they are inspecting a voter statement, and may not be required to be more than six (6) feet from the canvassing process.

(C) At no time shall a poll watcher have physical possession of an absentee ballot whether it is within the ballot secrecy envelope or whether it has been removed for counting.

(D) If a poll watcher requests to conduct an inspection of a voter statement which they believe may be subject to challenge, the poll watcher shall be allowed to view the voter statement in the presence of the election officials but shall not be permitted to remove the voter statement from the canvassing area.

(E) A poll watcher may not individually review every absentee voter statement and shall not use the ability to inspect a document in bad faith to impede the canvassing process.

(F)(i) The county board of election commissioners may, by unanimous vote of those members present, suspend the ability of a poll watcher to individually review absentee voter statements if that poll watcher:

(a) has requested to review more than thirty (30) absentee voter statements in less than an hour during a day of canvassing; and

(b) has been determined by the county board of election commissioners to be acting in bad faith so that the inspections operate to obstruct the canvassing process.

(ii) This shall not prevent the candidate, party, or group from appointing a substitute poll watcher, who shall not be subject to the suspension.

(2)(A) The county board of election commissioners, and those subordinate officials appointed to canvass and count ballots, shall ensure that the ballots are secured in a box or other containment device when the ballots are placed into storage and that the ballots are only removed from the storage or containment device at a time and location when and where poll watchers may be present.

(B) Poll Watchers shall be permitted to view the entire process of counting ballots from the time the ballots are removed from storage in a secured container until the time the ballots are returned to storage in a secured container. Poll Watchers are not permitted to access, touch, or otherwise take physical possession of a ballot.<sup>38</sup>

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<sup>37</sup> A.C.A. § 25-19-105(b)(27)(B)

<sup>38</sup> A.C.A. § 7-5-615(b)

(C) Poll watchers shall be allowed to inspect the process of counting ballots.<sup>39</sup> If a poll watcher requests to view a ballot during the counting process, the election official conducting the counting process shall place the ballot in view of the poll watcher while retaining physical custody of the ballot. The poll watcher shall not manipulate or otherwise take physical possession of the ballot.

### **§ 905 Court-Ordered Extension**

A person who votes in an election because of a federal or state court order or any other order extending the time established for closing the polls may vote in the election only by casting a provisional ballot. The provisional ballots cast because of the order must be separated and held apart from other provisional ballots cast by provisional voters not affected by the order.<sup>40</sup>

### **§ 906 Voting a Provisional Ballot**

(a) Provisional ballots cast at the polls during early voting or on election day for reasons other than the failure to verify voter registration shall be handled as follows:

- (1) If as a result of a poll watcher challenge, the poll watcher must notify a poll worker of the challenge before the voter signs the precinct voter registration list and must complete a “challenged ballot form,” and a poll worker must inform the voter that his or her ballot is being challenged<sup>41</sup>
- (2) If as a result of failure to meet an identification requirement of a first-time voter who did not provide a copy of his or her photo identification or otherwise satisfy the requirements of 7-5-201, when that voter registered to vote, a poll worker must inform the voter of the reason the voter is not allowed to cast a regular ballot.
- (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and in the presence of the poll worker stating that he or she is both a registered voter in the precinct in which he or she desires to vote and eligible to vote in the election.<sup>42</sup>
- (4) If the provisional ballot is cast on a preprinted paper ballot, the poll worker shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided.<sup>43</sup>
- (5) The provisional voter shall mark his or her ballot.<sup>44</sup>
- (6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope (nothing else goes in this envelope).<sup>45</sup>
- (7) The provisional voter shall then place the sealed ballot secrecy envelope marked “Provisional Ballot,” containing his or her voted provisional ballot in a “provisional voter envelope”, seal it, and give it to the poll worker.<sup>46</sup>
- (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a).<sup>47</sup>

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<sup>39</sup> A.C.A. § 25-19-105(b)(27)(B)

<sup>40</sup> A.C.A. § 7-5-304(c)

<sup>41</sup> A.C.A. §§ 7-5-308(a)(1); 7-5-312(e),(h)

