

Rules and Regulations related to 2011 HB 2067, Voter Photographic Identification

Senate Committee on Ethics and Elections

KLRD, 8 March 2012

Brief review of general procedures after agency drafting and before the effective date of proposed rules and regulations.

- Each rule and regulation proposed goes first to the Secretary of Administration for approval of its organization, style, spelling, and grammar. Approved rules and regulations are stamped.
- After a rule and regulation is approved by the Secretary of Administration, it is reviewed by the Attorney General's office for an opinion as to the proposed rule and regulation's legality, including whether its making is within the agency's statutory authority (or, in the case of the Board of Education, its constitutional authority). The Attorney General's office also stamps each rule and regulation it approves.
- After Administration and Attorney General approval, the rule and regulation must be formally adopted by the state agency.
- The rule and regulation must be filed with the Secretary of State, in a form and manner approved by that office.
- The adopting agency must give at least 60-days notice of its intention to adopt a rule and regulation in the Kansas Register, to the Secretary of State, to the Legislative Research Department and to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee on Administrative Rules and Regulations (also known as the JCARR).
- The JCARR, a statutory committee, is required to review each proposed rule and regulation during the public comment period. The committee may introduce legislation but may not require an agency to change a proposed rule and regulation.
- The agency must prepare a statement of the principal reasons for adopting a rule and regulation, including its reasons for not accepting substantial arguments made in testimony and comments.
- A finalized rule and regulation must be filed with the Secretary of State, and the Secretary of State must publish it. Rules and regulations are published in the Kansas Register, usually about two weeks before the effective date.

Authority granted to the Secretary of State regarding photo ID requirements in 2011 HB 2067 and elsewhere in law

Provisions of 2011 HB 2067 that added to the Secretary of State's authority regarding rules and regulations (2011 changes noted in italics):

- Sec. 2, KSA 25-1122, Advance voting; ballot application identification requirements; provisional ballots; time for filing application; satellite advance voting sites; voters needing assistance; permanent advance voting status; records maintained by county election officer; rules and regulations.
 - (k) *The secretary of state may adopt rules and regulations in order to implement the provisions of this section and to define defining valid forms of identification.*

- Sec. 3, KSA 25-1122d, Advance voting; application for ballot, form; identification, form of; rules and regulations.
 - (e) *The secretary of state may adopt rules and regulations in order to implement the provisions of this section.*

- Sec. 8, KSA 25-2309, Application for registration; registration agencies; limitations on public inspection of registrations; registration citizenship requirements; election board citizenship hearings; unsatisfactory evidence of citizenship; sworn affidavits; rules and regulations.
 - (s) *The secretary of state may adopt rules and regulations to in order to [sic] implement the provisions of this section.*

- Sec. 11, 25-2908, Use of registration book and poll book or registration book at polling place; election board members, duties; name of voter not in book; rules and regulations; valid forms of voter identification; provisional ballots; identification requirements; exempt persons.
 - (g) *The secretary of state may adopt rules and regulations in order to implement the provisions of this section and definedefining valid forms of identification with greater specificity, however the requirement that a voter must provide a form of identification that complies with the subsection (h) may not be altered.*

The Secretary already had rule and regulation authority applicable to several rules and regulations (2011 amendments noted in *italics*):

- HB 2067, Sec. 10, 25-2352, Registration of voters as part of application for driver's license or nondriver identification card; motor vehicle record information transfers; rules and regulations.
 - (g) *The secretary of state is hereby authorized to adopt such rules and regulations in the manner prescribed by law as may be necessary for the administration of the provisions of this section.*

- HB 2067, Sec. 19, 25-2311, Opening and closing of registration; when required; certification of number of registered voters in precincts to secretary of state.
 - (f) The secretary of state may adopt rules and regulations interpreting the provisions of this section and specifying the days when registration shall be open, days when registration shall be closed, and days when it is optional with the county election officer for registration to be open or closed.
- KSA 25-440, Secretary of State to adopt rules and regulations. The secretary of state may adopt rules and regulations governing the procedures and forms necessary to implement this act [the Mail Ballot Elections Act]. The authority of the secretary of state to adopt rules and regulations under this act shall be liberally construed.

Proposed Rules and Regulations, Committee Concerns, and Agency Responses

Below are each of the rules and regulations amended or added. Main provisions are summarized by staff. For each rule and regulation, comments of the Joint Committee on Administrative Rules and Regulations (JCARR) and the Secretary of State's response are quoted.

Only one regulation, KAR 7-23-4, was amended; the rest are new.

