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Proposed Rulemaking

Title

Promulgated by:
State Board of Election Commissioners

Title 7. Elections

Chapter III. State Board of Election Commissioners

Subchapter F. Voting

Part 91. Rules on Poll Watchers, Vote Challenges, and Provisional Voting

Subpart 1. Generally

7 CAR § 91-101. Scope.

(a) This part sets forth the procedures for:

- (1) Poll watchers;
- (2) Challenging votes; and
- (3) Issuing, processing, and counting provisional ballots.

(b) This part is in addition to, and not a substitute for, the laws of the State of Arkansas.

7 CAR § 91-102. Definitions.

As used in this part:

(1) "Absentee ballot processing site" means 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;

(2) "Ballot style" means a ballot's combination of contests and issues to be voted upon that is unique to each precinct or part of a precinct;

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(3) "Challenged ballot form" means the applicable portions of a provisional voter envelope that are completed when a poll watcher challenges a voter, identifying the:

- (A) Voter whose vote was challenged;
- (B) Poll watcher;
- (C) Reason for the challenge;
- (D) Applicable provisional voter number from the list of provisional voters;
- (E) Poll;
- (F) Precinct;
- (G) Ballot style; and
- (H) Date and time of the challenge under the signature of both the poll watcher and the challenged voter;

(4) "Counting site" means a location selected by the county board of election commissioners with respect to all elections for the processing and/or counting of votes;

(5) "County board of election commissioners" means the three-member board in each of the seventy-five (75) counties in this state responsible for conducting all elections within its respective county, including:

- (A) Two (2) members elected by the county committee of the majority party and one (1) member elected by the county committee of the minority party; or
- (B) Persons appointed by the state chair of either the majority or minority parties to fill a vacancy in that party's position;

(6) "Election clerk" means, for the purpose of this part, 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 under the supervision of the county board of election commissioners;

(7)(A) "Election official" means a person:

- (i) Who is a member of the county board of election commissioners;
- (ii) Who performs election coordinator duties;
- (iii) Who is a poll worker designated by a county board of election commissioners to be:

- (a)* An election clerk;
- (b)* An election judge;
- (c)* An election sheriff; or
- (d)* A deputy county clerk; or

(iv) Assigned by a county clerk to conduct early voting.

(B) "Election official" includes a person:

- (i) Who serves as a member of the county board of election commissioners;
- (ii) Who is appointed by the county board of election commissioners to serve as:

- (a)* An election coordinator;
- (b)* A person appointed to perform tasks related to the election that require the handling of ballots or other election materials or equipment;
- (c)* An election clerk;
- (d)* An election judge;
- (e)* An election sheriff; or
- (f)* An absentee ballot clerk; or

(iii) Assigned by a county clerk to conduct early voting administered by the county clerk;

(8)(A) "Electronic poll book" means 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.

(B) The functions of an electronic poll book may include:

- (i) Voter lookup;
- (ii) Voter verification;
- (iii) Voter identification;
- (iv) Precinct assignment;
- (v) Ballot assignment;
- (vi) A recording of when a voter presents himself or herself to an

election official to request a ballot; and

(vii) Directions to the correct polling site.

(C) An electronic poll book may be used as the precinct voter registration list;

(9) "Eligibility affirmation" means 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) A registered voter in the precinct in which he or she desires to vote; and

(B) Eligible to vote in that election;

(10)(A) "First-time voter registered by mail" means any registered voter, except those exempted by Arkansas Code § 7-5-201(e)(2):

(i) Who has not previously voted in a federal election in the state; and

(ii) Whose registration application arrived at the county clerk's office or Secretary of State's office by mail.

(B) First-time voters registered by mail who do not provide identification when registering are flagged by the county clerk for the additional identification requirement.

(C) 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.

(D) 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:

(i) Considered first-time voters registered by mail; and

(ii) Flagged by the county clerk for the additional identification requirement;

(11) "General provisional ballot" means a ballot that has been cast as a provisional ballot for any reason other than that the voter was required to verify his or her voter registration under Arkansas Constitution, Amendment 51, § 13, and failed to do so;

(12)(A) "Poll watcher" means 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 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:

- (i) Voter in person; or
- (ii) Absentee vote.