<sup>42</sup> A.C.A. § 7-5-308(a)(2)

<sup>43</sup> A.C.A. § 7-5-308(a)(3)

<sup>44</sup> A.C.A. § 7-5-308(a)(4)

<sup>45</sup> A.C.A. § 7-5-308(a)(5)

<sup>46</sup> A.C.A. § 7-5-308(a)(6)

<sup>47</sup> A.C.A. § 7-5-308(a)(7)

- (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.<sup>48</sup>
  - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots<sup>49</sup> and forward all sealed “provisional voter envelopes” in a secured container provided for that purpose to the county board of election commissioners after the polls close.
  - (11) The county board of election commissioners will forward, in a secured container, the sealed “provisional voter envelopes” to the county clerk’s office for certification of each provisional voter’s registration status.
  - (12) Upon completion of the certification, the county clerk returns the secured container of sealed “provisional voter envelopes” to the county board for determination before certification of the election results as to whether the provisional ballots are valid and should be counted.<sup>50</sup>
- (b) Provisional ballots cast at the polls during early voting or on election day because a voter was required to verify his or her voter registration and failed to do so, shall be handled as follows:
- (1) The poll worker shall indicate on the precinct voter registration list that the voter did not present a required document or identification card.<sup>51</sup>
  - (2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election.<sup>52</sup>
  - (3) The provisional voter must execute a written eligibility affirmation under penalty of perjury and in the presence of the poll worker stating that he or she is both a registered voter in the precinct in which he or she desires to vote and eligible to vote in the election.<sup>53</sup>
  - (4) If the provisional ballot is cast on a preprinted paper ballot, the poll worker shall initial the back of the ballot, remove the ballot stub from the provisional ballot, and place the stub in the stub box provided.<sup>54</sup>
  - (5) The provisional voter shall mark his or her ballot.<sup>55</sup>
  - (6) The provisional voter shall place his or her voted ballot in a ballot secrecy envelope marked “PROVISIONAL BALLOT” and seal the envelope.<sup>56</sup>
  - (7) The provisional voter shall then place the sealed ballot secrecy envelope marked “Provisional Ballot,” containing his or her voted provisional ballot in a “provisional voter envelope” and seal the envelope.
  - (8) The poll worker must provide the provisional voter a copy of the notice prescribed in §906(a)<sup>57</sup> and ensure that the provisional ballot envelope is sealed.
  - (9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot.<sup>58</sup>
  - (10) The poll worker must preserve, secure, and separate all provisional ballots from the remaining ballots<sup>59</sup> and forward all sealed “provisional voter envelopes” in a secured

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<sup>48</sup> A.C.A. § 7-5-308(a)(8)

<sup>49</sup> A.C.A. § 7-5-308(c)

<sup>50</sup> A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

<sup>51</sup> A.C.A. § 7-5-308(b)(1)

<sup>52</sup> A.C.A. § 7-5-308(b)(2)

<sup>53</sup> A.C.A. § 7-5-308(b)(3)

<sup>54</sup> A.C.A. § 7-5-308(b)(5)

<sup>55</sup> A.C.A. § 7-5-308(b)(6)

<sup>56</sup> A.C.A. § 7-5-308(b)(7)

<sup>57</sup> A.C.A. § 7-5-308(b)(9)

<sup>58</sup> A.C.A. § 7-5-308(b)(10)

<sup>59</sup> A.C.A. § 7-5-308(c)

container provided for that purpose to the county board of election commissioners after the polls close.

- (11) The county board of election commissioners will forward, in a secured container, the sealed “provisional voter envelopes” to the county clerk’s office for certification of each provisional voters’ registration status.
- (12) Upon completion of the certification, the county clerk returns the secured container of sealed “provisional voter envelopes” to the county board for determination before certification of the election results as to whether the provisional ballots are valid and should be counted.<sup>60</sup>

(c) For an absentee ballot which becomes a provisional ballot, the absentee ballot canvassing official shall place the absentee ballot materials in a provisional voter envelope and should check the “Other” box and write the word “Absentee” next to the box marked “Other” on the form provided on the provisional ballot envelope.