The JCARR heard this set as proposed rules and regulations at its meeting on January 3, 2012. A letter listing the Committee's concerns is dated January 10, 2012. The response to each comment from the Secretary of State's Office was dated February 1, 2012. A letter from the Secretary of State dated February 7, 2012, informed the Committee that proposed rule and regulation KAR 7-46-4 was rescinded prior to publication.

Comments from the JCARR and the Secretary of State responses to those comments are directly quoted from the applicable letters.

Article 23.—VOTER REGISTRATION

Rule and Regulation: 7-23-4. Notice of places and dates of registration. AMENDED

Major amendment. Registration is open until the close of business on the 15th 21st day before the election.

JCARR Comments and Secretary of State response to each: none; n/a

Rule and Regulation: 7-23-14. Assessing documents submitted as evidence of United States citizenship. NEW

Major provisions:

(a) When assessing document submitted as evidence of U.S. citizenship, the election officer shall consider first name, middle name or initial, surname, date of birth, place of birth, and sex.

(a)(1), (2), and (5) - If the name or sex information is not consistent with the information on the application, ask for a second government-issued document. If no government-issued second document, allow the applicant to sign an affidavit. If no affidavit either, inform the applicant of the applicant's right to appeal.

(a)(3) If the date of birth is inconsistent, inform the applicant of the applicant's right to appeal.

(a)(4) If the place of birth is on the document, it may be used to assess status. Having no birth place on the document "shall not result in an unsatisfactory assessment."

(a)(6) An expired document can be considered.

(b) If an applicant for registration fails to submit evidence of citizenship before the deadline to register may submit that evidence by mail or personally until the close of business on the day before the election or electronically (fax, email) until midnight on the day before the election.

(b)(1), (2), and (3) The evidence will be assessed. If possible, add the voter's name to the poll book. If the name is not added to the poll book, allow the applicant to vote a provisional ballot.

(c) and (d) Anyone whose name is lawfully removed from the voter registration list will, after January 1, 2013, be required to prove citizenship before re-registering.

JCARR Comments and Secretary of State response to each:

- KAR 7-23-14. In subsection (a) and paragraph (a)(1), election officers are to consider an individual's middle name in determining U.S. citizenship. Committee members request the procedure that must be followed by a potential voter who may have changed a middle name upon marriage or whose document reflect use different names in various documents based upon when the documents were issued.
 - Paragraphs (a)(2)(A), (B) and (C) state that, in cases where the citizenship document is inconsistent with the name the applicant provided on his/her voter registration application, the applicant may provide a second document confirming the applicant's current name, sign an affidavit if unable or unwilling to provide a second document, or appeal to the state election board. The proposed regulation stands unchanged.

- KAR 7-23-14. In paragraphs (a)(2)(A), (B) and (C) on page 1 and in the corresponding paragraphs (a)(5)(A), (B) and (C) on page 2, the phrase "second, government-issued document" needs to be defined. Does the term "second" mean another or different? Does the term "government-issued" refer to a document submitted as evidence of United States citizenship or a document issued by a county or local unit of government, another state or even another country?
 - The term "second" means a different document. The second document is submitted only in situations where the first document was not consistent with regard to name or sex. Use of the term "another" would imply that the first document submitted was a government-issued document. However, there are qualifying documents which are not government-issued, so this term would be inaccurate.
The term "government-issued" is not limited to documents qualifying as evidence of United States citizenship. It may be a document issued by a municipal, county, state, or federal government office or agency. It may be a document issued by another state or country.
The proposed regulation stands unchanged.
- KAR 7-23-14. In subsection (b) there appears to be an unintended consequence. Paragraph (b)(1) directs the county election officer to accept and assess the citizenship document. Paragraph (2) directs the county election officer to add the applicant's name to the voter registration list regardless of the result of the second assessment. The Committee suggests the agency specify the result if the citizenship document is not acceptable.
 - If the county election officer assesses a citizenship document and determines that it is not acceptable, the election officer is guided by KSA 25-2309(l): "The county election officer or secretary of state's office shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship." Section (b) requires a VALID citizenship document. A document assessed as unsatisfactory does not qualify as a valid citizenship document. Further, note that the last sentence of (b)(3) states that if a person fails to meet the conditions specified in the section and therefore casts a provisional ballot, the ballot is not counted.
The proposed regulation stands unchanged.
- KAR 7-23-14. Paragraphs (a)(2)(C) and (a)(3) mention the processes of KSA 25-2309(m). Since KSA 25-2309(m) requires the applicant seeking assessment of the evidence submitted to prove citizenship on appeal to the State election board and the Board must give notice at least five days before the hearing date, does the process outlined in this draft regulation guarantee a decision prior to the applicant's vote being canvassed by the local canvassing board? In other words, will the appeal process allow the vote to count?
 - The appeal process provided in KSA 25-2309(m) is a failsafe process to allow a person who has difficulty providing evidence of United States citizenship a final opportunity to be granted status as a registered voter. This occurs when the person is registering to vote, not when he/she is casting a ballot. If, ever (sic) [even] at the latest possible date, an appeal is requested, the process would allow adequate time for resolution of the question of the applicant's

registration status before the county board of canvassers would meet to determine the validity of the ballot.