(B) 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.

(C) 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.

(D) A candidate may be present in person during early voting only for the purpose of observing whether votes are fairly and accurately cast;

(13)(A) "Poll watcher authorization form" means an affidavit, in the form specified by law, designating and authorizing a poll watcher.

(B) 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:

- (i) Polling site;
- (ii) Absentee ballot processing site; or
- (iii) Counting site.

(C) 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;

(14) "Poll worker" means 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;

(15) "Polling site" means a location selected by the county board of election commissioners where votes are cast;

(16) "Precinct" means the geographical boundary lines dividing a county, municipality, township, or school district for voting purposes;

(17)(A) "Precinct voter registration list" means a computerized list provided by the county clerk and used by poll workers in each polling place for every election conducted in the state:

(i) Indicating the name and date of the election;

(ii) Identifying the precinct's number and county in which located;

and

(iii) 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.

(B) In any precinct with more than one (1) ballot style, the precinct voter registration list must also identify the district, subdistrict, county, municipality, ward, and school zone in which each voter is qualified to vote.

(C) An electronic poll book may be used as the precinct voter registration list;

(18)(A) "Provisional ballot" means 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.

(B) Provisional ballots are counted upon verification of a voter's eligibility or compliance with those legal requirements;

(19)(A) "Provisional voter envelope" means an envelope used by poll watchers for voter challenges and by poll workers for voter qualification issues containing information relating to provisional voters, including:

- (i) A provisional voter's eligibility affirmation;
- (ii) The reason for voting provisional;
- (iii) The ballot style voted;
- (iv) A space for the county clerk's certification of the provisional voter's registration status; and
- (v) A space for the disposition of the provisional ballot upon review by the county board of election commissioners.

(B) The form for the provisional voter envelope is:

- (i) Determined by the State Board of Election Commissioners; and
- (ii) Approved in a public meeting.

(C) The CBEC shall ensure the information contained on the approved form appears on the provisional voter envelope;

(20) "Unverified provisional ballot" means any ballot that has been cast as a provisional ballot due to the failure of a voter to verify his or her voter registration under Arkansas Constitution, Amendment 51, § 13, when required to do so by law; and

(21)(A) "Verification of voter registration" means 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.

(B) Refer to the State Board of Election Commissioners' Rules for the Verification of Voter Registration, 7 CAR pt. 90, for:

- (i) Additional information regarding this process; and
- (ii) The meaning of photo identification as referred to in this process.

76 CAR § 91-103. Failure to verify voter registration or provide voter identification.

(a) Early voting and election day voting.

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(1) 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.

(2) 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 Arkansas Code § 7-5-201(e)(2).

(b) Additional identification requirement for flagged first-time voters who registered by mail.

(1) 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.

(2) Voters who fall into this category are not required to verify their voter registration under Arkansas Constitution, Amendment 51, § 13.

(3) Rather, the voter must provide 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 in order to cast a regular ballot.

(4) If these voters fail to provide one (1) of the forms of identification, they will be required to vote a provisional ballot.

(c) Absentee voters generally. The absentee ballot of a voter who fails to verify his or her voter registration under the requirements of Arkansas Constitution, Amendment 51 by submitting a copy of the required document or identification card pursuant to the State Board of Election Commissioners' Rules for the Verification of Voter Registration, 7 CAR pt. 90, shall be considered as a provisional ballot.

(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.

76 CAR § 91-104. 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;
- (2) Allow the voter to cast a regular ballot, if the county clerk informs the poll worker that the voter is a qualified voter of the precinct;

(3) Allow the voter to cast a regular ballot, if the county clerk informs the poll worker that the voter:

(A) Transferred his or her registration from another county not later than four (4) days before the election; and

(B) Is at the correct poll in the new county of registration;

(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;

(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.

(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 registration list to indicate that an absentee ballot has been delivered to the voter under the procedures in this section.

(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.

(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^s 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 having 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 thirty (30) days of the election.

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

(A) Determines that the voter cast more than one (1) ballot in that election; or

(B) Is otherwise prohibited from counting the provisional ballot under this part.

76 CAR § 91-105. Poll watchers.

(a) Official recognition/credentials.

