

State of Kansas

Secretary of State

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 8:30 a.m. Tuesday, January 24, 2012 in the second floor auditorium at Memorial Hall, 120 S.W. 10th Ave., Topeka, to consider amendments to Kansas Administrative Regulation 7-23-4 and the adoption of proposed new Kansas Administrative Regulations 7-23-14, 7-36-7, 7-36-8, and 7-46-1 through 7-46-4. These regulations pertain primarily to photographic identification and proof of citizenship requirements for voters.

This 60-day notice of public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed regulations. Comments may be submitted prior to the hearing to Desiree Taliaferro, Administrative Assistant, Office of Legal Counsel, Office of the Secretary of State, Room 140, Memorial Hall 120 S.W. 10th Ave., Topeka, 66612-1594, or to desiree.taliaferro@sos.ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Desiree Taliaferro at (785) 296-2034 or the Kansas Relay Center at 1-800-766-3777.

K.A.R. 7-23-4 relates to notice required to inform the public of the voter registration deadline.

K.A.R. 7-23-14 details the process by which county election officers and the Secretary of State should assess documents submitted as evidence of United States citizenship.

K.A.R. 7-36-7 details the procedures by which advance ballot applications to vote by mail should be processed and advance ballots issued.

K.A.R. 7-36-8 details the application of the Uniformed and Overseas Citizens Absentee Voting Act in mail ballot elections.

K.A.R. 7-46-1 details the process by which a voter may submit a photographic identification document after casting a ballot.

K.A.R. 7-46-2 details the process by which an election board worker should assess the validity of a photographic identification document submitted by a voter to establish the voter's identity.

K.A.R. 7-46-3 details the process by which a voter may declare a religious objection to the photographic identification requirement.

K.A.R. 7-46-4 details the interaction between permanent advance voters and the photographic identification requirement.

There is no significant economic impact anticipated because of these regulations.

Copies of the full text of the regulations and the economic impact statement may be obtained at the address above or by contacting Barb Dominguez at (785) 296-2114 or barb.dominguez@sos.ks.gov. The proposed regulations are also available on the Secretary of State's website at www.kssos.org.

Kris W. Kobach
Secretary of State

K.A.R. 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. ~~1995 Supp. 25-2311, as amended by L. 1996, ch. 187, § 9~~ 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 _____, _____.

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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 ~~15th~~ 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 ~~re-register~~ reregister in person, by mail or other delivery when registration is open or the voter may ~~re-register~~ 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. 1995-Supp. 25-2311, as amended by L. 1996 2011, ch. 187 112, § 9 19; effective Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 24, 1990; amended Jan. 3, 1997; amended P-

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K.A.R. 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.

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(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.

(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.

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(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

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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 P-_____.)

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K.A.R. 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 nondriver'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 nondriver'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.

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(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 P-_____.)

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K.A.R. 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; implementing K.S.A. 25-435, 25-438, and 25-1218, as amended by L. 2011, ch. 27, sec. 3; effective P-_____.)

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Article 46: Photographic Identification Requirements

K.A.R. 7-46-1. Postelection submission of photographic identification by provisional voter.

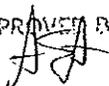
(a) Any voter who has cast a provisional ballot due to a failure or refusal to provide a valid photographic identification document at the time of voting may submit a valid photographic identification document by mail, in person, or by electronic means to the county election office in the county where 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 P-_____.)

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K.A.R. 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

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

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(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. (Authorized by and implementing K.S.A. 2010 Supp. 25-2908, as amended by L. 2011, ch. 56, sec. 11; effective P-_____.)

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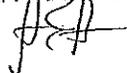
K.A.R. 7-46-3. Declarations of religious objection. (a) Each person who is otherwise entitled to vote and who seeks an exemption from the photographic identification requirement pursuant to K.S.A. 25-2908(i)(5), and amendments thereto, shall sign and submit a declaration form concerning the person's 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 P-
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K.A.R. 7-46-4. Submission of photographic identification by permanent advance voter.

(a) Each person who has qualified for permanent advance voting status before January 1, 2012 shall be exempt from the photographic identification requirement for all elections occurring after that date.

(b)(1) Each person who qualifies for permanent advance voting status on or after January 1, 2012 shall provide photographic identification to the county election officer as follows:

(A) When applying for permanent advance voting status;

(B) at any time before returning the person's advance voting ballot at the first election that occurs after the person applied for permanent advance voting status; or

(C) when returning that person's advance voting ballot at the first election that occurs after the person applied for permanent advance voting status.

(2) After providing photographic identification according to this subsection, the person shall not be required to submit photographic identification for subsequent elections unless the person's name is removed from the permanent advance voting list. (Authorized by and implementing K.S.A. 2010 Supp. 25-1122, as amended by L. 2011, ch. 56, sec. 2; effective P-
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**KANSAS SECRETARY OF STATE
ECONOMIC IMPACT STATEMENT
K.A.R. 7-23-4, 7-23-14, 7-36-7, 7-36-8, and 7-46-1 through 7-46-4**

I. Summary of Proposed Regulation, Including Its purpose:

K.S.A. 7-23-4. This regulation pertains to the notice posted by each county election officer about voter registration procedures before each election. The legislature recently changed the voter registration deadline to the 21st day preceding an election and moved the date opening advance voting to the 20th day preceding an election. This regulation is amended to incorporate this legislative change.