The process is similar to past practice. If questions arise concerning a person's qualifications to vote or about the information provided on the voter registration application, the person is not considered a registered voter until the questions are resolved and the county election officer adds the person's name to the official voter list.

The proposed regulation stands unchanged.

- KAR 7-23-14. In paragraphs (a)(2)(B) and (a)(5)(B), the election officer is directed to allow the applicant to sign an affidavit. Where is the election officer directed to accept registration if the applicant provides such an affidavit?
 - If a voter registration applicant signs the affidavit provided for in (a)(2)(B) or (a)(5)(B), the county election officer is guided by KSA 25-2309(q), which states in part: "If such an affidavit is submitted by the applicant, the county election officer or secretary of state shall assess the eligibility of the applicant without regard to any inconsistency stated in the affidavit." Thus, if the affidavit accounts for the inconsistency, and the document provided as evidence of citizenship is otherwise valid, the applicant will be granted status as a registered voter.
 - The proposed regulation stands unchanged.

Article 36.—ABSENTEE AND ADVANCE VOTING

Rule and Regulation: 7-36-7. Processing advance voting ballot applications. NEW

Major provisions:

(a) If the application does not contain sufficient information or the information is illegible, the county election officer is directed to contact the applicant before election day, if practicable.

(b), (c) and (e). If the application is not signed or is inconsistent, if the application does not contain a driver's license number or that is illegible, or information on a document is illegible, the county election officer is directed to contact the applicant "by any means" to clarify the information. In (d), a county election officer may collect a driver's license number by any legal means.

(f) directs the county election officer to issue a provisional advance voting ballot if the information, signature, or photocopy is incomplete or inconsistent with the voter registration list.

(g) The county board of canvassers will determine the validity of each provisional advance voting ballot. If the voter provided additional information and that information is consistent with the registration list, the vote is to be counted unless is is invalid for another reason. If the additional information was not provided or if the information is inconsistent with the voter registration list, the ballot shall not be counted.

JCARR Comments and Secretary of State response to each:

- KAR 7-36-7. In subsection (a), the phrase "if practicable" provides wide discretion to local officials in timing and means and should be clarified to provide more direction to local officials. The Committee notes that the phrase "if practicable" is rarely used in statute when defining required actions. In subsections (b) and (e), the phrase "by any means" similarly should be clarified to provide direction to local officials. It appears that nothing in this regulation would prevent a local official from attempting to contact an applicant via email only or phone only, regardless of whether such connections are available to the applicant. Committee members suggest local officials be directed to require that contact be attempted via U.S. Mail, telephone, and local individuals who may be able to indicate the whereabouts of a voter requesting an advanced ballot. (Contact information for someone known to the applicant could be included on the ballot application.)
 - The proposed regulation was drafted in recognition of the authority that the Legislature has previously granted to county election officers, most of whom are publicly elected officials. The regulation recognizes the fact that elections are appropriately conducted at the county level because county election officers are familiar with their voters. It is common practice for them to contact voters by telephone, U.S. mail, email, or through relatives or acquaintances; and the proposed regulation recognizes and preserves that practice by allowing county election officers to use "any means" to contact the voter. It is our belief that listing specific methods of contact in the regulation could, in some cases, defeat the purpose of the regulation if contact methods used in some counties, but unknown to us, were not listed.

The phrase "if practicable" refers to the practicability of contacting the voter *before election day* to obtain the necessary information. If at least one attempt has been made to contact the voter, and there is not time to take further steps before election day, the election officer immediately issues a provisional ballot. That allows the voter more time to take action to resolve the issue that prompted the county election officer to attempt to contact him, up to the time the county board of canvassers convenes.

Therefore, the discretion granted to county election officers by this proposed regulation is limited to the election officer's decision regarding whether and when to issue a provisional ballot. Under this regulation, the worst-case scenario would be that a voter would immediately receive a provisional ballot and an opportunity to resolve the issue that made the ballot provisional. It is the county board of canvassers, not the county election officer, that ultimately decides whether the ballot will count.

The procedures outlined in the regulation were designed to benefit the voter in every way possible. These regulations were drafted in consultation with a task force of county election officers who are responsible for implementing the regulations.

The proposed regulation stands unchanged.