(1) Prior to acting as a poll watcher, a prospective poll watcher must complete the poll watcher training offered on the State Board of Election Commissioners' website.

(2)(A) Poll watchers representing a candidate, group, or political party must:

(i) 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

(ii) Present a file-marked copy of the valid form to the election officials immediately upon entering the:

- (a) Polling site;
- (b) Absentee ballot processing site; and/or
- (c) Counting site.

(B) Before accepting and file marking a poll watcher authorization form, a county clerk must first review the certificate of completion to confirm that the poll watcher has completed the required poll watcher training.

(C) When file marking the poll watcher authorization form, the county clerk shall provide the poll watcher with three (3) copies of the file marked form without cost.

(3) A poll watcher may list multiple sites on one (1) 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.

(4)(A) A candidate may not be present in person at the polls on election day as a poll watcher.

(B) A candidate may be present in person as a poll watcher during the:

- (i) Counting and tabulation of ballots; and
- (ii) Processing of absentee ballots.

(5)(A) 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:

(i) May not challenge voters as a poll watcher during early voting;
and

(ii) May speak only to a designated poll worker.

(B) A candidate who is present in person at an early voting location for the purpose of observing may not:

- (i) Speak to voters; or
- (ii) Disrupt the orderly conduct of the election.

(C) 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.

(6) 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.

(7) 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) A polling site where voters identify themselves to election officials; and

(B) The absentee ballot processing site where absentee ballots are processed.

(8) 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 the counting of ballots at the:

(A) Polling site;

(B) Central counting location; or

(C) Absentee ballot counting location.

(9) Poll watcher rights and responsibilities must be posted in plain view at each:

(A) Polling site;

(B) Absentee ballot processing site; and

(C) Counting site.

(10) A poll watcher shall wear a name tag, while present in the polling site or other location where an election process is occurring, that:

(A) Displays the name of the poll watcher; and

(B) Identifies the individual as a poll watcher.

~~(b) Challenges.~~

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(b) Observation of polling site or sites

————(1) Authorized poll watchers who are officially recognized at a polling site may:

(A) Stand close enough to the place where voters check in to vote so as to hear the voter's name; ~~and~~

————(B) Stand close enough to observe election operations in the poll;

————(C) Move around the poll to observe the different operations of the poll;
and

————~~(B)~~(D) Challenge an ineligible voter upon:

(i) Notifying a poll worker of the challenge before the voter signs the precinct voter registration list; and

(ii) Subsequently compleing ~~Completing~~ a challenged ballot form.

(2) A poll watcher may challenge a voter only on the grounds that the voter:

(A) Is not eligible to vote in the precinct; or

(B) Has already voted in the election.

(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:

(A) Any qualified poll watcher may challenge the vote in the same manner provided by law for personal voting challenges; and

(B) The election clerks must consider the absentee ballot as a provisional ballot.

————(4) A poll watcher may not be:

————(A) Within six feet (6') of any voter in the process of voting; or

————(A) in a position in which the poll watcher can see how a voter is marking is or her ballot.

(c) Inspection of absentee voter statements and ballots.

(1)(A)(i) The poll watcher shall be allowed to inspect a voter statement during the canvassing and counting of absentee ballots.

(ii) The canvassing process shall be conducted so that a poll watcher is able to generally view the paperwork as it is being processed.

(iii) Election officials must require the poll watcher to stand or otherwise be in a position permitting them to:

(a) Hear the information read aloud; and

(b) Generally view the documents.

(iv) The poll watchers:

(a) Are not required to be able to read the full text of every document; and

(b) May be required to remain at a sufficient distance to ensure the integrity of the canvassing process.

(B) Poll watchers may not be:

(i) Permitted closer than three feet (3') from the canvassing process, unless they are inspecting a voter statement; and

(ii) Required to be more than six feet (6') from the canvassing process.

(C) At no time shall a poll watcher have physical possession of an absentee ballot, whether it:

(i) Is within the ballot secrecy envelope; or

(ii) Has been removed for counting.

(D) If a poll watcher requests to conduct an inspection of a voter statement that 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:

(i) May not individually review every absentee voter statement; and

(ii) 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 has:

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

(b) 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:

(i) Secured in a box or other containment device when the ballots are placed into storage; and

(ii) Only removed from the storage or containment device at a time and location when and where poll watchers may be present.