(d) The absentee ballot canvassing official should also indicate the reason for making the absentee ballot provisional on the form provided on the provisional ballot envelope. When the absentee voter’s voter statement is inconsistent with the absentee ballot return envelope regarding the identity of a bearer or agent the absentee ballot canvassing official should write “Inconsistent Bearer [or Agent] – Envelope/Statement” after the word “Absentee” next to the “Other” box on the provisional ballot envelope. When the absentee voter’s voter statement is inconsistent with the absentee ballot application regarding the identity of a bearer the absentee ballot canvassing official should write “Inconsistent Bearer – Application/Statement” after the word “Absentee” next to the “Other” box on the provisional ballot envelope.

(e) When the absentee voter’s voter statement is inconsistent with the absentee ballot application the voter’s ballot shall not be counted.<sup>61</sup>

## **§ 907 Notice to Provisional Voters**

(a) Whenever a person casts a provisional ballot at the polls during early voting or on election day, the poll worker must provide the voter a copy of a notice that includes the following information:

- (1) That the provisional voter will be notified by first class mail whether his or her vote was counted and the reason if not counted.<sup>62</sup>
- (2) The address, telephone number, and regular office hours of the county clerk;
- (3) An explanation of the provisional voting process;
- (4) An explanation of how a voter who cast a provisional ballot because the voter failed to verify his or her voter registration can return to the clerk or the county board to verify their voter registration before Monday at noon following the election.
- (5) The date, time, and address of a hearing for the voter if the provisional ballot is rejected.

(b) The system that the Secretary of State has established for provisional voters to be notified whether their ballot was counted requires written notice mailed first class to the provisional voter by the county board of election commissioners. Sample notices may be obtained from the Secretary of State’s office. The notice shall include the following:

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<sup>60</sup> A.C.A. §§ 7-5-308(e)(1); 7-5-417(c)

<sup>61</sup> A.C.A. § 7-5-416(b)(1)(F)(ii)

<sup>62</sup> A.C.A. § 7-5-902

- (1) A statement whether the provisional ballot was counted or was not counted;
- (2) If the provisional ballot was preliminarily determined to be invalid, the reason the ballot was not counted; and
- (3) The date, time, and address of a hearing by the county board regarding the voter's eligibility to vote in the election.

(c) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.<sup>63</sup>

(d) If the county board determines that a provisional ballot or an absentee ballot which has been made provisional will not be counted, the board must send written notice to the voter who cast the ballot and state the reason or reasons the ballot was not counted.<sup>64</sup>

### **§ 908 Review of Provisional Ballots**

(a) The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.<sup>65</sup>

(1) Based upon its examination of the "Provisional Voter Eligibility Affirmation," the "Challenged Ballot Form," if applicable, the "Reason for Voting Provisional," the county clerk's certification, and any additional information available, the county board shall make a determination of whether the provisional ballot was cast by an eligible voter and was the correct ballot for the precinct of the voter's residence according to the precinct listed on the voter's eligibility affirmation or the registration address of the absentee voter.<sup>66</sup>

(2) If the county board makes an initial determination that the provisional ballot will not be counted, the county board must notify the provisional voter of the reason for rejecting the provisional voter's ballot and of the date, time, and place for a hearing and other information as provided in these rules before a final determination is made.<sup>67</sup>

(b) Procedures for the review of General Provisional Ballots

(1) When reviewing the provisional ballot cast at the polls by a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or voting, the county board should not base its initial determination of whether to count the ballot solely on the provisional voter's failure to meet the additional identification requirement. The provisional ballot should be rejected if there is a determination, independent of the failure to meet the additional identification requirement that the person who voted is not eligible to vote in the precinct.