- KAR 7-36-7. Are sections (a) through (g) all required for an advanced voter's ballot to be considered?
 - Most advance ballot applications contain all the necessary information. This regulation prescribes procedures for instances in which a piece of information is missing, illegible or inconsistent with the applicant's voter registration records.

The proposed regulation stands unchanged.

Rule and Regulation: 7-36-8. Uniformed and overseas citizens absentee voting act; ballot distribution deadline in local mail ballot elections. *NEW*

Major provisions:

For a local mail ballot election, the county election officer is directed to send a ballot to any person qualified to vote under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) who submitted an application for a federal services ballot 45 or more days before the election. The ballot is to be sent within two business days of receiving the application if the application is received less than 45 days before such an election.

JCARR Comments and Secretary of State response to each:

- KAR 7-36-8. In the history section, consider adding KSA 25-1225 to the list of authorizing statutes. KSA 25-440's authorizing section does not cover KSA 25-1215 as amended.
 - KSA 25-1225 will be added to the history section. (It is present in the published final rule and regulation.)

Note: This rule and regulation implements provisions of KSA 25-1218 added with 2011 SB 103:

(c) Any person who is qualified to vote under this act shall be allowed to submit a federal write-in absentee ballot as prescribed pursuant to the federal act if the:

(1) Person has previously submitted a proper application for a ballot;

(2) ballot was not received; and

(3) person does not submit the federal write-in absentee ballot from a location within the United States.

Article 46.—PHOTOGRAPHIC IDENTIFICATION REQUIREMENTS. NEW

Rule and Regulation: 7-46-1. Processing advance voting ballot applications. NEW

Major provisions:

(a) A voter who cast a provisional ballot because of no identification may submit photographic identification after the election to the county election office. "Electronic means" is defined to include fax, email, or any other electronic means the Secretary of State's office has approved.

(b) says the County board of canvassers will count the ballot if the photographic evidence was submitted before the board meets and the ballot is not invalid for another reason.

JCARR Comments and Secretary of State response to each:

- KAR 7-46-1. The Committee suggests local election officials should be directed to inform voters of the deadline for submitting a valid photographic identification document. In subsection (a), what other electronic means might be approved by the Secretary of State without amending this rule and regulation? The Committee notes that the opinion in *Bruns v. Kansas State Bd. of Technical Professions* (255 Kan. 728, 877 P.2d 391 (1994)) states that a policy that is not filed and published has no force and effect of law.
 - Many county election officers publish in the local newspaper a notice of the date of the meeting of the county board of canvassers. We will consider recommending that, in such cases, they include the deadline for receipt of photographic identification documents.
"Other electronic means" could include a photograph attached to a text message, or other means.
The proposed regulation stands unchanged.

Rule and Regulation: 7-46-2. Election board worker assessment of photographic identification documents. *NEW*

Major provisions:

(a) Election workers determine the sufficiency and validity of photographic identification documents.

- To do that, the election worker is directed to verify the name on the ID is consistent with the name in the poll book, allowing for abbreviations.
- If the name is inconsistent, the worker is to issue a provisional ballot.
- If the name is consistent, the poll worker is to compare the photograph to the voter. If the worker is satisfied the name and photo ID are consistent, the worker is to issue a regular ballot.
- If the worker is unable to determine whether the person presenting the photo ID is the person depicted on the ID because the photograph is degraded, the worker still may issue a regular ballot if
 - the dates of birth are the same on the ID and in the poll book;
 - the voter submits a second photo ID that appears to depict the voter; or
 - the election board worker knows the person in the photo is the voter.
- If the election worker determines the photo ID does NOT depict the voter and no other photo ID is offered and appears to depict the voter, the election worker will issue a provisional ballot.

(b) Photo ID is not to be used to verify address. The address in the poll book is to be verified by the address stated by the voter.

(c) If the election board worker is unable to determine eligibility, the supervising judge will decide whether to issue a regular or provisional ballot to the voter.

(d) A provisional ballot will be presented to the board of county canvassers and will be counted if, before the board of county canvassers convenes, the voter has submitted sufficient information (see KAR 7-46-1) and the board determines the ballot is valid.

(e) Nothing in the regulation requires an election board worker to issue a regular ballot if the worker determines a voter is attempting to circumvent the photo ID requirement, and nothing exempts a voter from providing photo ID except as specified in KSA 25-2908(i).

