

Agency # 108.00

**EMERGENCY
RULES
FOR
VOTER IDENTIFICATION
(Effective January 1; Revised March 4, 2014)**



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Scope of Rules

These rules will set forth the procedures for processing and administering voter identification requirements. These rules are in addition to and not a substitute for the laws of the State of Arkansas and rules promulgated by the Secretary of State.

§800 Definitions

- (a) Additional Identification Requirement – documentary identification in addition to proof of identity that certain first-time voters who register by mail must show to cast a regular ballot during early voting or at the polls on election day. Acceptable identification documents include a copy of current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.¹

- (b) Administrator - the administrative head of a long-term care or residential care facility licensed by the state.

- (c) Proof of Identity:
 - (1) A voter identification card issued by the county clerk pursuant to Act 595 of 2013; OR
 - (2) A document or identification card that meets all of the following conditions:
 - (a) Shows the name of the person to whom the document was issued;
 - (b) Shows a photograph of the person to whom the document was issued;
 - (c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
 - (d) If displaying an expiration date, the document or card is not expired or expired no more than four (4) years before the date of the election in which the person seeks to vote.
 - (3) Documents or Identification cards that comply with the above requirements for proof of identity may include, without limitation, the following:
 - (a) A driver's license;
 - (b) A photo identification card;
 - (c) A concealed handgun carry license;
 - (d) A United States passport;
 - (e) An employee badge or identification document;
 - (f) A United States Military identification document;
 - (g) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;

¹ A.C.A. § 7-5-201(e) as amended by Act 595 of 2013

- (h) A public assistance identification card; and
- (i) A voter identification card as provided under Act 595 of 2013 and rules propounded by the Secretary of State²

(d) Documentation from the Administrator – a letter on facility letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter and is valid for one year after the date it is signed and issued. The letter issued by the administrator can be used by a resident of a long-term care facility as identification during early voting, on election day at a polling location, and when voting by absentee ballot.³

§ 801 Proof of Identity Required When Voting at the Polls

All voters except those who reside in a long-term care or residential care facility licensed by the state must present “proof of identity” to cast a regular ballot at the polls during early voting and on election day.

A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility in lieu of the requirement to present proof of identity before voting⁴.

§ 802 Poll Worker Assessment of Validity of Proof of Identity

The proof of identity shall be used to verify the name and appearance of the voter, except that when a voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013, the card shall also be used to verify the voter’s identification number. The Precinct Voter Registration List shall be used to verify the address of the voter by comparing the voter’s address in the list to the address stated by the voter.

The poll worker to whom proof of identity is presented shall:

- (1) Verify that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames;
- (2) If the voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013 and rules propounded by the Secretary of State, verify that the registrant identification number on the card is the same as the registrant identification number on the Precinct Voter Registration List.

² A.C.A. § 7-1-101 as amended by Act 595 of 2013

³ A.C.A. § 7-5-201(d)(2) as amended by Act 595 of 2013 and §16.0 of the Arkansas Secretary of State’s Rules on Voter Identification

⁴ A.C.A § 7-5-201(d) as amended by Act 595 of 2013

- (3) If the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics;
- (4) If the poll worker is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;
- (5) If the voter's name is different from the name in the Precinct Voter Registration List or the name as stated by the voter but the poll worker is satisfied that the voter is the person depicted in the photograph, issue the person a regular ballot after the voter completes a voter registration application form for the purpose of updating the voter's information; and
- (6) If the poll worker determines that the proof of identity does not depict the voter, then the poll worker shall offer the voter a provisional ballot.

§ 803 Additional Identification Requirement for Certain First-Time Voters

Certain first-time voters who register by mail and who, when registering to vote do not provide statutorily required identification documentation, will be flagged on the Precinct Voter Registration List for possible additional identification documentation when voting at the polls during early voting or on election day or by absentee ballot. These first-time voters, like all other voters, are required to present proof of identity in order to vote at the polls during early voting or on election day. A flagged voter who presents a valid proof of identity that is also current (not expired) may vote without presenting an additional identification document. However, if a flagged voter presents a valid proof of identity that is not current (i.e., is expired) and valid for the purpose for which it was issued, the flagged voter must also show a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.⁵

§ 804 Failure to Present Proof of Identity or Other Required Documentation at the Polls

A person voting at the polls during early voting or on election day who did not present proof of identity, or, if a resident of a long-term care or residential care facility licensed by the state, who did not provide either proof of identity or documentation from the administrator of the facility attesting that the person is a resident of the facility, shall be offered a provisional ballot.⁶

⁵ A.C.A. § 7-5-201 (e) as amended by Act 595 of 2013

⁶ A.C.A. § 7-5-321 as amended by Act 595 of 2013

A first-time voter who registered by mail who did not present the additional identification, if required under §803, shall be offered a provisional ballot.⁷

§805 Identification Required When Voting Absentee

The absentee voter must submit with the 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.⁸

A resident of a long-term or residential care facility licensed by the State of Arkansas may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility as identification.

The ballot of a voter who failed to provide required identification with his or her absentee ballot shall be considered a provisional ballot.⁹

Uniformed services and merchant marine voters and their spouses and dependents who are away from the county because of the active duty status of a uniformed services or merchant marine member are exempt from the identification requirement for absentee ballots.¹⁰

§ 806 Postelection Submission of Identification or Affidavit of Indigence or Religious Objection

A. Voters At the Polls

A provisional ballot cast because a voter failed to present proof of identity when voting at the polls during early voting or on election day shall be counted and included in the certified results of the election if:

- (1) The voter's ballot is not successfully challenged for any other reason; and
- (2) The voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election either the voter's proof of identity or an affidavit that the voter cannot provide proof of identity because of indigence or a religious objection to being photographed.