K.A.R. 7-23-14. This regulation details the process by which county election officers and the Secretary of State should assess documents submitted as evidence of United States citizenship. Evidence of United States citizenship is used to ensure that qualified electors are eligible to register to vote. The purpose of this regulation is to give guidance to the assessor as to which factors should be considered while taking into account possible events in the life of an individual such as marriage, divorce, name-change, change in gender, etc. This regulation ensures that qualified electors will be able to vote regardless of the existence of these life events. Additionally, this regulation sets out the timeline for the submission of a proof of citizenship document by a voter as it relates to other registration and election dates.

K.A.R. 7-36-7. This regulation details the procedures by which advance ballot applications to vote by mail should be processed and advance ballots issued. The purpose of this regulation is to ensure that advance ballot applicants will, at a minimum, receive a provisional ballot. It also lays out the responsibilities of county election officers to attempt to contact applicants if information is illegible, incomplete, or inaccurate. This regulation gives voters every opportunity possible to submit the information required to obtain an advance ballot by mail.

K.A.R. 7-36-8. This regulation details the application of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in mail ballot elections. The purpose of this regulation is to state the deadlines applicable to UOCAVA voters considering that recent legislation requires all local issues and questions be submitted to UOCAVA voters. This requirement applies even if these issues or question are submitted through a mail ballot election.

K.A.R. 7-46-1. This regulation details the process by which a voter may submit a photographic identification document after casting a provisional ballot. The submission of a sufficient photographic identification document will result in the provisional ballot being counted. This regulation ensures that voters will have every opportunity possible to submit the required photographic identification document before the county canvass.

K.A.R. 7-46-2. This regulation details the process by which an election board worker should assess the validity of a photographic identification document submitted by a voter to establish the voter's identity. The purpose of this regulation is to give guidance to the election board workers to ensure that votes are counted regardless of the existence of nick-names, abbreviations, name-changes due to marriage or other legal action, change in gender, or other circumstances affecting an individual's name or appearance. This regulation also ensures that all voters will receive, at a minimum, a provisional ballot and that no voter will be turned away at a polling location without receiving a ballot.

K.A.R. 7-46-3. This regulation details the process by which a voter may declare a religious objection to photographic identification requirement. The purpose of this regulation is to set out the time-frame and process for such an objection to be declared.

K.A.R. 7-46-4. This regulation details the interaction between permanent advance voters and the photographic identification requirement. The purpose of this regulation is to set out the time-

frame and process for permanent advance voters to be exempted from the photographic identification requirement.

II. Federal law requirements:

The proposed regulations and revocations are not mandated by federal law, nor are they required for participation in, or implementation of, a federally subsidized or assisted program. The proposed regulations and revocations do not exceed any requirements of federal law.

III. Economic Impact:

K.A.R. 7-23-4. The economic impact of this regulation on county election officers is expected to be nonexistent because the change in the regulation is simply a date change. There is no significant economic impact anticipated on any county election officer, state agency or the general public because no county election officer, state agency or the general public will be required to perform any act not already being performed.

K.A.R. 7-23-14. There is no significant economic impact anticipated because of this regulation on any county election officer, state agency or the general public because the assessment of evidence of United States citizenship is required by statute. This regulation merely gives detail as to the process by which such evidence should be assessed.

K.A.R. 7-36-7. There is no significant economic impact anticipated because of this regulation. County election officers already have procedures in place for contacting advance voters as necessary.

K.A.R. 7-36-8. There is no significant economic impact anticipated because of this regulation. The law requires ballots to be mailed to UOCAVA voters in mail ballots elections. This regulation merely clarifies the date by which county election officers must transmit the ballots.

K.A.R. 7-46-1. There is no significant economic impact anticipated because of this

regulation. County election officers already have procedures in place for accepting voters' identification documents after election day. This is done during the period when provisional ballots are being researched in preparation for the county canvass. The period allowed for this process in law was lengthened this year with passage of legislation moving the date of the county canvass later.

K.A.R. 7-46-2. There is no significant economic impact anticipated because of this regulation. This regulation is intended to define the procedure used by election board workers as they assess the validity of voters' identification documents. That duty is assigned by law; this regulation does not assign new duties.

K.A.R. 7-46-3. There is no significant economic impact anticipated because of this regulation. County election officers already have procedures in place for accepting documents and assigning or changing voters' status in the statewide voter registration database. The forms are available to voters online. Some forms may be submitted to election board workers at the polling place on election day, but this process will not add to the time necessary for voting; it replaces the process of submitting photographic identification.

K.A.R. 7-46-4. There is no significant economic impact anticipated because of this regulation. This regulation clarifies the process of applying for permanent advance voter status as it relates to the one-time submission of photographic identification. The permanent advance voting process has been provided for in law for many years and is well known to county election officers.

IV. Less Costly or Intrusive Methods:

The evaluation of other less costly or intrusive methods was unnecessary because the changes or revocations described either have no significant economic impact anticipated while maintaining the present level of services. These regulations merely provide detail to requirements now existing under state law.