Comments & Responses:

Rules on Voter Identification

1. **Comment (AARP):** Overall, commenter is concerned that the proposed rules will create more voter and poll worker confusion and delays and that the rules don’t address how voters and poll workers will learn about new ID requirements.

   **Staff response:** The board will be asked to approve poll worker training materials at a later date.

2. **Comment (AARP):** §800(c) regarding the requirement that the documentation from the administrator (an exception to the POI requirement for long-term care resident voters) be issued no earlier than 1 day before the start of early voting. The commenter asks for a “much more flexible regime for issuance of [administrator] documentation ... perhaps as much as a week to ten days in advance.”

   **Staff response:** Staff recommends, following a recommendation by the Secretary of State, that the documentation from the administrator be good for one year.

3. **Comment (AARP):** §800(c) also regarding the administrator documentation, commenter suggests a rule requiring all facility operators to produce and timely provide the documentation that may be used at the polls in lieu of POI and requiring state licensing authorities to notify operators of these duties at least 2 months before early voting starts.

   **Staff response:** Staff believes that regulation of administrators and long term care facilities lies with the Office of Long-term Care (DHS), and the board may not have the authority to pass such a rule pursuant to Act 595 per A.C.A. §7-4-101(f)(5).

4. **Comment (AARP):** §800 definitions commenter suggests adding a broad definition of “public assistance” to clarify that the “public assistance identification card” (an acceptable form of POI) encompasses “any cash or non-cash ... assistance provided to individuals by a federal or state entity or by an agent for such entity....”

   **Staff Response:** Act 595 states that acceptable POI must be issued by the United States, the State of Arkansas or an accredited post-secondary educational institution in the State of Arkansas. Act 595 does not provide for ID issued by a private entity that could be construed to be an “agent” of a governmental entity to be acceptable POI.

5. **Comment (unidentified poll worker):** §800 Definitions, requested that rules state that concealed carry permits are acceptable ID at polls

   **Staff Response:** The proposed rule (and Act 595) already provide for a concealed carry permit issued by the state and bearing a photo of the voter to be proper POI.

6. **Comment (Soffer):** §800 Definitions in (b): Proof of Identity, (1) and (3)(i) are duplicates and (i) should be deleted.
**Staff Response:** The rule as currently written reflects the language in Act 595, and does reference voter ID’s issued by the county clerk twice. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case.

7. **Comment (Soffer):** §800(b)(1) add a semi-colon after 2013. (Note that this change will be made to (c)(1) if the recommendation to add the definition of *administrator* is adopted, JC)

**Staff Response:** Staff recommends adoption of Commissioner Soffer’s suggestion.

8. **Comment (Soffer):** §800(b)(2)(c) has “the Untitled (sic) States rather than the federal government. That is the language in Act 595. (Note that this change will be made to (c)(2) if the recommendation to add the definition of *administrator* is adopted, JC)

**Staff Response:** Staff recommends fixing the typographical error referenced in Commissioner Soffer’s comment.

9. **Comment (Soffer):** §800(b)(2)(c) Insert the caveat (federal government) after “States.” (Note that this change will be made to (c)(2) if the recommendation to add the definition of *administrator* is adopted, JC)

**Staff Response:** The rule as currently written reflects the language in Act 595. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case.

10. **Comment (Soffer):** § 800, Definitions, insert “all of” in the first line between “the” and “above” and “(i.e. (2) (a), (b), (c) and (d))” after above so the sentence reads, so it reads “all of the above (i.e. (2) (a), (b), (c) and (d))”

**Staff Response:** The rule as currently written reflects the language in Act 595. Adopting the proposed change would probably have no effect. However, staff is slightly concerned about unintended and unforeseen consequences that may result from varying from the text of the statute in this case. If adopted, staff recommends amending the language to (c)(3) as follows “Documents or identification cards that comply with all of the requirements of (c)(2) for proof of identity may include, without limitation, the following:”.

11. **Comment (Watson Garland Co. CBEC):** §800 Definitions, commenter wants each type of allowable POI listed in the definition to individually state “with current name” and “with photograph” to assure that voters understand the requirement that acceptable POI must have the voter’s name and photograph on it.

**Staff Response:** Act 595 and the proposed rule clearly require POI to contain both a photo and the name of the voter.
12. Comment (RPA, SOS): §800(c), definition of “documentation from the Administrator” is inconsistent with SOS rules on the issuance of voter ID cards by the clerks.