25-2908(i) The following persons are exempt from the photographic identification document requirements of this section:

(1) Persons with a permanent physical disability that makes it impossible for such persons to travel to a county or state office to obtain a qualifying form of identification and have qualified for permanent advance voting status under K.S.A. 25-1124, and amendments thereto;

(2) members of the uniformed service on active duty who, by reason of such active duty, are absent from the county on election day;

(3) members of the merchant marine who, by reason of service in the merchant marine, are absent from the county on election day;

(4) the spouse or dependent of a member referred to in paragraph (2) or (3), who, by reason of the active duty or service of the member, is absent from the county on election day; and

(5) any voter whose religious beliefs prohibit photographic identification. Any person seeking an exemption under this provision must complete and transmit a declaration concerning such religious beliefs to the county election officer or the Kansas secretary of state. The declaration form shall be available on the official website of the Kansas secretary of state.

JCARR Comments and Secretary of State response to each:

- KAR 7-46-2. The Committee notes that subsection (c) provides review by a supervising judge if a voter and an election board worker have a dispute as to whether proper identification has been provided, but subsection (e) provides that only the election board worker may decide whether to issue a regular ballot or a provisional ballot "if the election board worker determines that a voter is attempting to circumvent the photographic identification requirement." The Committee recommends that a supervising judge, not the election board worker, should make the determination described in subsection (e).
 - After observing this practice for small elections this year, we will consider whether an amendment to the regulation is needed.

All operations performed and decisions made at the polling place are accomplished under the supervision of the supervising judge, but as a practical matter it is not the supervising judge who considers the qualifications of each voter or dispenses ballots. Individual election board members are appointed, trained and sworn to carry out this function. It has long been the practice that, if an election board worker is unsure as to whether a ballot should be provisional, the decision is made by the supervising judge. The proposed regulation is consistent with this longstanding practice.

See KSA 25-2810(a): "Each election board shall have control of its voting place and election procedure under the sole supervision of the secretary of state, county election officer, deputy county election officers and the supervising judge."

Rule and Regulation: 7-46-3. Declarations of religious objection. NEW

Major provisions:

(a) a person who seeks an exemption from providing photo ID to vote because of the person's religious beliefs must sign and submit a declaration form to the Secretary of State or the county election officer before the election or when applying for a ballot.

(b) this declaration may not be submitted after casting a ballot.

JCARR Comments and Secretary of State response to each: none; n/a

Rule and Regulation: 7-46-4. Submission of photographic identification by permanent advance voter. RESCINDED after JCARR hearing and before publication

Major provisions:

As proposed, it would have stated that a person who qualifies for permanent advance voting before January 1, 2012, would have been exempt from photo ID requirements for all subsequent elections. A person who qualified would be required to provide photo ID before returning the person's first advance voting ballot (only once).

JCARR Comments and Secretary of State response to each: none; n/a

Additional JCARR Comments and Secretary of State response to each:

- The Committee expresses its overall discomfort with the level of discretion given to local election officials in determining the acceptability of documents and in determining the identity of individual voters at polling places. The Committee notes that determinations of the State Election Board are exempted from the Judicial Review Act (KSA 2011 Supp. 77-603(c)(4)) and requests the agency respond to this concern. Where would an aggrieved potential voter learn of procedures for appealing to federal officials?
 - Counties are subdivisions of state government. To the extent that any discretion exists, it is granted by the Legislature. County officials act within the authority granted by the Legislature. The proposed regulations provide further direction to county election officers in the exercise of their authority. It should be clear that there is never any discretion as to whether or not a ballot is issued to the voter. Any existing discretion would solely be limited to whether the ballot is regular or provisional. If a provisional ballot is issued, the voter has ample opportunity to correct the deficiency. Any aggrieved voter may go online to www.voteks.org for information on filing a complaint under federal law.
- Committee members request information on the public education efforts undertaken by the Secretary of State's office regarding the SAFE Act. Committee members expressed concern regarding the public's ability to deal with the law and regulations if education efforts have not been widely undertaken.
 - Although we have not proposed regulations dealing with the voter education program, nor do we have the authority to do so, we have enclosed a summary of the voter education program planned for 2012 and 2013. [two pages attached to filed paper copy]
- The Committee reminds Secretary Kobach that if the above issues warrant substantial changes in the proposed regulations, those regulations must be brought before the Committee again.
 - If substantial changes are made to the proposed regulations, we will inform the committee.
- The Committee notes that the Economic Impact Statement is incomplete because it does not estimate the costs of the regulations to local election boards and officials and requests inclusion of those costs in an amended Economic Impact Statement.
 - There are some costs resulting from passage of the SAFE Act, but these costs were included in the applicable fiscal notes regarding the Act itself. KSA 77-416 states that economic impact statements "shall consider the economic impact of such proposed *rule and regulation*." The proposed regulations do not add costs above those mandated by the Act. Setting the Act aside, the regulations do not create additional expenses.

ergy or materials shall be exempt from payment of monitoring fees for the amount of hazardous waste reclaimed. This exemption shall not apply to hazardous waste residues produced during reclamation.