(B)(i) 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.

(ii) Poll watchers are not permitted to access, touch, or otherwise take physical possession of a ballot.

(C)(i) Poll watchers shall be allowed to inspect the process of counting ballots.

(ii) 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.

(iii) The poll watcher shall not manipulate or otherwise take physical possession of the ballot.

(d) Purpose of poll watchers.

(1) A poll watcher's primary duty is to:

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- (A) Observe the check-in process of voters; and
- (B) Challenge any inappropriate voter who is observed.
- (2) A poll watcher is allowed to observe the entire operation of the poll.
- (3) (A) A poll watcher may alert the poll supervisor of potential violations of election procedures.
- (B) Alternatively, the poll watcher may contact the State Board of Election Commissioners.
- (4) A poll watcher is not present at the polling site to police the activity of poll workers.

7 CAR § 91-106. Court-ordered extension.

(a) 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.

(b) 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.

7 CAR § 91-107. 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:

(A) The poll watcher must:

(i) Notify a poll worker of the challenge before the voter signs the precinct voter registration list; and

(ii) Complete a challenged ballot form; and

(B) A poll worker must inform the voter that his or her ballot is being challenged;

(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 Arkansas Code § 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;

(4) If the provisional ballot is cast on a preprinted paper ballot, the poll worker shall:

(A) Initial the back of the ballot;

(B) Remove the ballot stub from the provisional ballot; and

(C) Place the stub in the stub box provided;

(5) The provisional voter shall mark his or her ballot;

(6)(A) The provisional voter shall:

(i) Place his or her voted ballot in a ballot secrecy envelope marked "PROVISIONAL BALLOT"; and

(ii) Seal the envelope.

(B) Nothing else goes in this envelope;

(7) The provisional voter shall then:

(A) Place the sealed ballot secrecy envelope marked "PROVISIONAL BALLOT" containing his or her voted provisional ballot in a provisional voter envelope;

(B) Seal it; and

(C) Give it to the poll worker;

(8) The poll worker must provide the provisional voter a copy of the notice prescribed in this subsection;

(9) The poll worker must make and retain a separate list of the names and addresses of all persons casting a provisional ballot;

(10) The poll worker must:

(A) Preserve, secure, and separate all provisional ballots from the remaining ballots; and

(B) 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 shall submit a copy or image of the provisional voter envelope form to the county clerk within one (1) business day of the election; and

(12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:

(A) Whether the voter is registered to vote in the county;

(B) If registered, what ballot style the voter was qualified to cast; and

(C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

(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;

(2) The poll worker shall notify the voter that the voter must cast a provisional ballot in that election;

(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.

(4) If the provisional ballot is cast on a preprinted paper ballot, the poll worker shall:

(A) Initial the back of the ballot;

(B) Remove the ballot stub from the provisional ballot; and

(C) Place the stub in the stub box provided;

(5) The provisional voter shall mark his or her ballot;

(6) The provisional voter shall:

(A) Place his or her voted ballot in a ballot secrecy envelope marked "PROVISIONAL BALLOT"; and

(B) Seal the envelope;

(7) The provisional voter shall then:

(A) Place the sealed ballot secrecy envelope marked "PROVISIONAL BALLOT" containing his or her voted provisional ballot in a provisional voter envelope; and

(B) Seal the envelope;

(8) The poll worker must:

(A) Provide the provisional voter a copy of the notice prescribed in subsection (a) of this section; and

(B) 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;

(10) The poll worker must:

(A) Preserve, secure, and separate all provisional ballots from the remaining ballots; and

(B) 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 shall submit a copy or image of the provisional voter envelope form to the county clerk within one (1) business day of the election; and

(12) Based on the information provided on the provisional voter envelope, the county clerk shall certify to the county board of election commissioners:

(A) Whether the voter is registered to vote in the county;

(B) If registered, what ballot style the voter was qualified to cast; and

(C) Whether an absentee ballot was returned for that voter if that question is relevant to the provisional ballot.