⁷ A.C.A. § 7-5-305(a)(8)(B)(iii)

⁸ A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013

⁹ A.C.A. §§ 7-5-412(b); 7-5-321

¹⁰ A.C.A. § 7-5-201(d)(1)(B) as amended by Act 595 of 2013

The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county board by presenting the proof of identity or the affidavit at any meeting of the county board held before noon on the Monday following the election.

The voter may provide his or her proof of identity or his or her affidavit of indigence or religious objection to the county clerk by presenting the proof of identity or the affidavit to the county clerk before noon on the Monday following the election.

The voter shall present the proof of identity or deliver the affidavit of indigence or religious objection in person.¹¹

B. Absentee Voters

The ballot of an absentee voter that was made provisional for failure to provide required identification with his or her absentee ballot shall be counted and included in the certified results of the election if:

- (1) The absentee voter's ballot is not successfully challenged for any other reason; and
- (2) The absentee voter provides to either the county clerk or the county board of election commissioners by noon on the Monday following the election the voter's required identification or an affidavit that the voter cannot provide the required identification because of indigence or a religious objection to being photographed.

The absentee voter may provide his or her required identification or his or her affidavit of indigence or religious objection to the county board by presenting the required identification or the affidavit at any meeting of the county board held before noon on the Monday following the election.

The absentee voter may alternatively provide his or her required identification or his or her affidavit of indigence or religious objection to the county clerk by presenting the required identification or the affidavit to the county clerk before noon on the Monday following the election.

The absentee voter shall present the required identification or his or her affidavit of indigence or religious objection by mail, in person by the voter, or in person by a third person designated by the voter.

When the identification is delivered by a third person, it must be accompanied by a written statement of the voter, signed and dated by the voter, stating the person's name and address and that the person has been authorized by the voter to deliver the identification for the voter. Other than the administrator of a long-term care or residential care facility licensed by the state, no person may deliver to the clerk or election commission the identification of more than two

¹¹ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013

absentee voters. If no written statement is included with the required identification delivered by a third person, the ballot shall not be counted.

An administrator of a long-term care or residential care facility licensed by the state may deliver to the clerk or election commission the identification documentation from any of the residents of the administrator's facility who submitted absentee ballots.

§ 807 Assessment of Validity of Photo Identification Submitted Postelection

A. Assessment of Validity of Proof of Identity Submitted Postelection by In Person Voters

The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

The county clerk or the county board receiving a proof of identity shall make a photocopy of the proof of identity and retain the copy with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

- (1) The name of the county clerk, or each county board member present at the meeting where the proof of identity was presented;
- (2) The name of the voter who presented the proof of identity;
- (3) The date and time the proof of identity was presented to the clerk or county board;
- (4) If it is determined that the photograph on the proof of identity depicts the voter, then a declaration of that finding;
- (5) If it is determined that the photograph on the proof of identity does not depict the voter, then a declaration of that finding including the reason for that finding; and
- (6) Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.¹²

B. Assessment of Validity of Photo Identification Submitted Postelection In Person by Absentee Voters

¹²A.C.A. § 7-5-321(c) as provided in Act 595 of 2013

The county clerk or county board shall compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.

The county clerk or the county board receiving the required identification shall make a photocopy of the identification and retain the copy with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

- (1) The name of the county clerk, or each county board member present at the meeting where the identification was presented;
- (2) The name of the voter who presented the identification;
- (3) The date and time the identification was presented to the clerk or county board;
- (4) If it is determined that the photograph on the identification depicts the voter, then a declaration of that finding;
- (5) If it is determined that the photograph on the identification does not depict the voter, then a declaration of that finding including the reason for that finding; and
- (6) Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.¹³

§ 808 Postelection Submission of Affidavit of Indigence or Religious Objection

The county clerk or county board receiving an affidavit of indigence or religious objection in person shall make a photocopy of the affidavit, provide the copy to the voter and retain the original affidavit with the voter's provisional ballot envelope. The county clerk or the county board shall provide a receipt to the voter containing the following information:

- (1) The name of the county clerk, or each county board member present at the meeting where the affidavit was delivered;
- (2) The name of the voter who delivered the affidavit;
- (3) The date and time the affidavit was delivered to the clerk or county board; and
- (4) Any additional information the clerk or county board deems relevant.

The county clerk or county board shall retain a copy of the receipt.

¹³A.C.A. § 7-5-321(c) as provided in Act 595 of 2013

§809 County Clerk to Provide Required Identification or Affidavits to Election Commission

The county clerk who receives required identification or an affidavit of indigence or religious objection shall provide the copy of the voter's required identification or the original affidavit and a copy of the voter's receipt to the county board.¹⁴

§810 Vote Counted When Required Identification or Affidavits Properly Submitted

The county board shall count the vote and include it in the certified returns upon receipt of a copy of a voter's valid and timely delivered proof of identity, required identification of an absentee voter, or affidavit of indigence or religious objection.¹⁵

§811 Effective Date

These emergency rules are effective upon filing.

¹⁴ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013

¹⁵ A.C.A. § 7-5-321(c) as provided in Act 595 of 2013