(2) Each small quantity generator and each Kansas small quantity generator shall pay the annual monitoring fee of \$150 before April 1 of each year.

(e) Monitoring fee payments. Each monitoring fee payment that is made by check or money order shall be made payable to the "hazardous waste management fund - Kansas department of health and environment."

This regulation shall be effective on and after July 1, 2012. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended Oct. 29, 2004; amended April 29, 2011; amended July 1, 2012.)

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State of Kansas

Secretary of State

Permanent Administrative
Regulations

Article 23.—VOTER REGISTRATION

7-23-4. Notice of places and dates of registration.

The notice regarding registration required by K.S.A. 25-2310, and amendments thereto, shall be published one time, at least 10 days before the date the registration books will be open additional hours as provided in K.S.A. 25-2311, and amendments thereto. If late hours are not required, the notice shall be published one time, at least 10 days before the date the registration books will be closed. The publication notice shall be made in the following form:

NOTICE OF PLACES AND DATES OF REGISTRATION

In compliance with the provisions of K.S.A. 25-2310, notice is hereby given that the books for registration of voters will be open at the following places during regular business hours:

Persons who apply for services at voter registration agencies may register at the following places during regular business hours:

* Beginning on the _____ day of _____, _____, additional hours of registration will be provided at the following places:

At _____ p.m. on the _____ day of _____, _____, the books for registration of voters will close and will remain closed until the _____ day of _____, _____.

A citizen of the United States who is 18 years of age or older, or will have attained the age of 18 years at the next election, must register before he or she can vote. Registration is open until the close of business on the 21st day before the election.

When a voter has been registered according to law, the voter shall remain registered until the voter changes name by marriage, divorce or other legal proceeding or changes residence. The voter may reregister in person, by mail or other delivery when registration is open or the voter may reregister on election day.

Application forms shall be provided by the county election officer or the Secretary of State upon request. The application shall be signed by the applicant under penalty of perjury.

In Witness Whereof I have hereunto set my hand and seal this _____ day of _____, _____

County Election Officer

(SEAL)

* If late hours are not required, omit this paragraph."

(Authorized by K.S.A. 25-2310; implementing K.S.A. 25-2310 and K.S.A. 25-2311, as amended by L. 2011, ch. 112, § 19; effective Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 24, 1990; amended Jan. 3, 1997; amended Feb. 24, 2012.)

7-23-14. Assessing documents submitted as evidence of United States citizenship. (a) In assessing documents submitted as evidence of United States citizenship, each election officer shall consider the following factors: first name, middle name or initial, surname, date of birth, place of birth, and sex.

(1) The first name and the middle name or initial, if provided, shall be consistent with the information provided on the person's application for voter registration. Hyphenated names shall be permitted if not inconsistent with the information provided on the person's application for voter registration.

(2) If the name on the document is inconsistent with the applicant's name as it appears on the application for voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's current name;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309(q) and amendments thereto, stating the inconsistency related to the applicant's name and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is either unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309(m) and amendments thereto.

(3) The date of birth indicated on the document submitted as evidence of United States citizenship shall match the date of birth provided on the application for voter registration. If the dates of birth are inconsistent, the election officer shall inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309(m) and amendments thereto.

(continued)

(4) If the place of birth is indicated on the document submitted as proof of United States citizenship, the place of birth may be used to assess the applicant's status as a United States citizen. If the document does not contain a place of birth, this fact shall not result in an unsatisfactory assessment.

(5) If the sex indicated on the document does not match the sex indicated on the application for the voter registration, the election officer shall perform the following:

(A) Ask the applicant for a second, government-issued document confirming the voter's sex;

(B) if the applicant is unable or unwilling to provide a second, government-issued document, allow the applicant to sign an affidavit pursuant to K.S.A. 25-2309(q) and amendments thereto, stating the inconsistency related to the applicant's sex and swearing under oath that, despite the inconsistency, the applicant is the individual reflected in the document provided as evidence of citizenship; and

(C) if the applicant is unable or unwilling to provide a second, government-issued document and refuses to sign an affidavit, inform the applicant of the applicant's right to appeal to the state election board, pursuant to K.S.A. 25-2309(m) and amendments thereto.

(6) If a document submitted as evidence of United States citizenship contains an expiration date and this date has passed when the document is submitted for purposes of voter registration, the document shall nonetheless be considered in assessing qualifications to register to vote.