(c) For an absentee ballot that becomes a provisional ballot, the absentee ballot canvassing official:

(1) Shall place the absentee ballot materials in a provisional voter envelope; and

(2) Should:

(A) Check the "Other" box; and

(B) Write the word "Absentee" next to the box marked "Other" on the form provided on the provisional ballot envelope.

(d)(1) 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.

(2) 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.

(3) 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.

7 CAR § 91-108. 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:

(A) Whether his or her vote was counted; and

(B) The reason if not counted;

(2) The address, telephone number, and regular office hours of the county clerk;

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(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 of election commissioners to verify their voter registration before Monday at noon following the election; and

(5) The date, time, and address of a hearing for the voter if the provisional ballot is rejected.

(b)(1) 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.

(2) Sample notices may be obtained from the Secretary of State's office.

(c) Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(d) If the county board of election commissioners determines that a provisional ballot or an absentee ballot that has been made provisional will not be counted, the county board of election commissioners must:

(1) Send written notice to the voter who cast the ballot; and

(2) State the reason or reasons the ballot was not counted.

7 CAR § 91-109. Review of provisional ballots.

(a)(1) The county board of election commissioners shall determine whether provisional ballots are valid before certifying the election.

(2) 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 of election commissioners shall make a determination of whether the provisional ballot was:

(A) Cast by an eligible voter; and

(B) The correct ballot for the precinct of the voter's residence according to

the:

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- (i) Precinct listed on the voter's eligibility affirmation; or
- (ii) Registration address of the absentee voter.

(3) If the county board of election commissioners makes an initial determination that an absentee ballot designated as a general provisional ballot will not be counted, the county board of election commissioners 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 this part before a final determination is made.

(b) Procedures for the review of general provisional ballots.

(1)(A) 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 of election commissioners 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.

(B) 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)(A) 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 of election commissioners should not base its initial determination of whether to count the ballot solely on the provisional voter's failure to meet the identification requirement.

(B) The provisional ballot of a flagged first-time voter should be rejected if:

- (i) The voter failed to provide the required identification; and
- (ii) There is a determination independent of the failure to meet the identification requirement that the person:
 - (a) Who voted is not eligible to vote in the precinct; or
 - (b) Failed to meet any of the other statutory requirements that would cause a voter's absentee ballot to be rejected.

(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 of election commissioners 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)(A) The county board of election commissioners shall review the unverified provisional ballots after 12:00 noon on the Monday following the election in order to determine whether the person who cast each ballot returned to either the county clerk or the county board of election commissioners in order to verify his or her voter registration.

(B) If, at this time, the county board of election commissioners determines that the voter who cast the unverified provisional ballot did return to the county board of election commissioners or county clerk before 12:00 noon on the Monday following the election and the county board of election commissioners determines there are no other grounds that would cause the ballot not to be counted, then the ballot shall be counted.

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

(3) The county board of election commissioners, through at least one (1) 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 of election commissioners shall notify each provisional voter by first class mail as to whether or not his or her provisional ballot was counted.

7 CAR § 91-110. Hearing.

(a)(1) Provisional voters who cast a general provisional ballot shall be allowed to appear before the county board of election commissioners to:

(A) Contest the county board of election commissioners' initial decision to disqualify their ballots; and

(B) Present evidence that they were:

(i) Registered to vote; and

(ii) Voted the correct ballot for the precinct of their residence.

(2) Provisional voters who cast unverified provisional ballots must satisfy the requirements of Arkansas Constitution, Amendment 51, and this part in order to have their ballot counted.

(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 county election commission then completes the election commission's portion of the list of provisional voters 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.

7 CAR § 91-111. 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:

(A) Cast by a registered voter; and

(B) 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 of election commissioners determines that the voter:

(A) Is eligible to vote in the precinct; and

(B) Has met all other statutory requirements necessary for an absentee ballot to be counted.

(b) Unless enjoined by a court of competent jurisdiction, an unverified provisional ballot shall be counted if:

(1) No other grounds exist that would cause the ballot to not be counted as a general provisional ballot; and

(2) The voter:

(A) Returns to the county clerk or county board of election commissioners before 12:00 noon on the Monday following the election; and

(B) Verifies his or her voter registration.

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

(d) Provisional ballots are counted as follows:

(1) The county election commission, through at least one (1) of its members:

(A) Either completes the election commission's portion of the list of provisional voters form from each precinct; or

(B) 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;

(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.