(2) When reviewing the provisional absentee ballot of a flagged first-time voter who registered by mail and did not meet the additional identification requirement when registering or voting, the county board should not base its initial determination of whether to count the ballot solely on the provisional voter's failure to meet the identification requirement. The provisional ballot of a flagged first-time voter should be rejected if the voter failed to provide the required

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<sup>63</sup> A.C.A. § 7-5-308(d)(3)

<sup>64</sup> A.C.A. § 7-5-902

<sup>65</sup> A.C.A. § 7-5-308(e)(1)

<sup>66</sup> A.C.A. § 7-5-308(e)(2)

<sup>67</sup> *Dotson v. Richey*, 211 Ark. 789 (1947)

identification and there is a determination independent of the failure to meet the identification requirement that the person who voted is not eligible to vote in the precinct or that the person failed to meet any of the other statutory requirements that would cause a voter's absentee ballot to be rejected.<sup>68</sup>

(3) When reviewing the provisional ballot of any person who was delivered an absentee ballot according to the precinct voter registration list, but then chose to cast a provisional ballot at an early voting or election day polling site, the county board shall:

(A) Count the voter's absentee ballot rather than the provisional ballot cast at the polling site, if the absentee ballot was returned and processed for counting on election day before the time of counting provisional ballots, or

(B) Count the voter's provisional ballot cast at the polling site, if the voter's absentee ballot was not returned or was not processed for counting on election day by the time of counting provisional ballots.

(c) Procedures for the review of all Unverified Provisional Ballots

(1) The county board shall review the unverified provisional ballots after 12:00 noon on the Monday following the election in order to determine whether the persons who cast each ballot returned to either the county clerk or the county board in order to verify his or her voter registration. If, at this time, the board determines that the voter who cast the unverified provisional ballot did return to the county board or county clerk before 12:00 noon on the Monday following the election and the county board determines there are no other grounds that would cause the ballot not to be counted then the ballot shall be counted.<sup>69</sup>

(2) If the county board determined that the voter who cast an unverified provisional ballot failed to return to the county clerk or county board before 12:00 noon on the Monday following the election to verify his or her voter registration, that ballot shall not be counted.<sup>70</sup>

(3) The county board, through at least one of its members, must attest to the disposition of each provisional ballot, stating:

(A) Whether or not the ballot was counted, and

(B) If rejected, the reason for not counting the ballot.

(d) The county board shall notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

## **§ 909 Hearing**

(a) Provisional voters who cast a general provisional ballot shall be allowed to appear before the county board to contest the county board's initial decision to disqualify their ballots and to present evidence that they were registered to vote and voted the correct ballot for the precinct of their residence. (Provisional voters who cast unverified provisional ballot must satisfy the requirements of Amendment 51 and this rule in order to have their ballot counted.)

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<sup>68</sup> A.C.A. §§ 7-5-412(a)(2), (d); 7-5-308 (e)(2)

<sup>69</sup> Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)

<sup>70</sup> Ark. Const. amend. 51, §13(b); A.C.A. § 7-5-308(f)



- (b) If these provisional voters do not appear for a hearing or otherwise provide satisfactory evidence of their registration, then the ballot shall not be counted.
- (c) The commission then completes the election commission's portion of the list of provisional voter's form, and all records are preserved in accordance with the laws governing preservation of ballots and election materials.
- (d) The process of hearing and final decision must be completed by the deadline to certify the election results.

### **§ 910 Counting Provisional Ballots**

(a) Unless enjoined by a court of competent jurisdiction, a general provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as an unverified provisional ballot and:

- (1) It is cast by a registered voter and is the correct ballot for the precinct of the voter's residence according to the precinct listed on the voter's eligibility affirmation; or
- (2) It is an absentee ballot, and the county board determines that the voter is eligible to vote in the precinct and has met all other statutory requirements necessary for an absentee ballot to be counted.<sup>71</sup>

(b) Unless enjoined by a court of competent jurisdiction, an unverified provisional ballot shall be counted if no other grounds exist that would cause the ballot to not be counted as a general provisional ballot and the voter returns to the county clerk or county board of election commissioners before 12:00 noon on the Monday following the election and verified his or her voter registration.<sup>72</sup>

(c) In counting provisional ballots, the county board must ensure the secrecy of the ballot pursuant to Amendment 81 of the Arkansas Constitution.