(b) If an applicant for voter registration fails to submit evidence of United States citizenship before the deadline to register to vote before an election, the applicant may submit a valid citizenship document by mail or personal delivery to the county election office by the close of business on the day before the election or a valid citizenship document by electronic means before midnight on the day before the election. "Electronic means" shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state. For each document received in accordance with this subsection, the county election officer shall perform the following:

(1) Accept and assess the citizenship document;

(2) add the applicant's name to the voter registration list as a registered voter; and

(3) if practicable, include the registrant's name in the poll book for the upcoming election. If poll books have already been printed, the county election officer shall, if practicable, communicate the registrant's name to the appropriate polling place with instructions to allow the registrant to vote a regular ballot. If the registrant's name is not communicated to the election board at the appropriate polling place by the county election officer before the opening of the polls on election day, the registrant shall be allowed to cast a provisional ballot. If any applicant to whom this subsection applies fails to submit satisfactory evidence of United States citizenship in accordance with this subsection and the applicant casts a provisional ballot, the ballot shall not be counted.

(c) If any registered voter is removed from the voter registration list for any reason consistent with federal or state law and the person submits a new application for

voter registration, the person's evidence of United States citizenship shall be assessed.

(d) Each person who meets all of the following conditions shall submit evidence of United States citizenship:

(1) The person was registered to vote before January 1, 2013 and was therefore deemed to have provided satisfactory evidence of United States citizenship pursuant to K.S.A. 25-2309(n), and amendments thereto.

(2) The person has been removed from the voter registration list for any reason in accordance with federal or state law.

(3) The person submits a new application for voter registration.

This regulation shall be effective on and after January 1, 2013. (Authorized by and implementing K.S.A. 2010 Supp. 25-2309, as amended by L. 2011, ch. 56, sec. 8; effective Jan. 1, 2013.)

Article 36.—ABSENTEE AND ADVANCE VOTING

7-36-7. Processing advance voting ballot applications. This regulation shall govern the processing of each application for an advance voting ballot received by a county election officer if the applicant is registered to vote in that election officer's county and wants to receive the ballot by mail.

(a) If the application does not contain sufficient information or if the information is illegible, the county election officer shall contact the applicant to obtain the information before election day, if practicable.

(b) If the application is not signed or the signature on the application is not consistent with the applicant's signature on the official voter registration list, the election officer shall attempt to contact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain an updated signature.

(c) If the application does not contain the number of the applicant's Kansas driver's license or Kansas non-driver's identification card or if the number is illegible, the county election officer shall attempt to contact the applicant by any means to obtain the information. The county election officer shall provide the applicant with the information required by K.S.A. 25-1122(e)(2), and amendments thereto.

(d) The county election officer may collect an applicant's Kansas driver's license number or Kansas non-driver's identification card number by any legal means. If the applicant provides the necessary number and the number is consistent with the number on the voter registration list, the county election officer shall issue a regular advance voting ballot.

(e) If an applicant submits a photocopy of the qualifying photographic identification document and the document contains information that is illegible or inconsistent with the information on the voter registration list, the county election officer shall attempt to contact the applicant by any means to confirm that the applicant intended to apply for an advance voting ballot and shall attempt to obtain a satisfactory photocopy of the qualifying photographic identification document.

(f) If it is not practicable to contact the applicant before the election or if the information, signature, or photocopy

provided is incomplete or inconsistent with the voter registration list, the county election officer shall issue a provisional advance voting ballot.

(g) The county election officer shall present each provisional advance voting ballot to the county board of canvassers for a determination of validity. If the voter provided additional information, an updated signature, or an additional photocopy upon request by the county election officer and if the information, signature, or photocopy is consistent with the voter registration list, the ballot shall be counted unless the ballot is determined to be invalid for another reason. If the voter did not provide additional information, an updated signature, or an additional photocopy upon request by the county election officer or if the information, signature, or photocopy is inconsistent with the information on the voter registration list, the ballot shall not be counted. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2; effective Feb. 24, 2012.)

7-36-8. Uniformed and overseas citizens absentee voting act; ballot distribution deadline in local mail ballot elections. When conducting a local mail ballot election pursuant to K.S.A. 25-431 et seq. and amendments thereto, the county election officer shall transmit a ballot to any person who is qualified to vote under the uniformed and overseas citizens absentee voting act and who has submitted an application for a federal services ballot 45 or more days before the date of the election. If a person submits an application for a federal services ballot less than 45 days before the date of the election, the county election officer shall transmit a ballot to the person within two business days after receipt of the application. (Authorized by K.S.A. 25-440 and 25-1225; implementing K.S.A. 25-435, K.S.A. 25-438, and K.S.A. 2011 Supp. 25-1218; effective Feb. 24, 2012.)

