Comments & Responses:

Rules on Poll Watchers, Vote Challenges, and Provisional Voting

1. Comment (Watson, Brown Garland Co. CBEC at public hearing) §900(a) Expressed concern about the definition of the site for absentee ballot processing stating that the processing will occur at the courthouse when, in fact, many counties process at other locations.

Staff response: The definition in the rule is the same as in the code; legislation would be required to make this change.

2. Comment (Washington Co. CBEC) §900(b), the definition related to the additional identification requirement for flagged first-time voters, add “proof of insurance” as an acceptable form of ID if it meets certain conditions.

Staff response: The types of documents allowed in the definition are the same as set out in Act 595, and they would not include proof of insurance; legislation would be required to make this change.

3. Comment (RPA) §900(g), the definition of “Documentation from the administrator”, the commenter suggests that it is inconsistent with SOS rules on the issuance by the county clerk of voter ID cards, and that it is beyond the scope of “7-5-201(g)” [I couldn’t find 7-5-201(g). The reference is probably to 7-5-201(d) TH].

Staff response: Staff recommends adoption of the SOS rule regarding administrator documentation, assuming the SOS rule is approved by BLR and the legislative committee. The SOS has submitted its rules for legislative review, which is scheduled to occur on August 20.

Act 595, section 5, A.C.A. §7-5-322(a)(1) provides the SOS with the authority to make rules regarding the issuance of Voter ID cards by the county clerk. The latest version of the SOS Rules on Voter Identification deals with administrator documentation in Rule 16, as follows:

16.01 A resident of a long-term or residential care facility licensed by the State of Arkansas is not required to provide Proof of Identity before voting. In lieu of the Proof of Identity, a resident is required to provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

16.02 A letter on letterhead, dated and signed by the administrator which specifically identifies the full name of the resident in the body of the letter is sufficient to meet the documentation requirement. The letter is valid for one year after the date it is signed and issued.

16.03 The letter issued by the administrator can be used by a resident of a long-term care facility during early voting, on election day at a polling location, and when voting by absentee ballot.

The current differences between the SBEC proposed rule and SOS’s version include the following:
The SBEC rule requires a “letter memorandum or notation” instead of just a “letter” under the SOS rule;

- The SBEC proposal requires the letter be executed no earlier than a day before early voting begins (to avoid the possible consequences of stale documentation) whereas the SOS rule allows the letter to be in effect for a year. The longer effective duration would aid voters and is consistent with recommendations of the AARP.

- The SBEC rule allows the letter to contain the names of multiple voters (for the convenience of the administrator and because of the short duration of the effectiveness of the letter) while the SOS rule requires that only one name appear on the letter. SBEC adoption of the SOS rule is also consistent with the recommendations of the AARP.

- The SBEC rule does not address how the documentation may be used by the voter, whereas the SOS rule states that it may be used either at the polls or for absentee voting. Staff is unclear as to whether or not this is specifically allowed in Act 595, but believes, along with SOS, that voters should receive the benefit of any doubt on issues concerning voter ID.

4. **Comment (Watson, Brown Garland Co. CBEC at public hearing)** §900(r) Expressed concern that all forms of POI listed in the definition should include a reference to a photo, and that not all concealed carry permits have a photo – wants to prevent arguments at the polls.

*Staff response:* Act 595 and the proposed rule clearly require POI to contain both a photo and the name of the voter.

5. **Comment (Washington Co. CBEC)** §905, last sentence, requiring absentee clerks to put each absentee ballot considered as provisional into a provisional ballot envelope with the reason for rejection being listed on the envelope. This requirement would make an already long day longer, commenter asserts. Washington Co. currently keeps the ballots separated from other ballots with a tally sheet for the reason the ballots were not counted.

*Staff response:* As long as absentee ballot clerks are able to associate the reasons for rejection with each individual rejected ballot, there may be no need to require the use of the additional provisional envelopes.

6. **Comment (Watson, Brown Garland Co. CBEC at public hearing)** §906 Expressed concern about the amount of information to be included on the slip of paper to be handed to provisional voters as a result of the rule requiring additional information on the notice provided the voter at the polls.

*Staff response:* Staff will consider this observation when developing sample notice forms.

7. **Comment (Watson, Garland Co. CBEC)** §906(a) next to last sentence. P. 14 Notice to Provisional Voters – requirement of rule that the notice to provisional voters explain the provisional voting process should be struck because such an explanation “will be lengthy and only serves to confuse the” voters.
**Staff response:** Staff has received numerous reports that many voters do not understand what they are being asked to do when they cast a provisional ballot. Staff believes a brief explanation of the process will clarify rather than cause confusion. Staff will consider this observation when developing sample notice forms.

8. **Comment (Soffer)** § 906(a) line 4 change to read words to the effect, “That the provisional voter will be notified if his or her vote was not counted and the reason why by first class mail. If a provisional voter DOES NOT receive a notice, their vote was counted.”

**Staff response:** The proposed rule as currently written is required to comply with state and federal requirements that the voter be notified whether the provisional ballot was counted.

9. **Comment (Washington Co. CBEC)** §906, notice to voters at the polls – this notice should not contain the name of the clerk, because the clerk can change and any pre-printed forms could not be used if that happens. Washington County is planning to have tear-off sheets printed, so a more generic form is better.

**Staff response:** Staff recommends removing the requirement to list the name of the clerk.

10. **Comment (Washington Co. CBEC)** §906, notice to voters at the polls – the date time and address of the hearings should not be included on the notice at the polls because this information may not be known on election day and would require new forms to be printed every election.

**Staff response:** Staff believes that with proper planning cbec’s will be able to meet this requirement. The purpose of the proposed rule is to provide for voters to receive notice without reliance on the mail.

11. **Comment (Watson, Brown Garland Co. CBEC at public hearing)** §907 Expressed concern about holding POI provisional until Monday; provisional ballots are usually counted soon after the election.

**Staff response:** This is required by Act 595.

12. **Comment (Soffer)** Attachment “A” Provisional envelope voter statement above the signature line be removed and information incorporated into the voter notice addressed in § 906. If HAVA precludes this, then insert a block requiring the voter to initial to request being notified in both accounts. The way this statement is currently worded leaves a voter no option to opt-out of being notified because they are required to sign the envelope regardless of their preference thereby triggering notification by mail. Notification by mail for disallowed provisional ballots and affording the voter a hearing opportunity is already a mandatory action covered elsewhere.

**Staff response:** These changes were incorporated into the proposed rules approved by the board at its June 19, 2013 meeting.
13. **Comment (Watson, Garland Co. CBEC)** Attachment “B” List of Provisional Voters, commenter asks that the form include precincts as a separate column. Garland County apparently has numerous precincts vote in each polling site and it would be clearer to list the precinct with each voter’s name than at the top of the page.

**Staff response:** Garland is the only county making this suggestion, though a revision in the form might be helpful to other counties as well. Perhaps this form should be removed from these rules and included with training materials as a suggested form that can be modified by the county as needed. Note that Staff does not view the form as it appears in these rules to be mandatory, but it could be seen as such.

**Changes proposed by Staff**

§900 add the definition of “Administrator” to wit:

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

§901 The heading of subsection B. Failure to Provide was inadvertently struck. That heading should be “un-struck” and the subsections renumbered. The purpose of Section 901 is to deal with ballots made provisional for failure to provide ID.

§901, under B. Additional Identification Requirement, strike “Unless statutorily exempt” because it is redundant (these first-time voters are not flagged if they are statutorily exempt and this section refers to flagged voters)