(d) Provisional ballots are counted as follows:

- (1) the commission, through at least one of its members, either completes the election commission's portion of the list of provisional voters form from each precinct or attests to a comprehensive list that shows the disposition of each provisional ballot in the election,
- (2) an election official opens the outer "provisional voter envelope" for those on the list marked to be counted,
- (3) the election official removes the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot,
- (4) the election official places the sealed inner ballot secrecy envelope marked "PROVISIONAL BALLOT" containing the provisional voter's voted ballot in a ballot box provided for that purpose,
- (5) when all the outer "provisional voter envelopes" have been opened and all of the sealed inner ballot secrecy envelopes are placed in the ballot box, the election official shakes the ballot box thoroughly to mix the sealed envelopes containing the provisional ballots,

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<sup>71</sup> A.C.A. § 7-5-308(e)(2)

<sup>72</sup> Ark. Const. amend. 51, §13(b)

- (6) the ballot box is then opened, the secrecy envelopes containing the voted provisional ballot opened, and the provisional ballots canvassed and counted, and
- (7) all records are preserved in accordance with the laws governing preservation of ballots and election materials.

### **§ 911 Prosecuting Attorney**

(a) Following each election, the county board of election commissioners may review the precinct voter registration lists for voters not providing identification at the polls and forward the information to the prosecuting attorney for investigation of possible voter fraud.<sup>73</sup>

(b) If, upon examination of any provisional ballot, the county board suspects that a violation of election laws has occurred, the county board may refer the matter to the prosecuting attorney for that county.<sup>74</sup>

### **§ 912 Preliminary and Unofficial Results**

The processing and counting of provisional ballots, including hearings, shall not delay the declaration of preliminary and unofficial results required by Arkansas Code Annotated § 7-5-701. When reporting preliminary and unofficial results, the county board of election commissioners should also report the number of uncounted provisional ballots pending review and the number of outstanding overseas absentee ballots.

### **§ 913 Official Certified Results**

The official certified results of the election shall include the votes cast on all provisional ballots that were determined by the county board of election commissioners to be valid.

### **§ 914 Forms Utilized Under this Rule**

(a) The “provisional voter envelope” utilized under this rule shall be the most current version of the provisional voter envelope approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(b) The “List of Provisional Voters” utilized under this rule shall be the most current version of the list of provisional voters approved for use by an affirmative vote of the State Board of Election Commissioners and available on its website.

(c) The “poll watcher authorization form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a version of this form which is formatted for easy printing and utilization. The reverse side of the poll watcher authorization form is required to contain the “poll watcher rights and responsibility form.” The most current version of this form is available on the agency’s website.

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<sup>73</sup> A.C.A. § 7-5-305(a)(8)(B)(iv)

<sup>74</sup> A.C.A. § 7-5-308(g)

(d) The “poll watcher rights and responsibility form” is established by state statute and must reflect the requirements of A.C.A. §7-5-312. The State Board of Election Commissioners has created a version of this form which is formatted for easy printing and utilization. The most current version of this form is available on the agency’s website.

# ARKANSAS STATE LIBRARY



## Agency Certification Form For Depositing Rules At the Arkansas State Library



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<b>Name of Agency:</b>		<b>Division/Department/Office:</b>
<b>Contact Person:</b>		<b>Telephone:</b>
<b>Statutory Authority for Promulgating Rules:</b>		
<b>Title of Rule:</b>		
<b>Rule Status</b>	<b>Date Adopted by Agency</b>	<b>Effective Date</b>
<small>(Use drop down to select different status)</small>	MM/DD/YYYY	<b>10 Days After Filing</b>  <b>Other:</b> _____ <small>(if other, specify date)</small>
<b>Rule above is proposed and will be replaced by final version</b>		
<b>Financial and/or Fiscal Impact Statement Attached</b>		
<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><b>Signature:</b> _____ <b>Date:</b> _____</p> <p><b>Title:</b> _____</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 on Poll Watchers, Vote Challenges, and Provisional Voting

- |   |              |             |
|---|--------------|-------------|
| 1. Does this proposed, amended, or repealed rule have a financial impact?   | Yes          | No <b>X</b> |
| 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 <b>X</b> | 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 <b>X</b> | 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>

**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 \$0.00

Total \$0.00

- (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.