Article 46.—PHOTOGRAPHIC IDENTIFICATION REQUIREMENTS

7-46-1. Postelection submission of photographic identification by provisional voter. (a) Any voter who has cast a provisional ballot due to a failure or refusal to provide a valid photographic identification document at the time of voting may submit a valid photographic identification document by mail, in person, or by electronic means to the county election office in the county where the voter is registered to vote. "Electronic means" shall include facsimile, electronic mail, and any other electronic means approved by the secretary of state.

(b) If the voter submits a valid photographic identification document to the county election office before the county board of canvassers convenes, the county election officer shall present the document to the board of canvassers to determine the validity of the provisional ballot. If the board of canvassers determines the photographic identification document to be valid and the provisional ballot is not determined to be invalid for any other reason, the ballot shall be counted. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2, and K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

7-46-2. Election board worker assessment of validity of photographic identification documents. (a) Each election board worker to whom a photographic identification document is presented by a voter shall assess the sufficiency and validity of that document as follows:

(1) The election board worker shall perform the following:

(A) Verify that the name on the photographic identification document is consistent with the name on the poll book;

(B) allow for abbreviations and nicknames, including "Wm." or "Bill" for "William";

(C) if the name of the voter is consistent with the name in the poll book, proceed to paragraph (a)(2); and

(D) if the voter's name is different from the name in the poll book or the name as stated by the voter due to marriage, divorce, hyphenation, or legal action, issue the voter a provisional ballot on the condition that the voter first completes an application for voter registration.

(2) The election board worker 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 to the voter, and other physical characteristics.

(A) If the election board worker is satisfied that the voter is the person depicted in the photographic identification document and the voter's name is consistent with the name in the poll book, then the election board worker shall issue the voter a regular ballot.

(B) If the election board worker is unable to determine whether the voter is the person depicted in the photographic identification document because of degradation or insufficient photograph quality, then the election board worker shall issue a regular ballot to the voter if one of the following conditions is met:

(i) The voter's date of birth on the presented photographic identification document matches the voter's date of birth in the poll book.

(ii) The voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(iii) An election board worker at the polling place possesses knowledge that the person depicted in the photographic identification document is the voter.

(3) If the election board worker determines that the photographic identification document does not depict the voter, then the election board worker shall issue a provisional ballot unless the voter submits a different photographic identification document that contains a photograph that appears to the election board worker to depict the voter.

(b) The photographic identification document shall not be used to verify the address of the voter if the document contains an address. The photographic identification document shall be used to verify only the name and appearance of the voter. The poll book shall be used to verify the address of the voter by comparing the voter's address in the poll book to the address stated by the voter.

(c) If there is a dispute regarding the application of this regulation to a voter or if the election board worker is unable to determine a voter's eligibility, the supervising

(continued)

judge shall make a decision regarding whether a regular ballot or a provisional ballot shall be issued.

(d)(1) The county election officer shall present all provisional ballots to the county board of canvassers for a determination of validity.

(2) Each provisional ballot issued under this regulation shall be counted if both of the following conditions are met, unless the provisional ballot is determined to be invalid for another reason:

(A) Before the county board of canvassers convenes, the voter provides information to the county officer that remedies each deficiency or inconsistency that led to the issuance of the provisional ballot.

(B) The county board of canvassers determines that the voter's provisional ballot is valid.

(e) Nothing in this regulation shall require an election board worker to issue a regular ballot if the election board worker determines that a voter is attempting to circumvent the photographic identification requirement. Except as specified in K.S.A. 25-2908(i) and amendments thereto, nothing in this regulation shall exempt the voter from providing a photographic identification document. (Au-

thorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

7-46-3. Declarations of religious objection. (a) Each person who is otherwise entitled to vote and who seeks an exemption from the photographic identification requirement pursuant to K.S.A. 25-2908(i)(5), and amendments thereto, shall sign and submit a declaration form concerning the person's religious beliefs before receiving a ballot in each election in which the person intends to vote. The person may sign and submit the declaration form to the secretary of state or the county election officer before each election or when applying for a ballot.

(b) A voter shall not submit a declaration of religious objection in place of a valid photographic identification document after casting a ballot. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective Feb. 24, 2012.)

Kris W. Kobach
Secretary of State

Doc. No. 040244

INDEX TO ADMINISTRATIVE REGULATIONS

This index lists in numerical order the new, amended and revoked administrative regulations and the volume and page number of the *Kansas Register* issue in which more information can be found. Temporary regulations are designated with a (T) in the Action column. This cumulative index supplements the 2009 Volumes of the *Kansas Administrative Regulations* and the 2010 Supplement of the *Kansas Administrative Regulations*.

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