7 CAR § 91-112. Prosecuting attorney.

(a) Following each election, the county board of election commissioners may:

(1) Review the precinct voter registration lists for voters not providing identification at the polls; and

(2) Forward the information to the prosecuting attorney for investigation of possible voter fraud.

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

7 CAR § 91-113. Preliminary and unofficial results.

(a) The processing and counting of provisional ballots, including hearings, shall not delay the declaration of preliminary and unofficial results required by Arkansas Code § 7-5-701.

(b) When reporting preliminary and unofficial results, the county board of election commissioners should also report the number of:

(1) Uncounted provisional ballots pending review; and

(2) Outstanding overseas absentee ballots.

7 CAR § 91-114. Official certified results.

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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.

7 CAR § 91-115. Forms utilized under this part.

(a) The provisional voter envelope utilized under this part shall be the most current version of the provisional voter envelope:

- (1) Approved for use by an affirmative vote of the State Board of Election Commissioners; and
- (2) Available on its website.

(b) The list of provisional voters utilized under this part shall be the most current version of the list of provisional voters:

- (1) Approved for use by an affirmative vote of the board; and
- (2) Available on its website.

(c)(1) The poll watcher authorization form:

- (A) Is established by state statute; and
- (B) Must reflect the requirements of Arkansas Code § 7-5-312.

(2) The board has created a version of this form that is formatted for easy printing and utilization.

(3) The reverse side of the poll watcher authorization form is required to contain the poll watcher rights and responsibilities form.

(4) The most current version of this form is available on the agency's website.

(d)(1) The poll watcher rights and responsibilities form:

- (A) Is established by state statute; and
- (B) Must reflect the requirements of Arkansas Code § 7-5-312.

(2) The board has created a version of this form that is formatted for easy printing and utilization.

(3) The most current version of this form is available on the agency's website.

7 CAR § 91-116. Poll watcher training.

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(a) Any person may complete the poll watcher training available on the website of the State Board of Election Commissioners.

(b) To obtain a certificate of completion, the prospective poll watcher shall:

(1) Review all required training materials; and

(2) Complete an assessment with a passing score as determined by the board.

(c) When a trainee obtains a passing score on the assessment, the board shall:

(1) Keep a record of the trainees who obtain a passing score; and

(2) Electronically deliver a certificate of completion of the poll watcher training to the trainee within two (2) business days.

(d) A trainee shall be qualified to act as a poll watcher for a one-hundred-eighty-day period from the date the training is successfully completed.

(e) The candidate, group, or party appointing a poll watcher is responsible for ensuring the trainee has access to the technology necessary to complete the poll watcher training.

(f)(1) If a poll watcher is unable to obtain a certificate of completion, the poll watcher may:

(A) Re-review all required training materials and retake the assessment;

or

(B) Lodge an appeal with the board.

(2) An appeal must be made, in writing, to the Director of the State Board of Election Commissioners stating clearly the reasons the trainee believes he or she was wrongfully denied a certificate of completion.

(3) Within three (3) business days of receiving an appeal, the director shall provide the trainee a:

(A) Certificate of completion of the poll watcher training; or

(B) Written response stating why the certificate was not issued.

(4) If the director denies the appeal, the trainee may notify the director that he or she wishes to submit the appeal to the board, at which point the director shall:

(A) Forward the written appeal to all members of the board; and

(B) Notify the chairman if any one member requests to consider the appeal in a public meeting.

(5) If a member requests to consider an appeal in a public meeting, the chairman shall call a meeting within two (2) weeks of notice by the director that an appeal must be reviewed for the purposes of determining whether the trainee is entitled to a certificate of completion of the poll watcher training.

(g) In order to promote the poll watcher training, the board shall:

(1) Include information regarding the training program in the Running for Public Office Handbook provided at no cost to candidates;

(2) Include information regarding the training program on the agency's website;

(3) Provide a flier to county clerks prior to candidate filing that explains the poll watcher training program for distribution at candidate filing;

(4) Distribute a flier at candidate filing for state and federal candidates that explains the poll watcher training program; and

(5) Provide a flier to recognized political parties that explains the poll watcher training program.