Staff Response: Staff recommends adoption of the SOS rule regarding administrator documentation, assuming the SOS rule is approved by BRR 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.

13. Comment (RPA): §801 regarding the requirement to present POI at the polls- “There needs to be a section addressing absentee voting for voters who live in long-term or residential care facilities. They may be voting absentee instead of early or on election day. They could be visiting
family in the hospital or want to vote absentee because they would be out of the precinct during the election for any number of reasons. ... Was it the intent of the Author of the implementing legislation to leave absentee voters out of this section? That should be clarified."

**Staff Response:** This comment is apparently asking for a rule allowing residents of long-term care facilities to be able to submit documentation from an administrator instead of the documentary ID required for other absentee voters.

As mentioned in the previous comment (Comment 12), the SOS rule that specifically states that the documentation may be used for absentee voting is a great aid to voters. The proposed SBEC rule is currently silent on this issue. However, in discussions with SOS, a reasonable argument has developed that Act 595 intends to allow this documentation to be used by absentee voters in long-term care facilities. Staff and SOS believe that voters should receive the benefit of any doubt on voter ID issues.

If approved, appropriate changes should be reflected in §800 and in §810.

14. **Comment (RPA):** Sec. 802(5), regarding name changes vis-à-vis POI – “If the voter’s name is different from the name in the precinct voter registration list, there is a specific procedure to follow in [A.C.A. §] 7-5-321 of the Act. If these rules do not follow and include that procedure they are outside the scope of the enabling legislation.”

AND

15. **Comment (Watson Garland Co. CBEC):** §802(5) poll worker Assessment... change language in the rule to clarify that voter must submit name change before receiving the ballot (“issue... a regular ballot after [instead of ‘if’] the voter completes a voter registration application form”)

**Staff Response:** Staff recommends the adoption of Garland County’s suggestion to change “if” to “after”.

Regarding RPA’s comment, note that the purpose of this rule is to address the POI requirement as it relates to voters who have changed their names since they registered to vote – usually, recently married voters.

Act 595 does not directly address name changes. Name changes are addressed in A.C.A. §7-5-305(a)(6) and A.C.A. §7-5-306(a). The procedure RPA addresses, A.C.A. §7-5-321 deals with voters who fail to provide proof of identity. Proposed §802(5) deals with voters who have provided proof of identity.

16. **Comment (AARP):** §802, Commenter asks for a rule addressing how poll workers will be trained to carry out with fairness and consistency the task of comparing photo [ID]... to the physical characteristics of the voter standing before them...”

AND
17. **Comment (Soffer):** §802 Poll Worker Assessment of Validity of Proof of Identity remove (7) because the Act does not contain any provision for a poll judge to make a call in the event there is a dispute whether the photo identification presented is that of the voter or not. The Act is clear if there is doubt, the individual is voted on a provisional ballot and the county board makes the determination. The alternative is asking the voter to provide a second form of identification to substantiate who they are. Not necessarily a photo ID but perhaps a credit card, and this can be covered in training.

**Staff Response:** Regarding AARP’s comment, §802(3) requires poll workers to compare the photo on the POI to the person standing before them “considering hair color, glasses facial hair, cosmetics, weight and other physical characteristics.” When there is doubt, the election judge is the final arbiter. Staff will recommend for the training materials to stress that poll workers must approach this task with the understanding that these characteristics can change over a period of time and that they must be applied fairly and consistently.

Regarding Commissioner Soffer’s proposal to remove §802(7), first note that the purpose for many of these rules, including this one, is to assure uniformity and consistency in the application of Act 595 statewide. If §802(7) is removed, the interpretation of Act 595 could vary from poll-to-poll and county-to-county, and there would be no basis for training one way or the other.

18. **Comment (Washington Co. CBEC):** §802(2), requiring a poll worker to compare the registrant ID number on a clerk-issued ID card against the poll book, “if the card came from the county clerk’s office, then the numbers should be the same as what is in the [poll book].”)  

**Staff Response:** Staff is not sure whether the commenter is asking that this language be changed or removed. Staff can only note that SOS requested this language.

19. **Comment (RPA):** §803, regarding the additional ID requirement for flagged first-time voters – “Federal law must be followed for this section and it appears it has been but this should be confirmed.”

**Staff Response:** The Bureau of Legislative Research, which reviews proposed rules prior to submission to the legislative committee, raised the same question that this comment poses regarding federal law’s interaction with the additional first-time voter requirement. Here is how staff responded to a question from Jessica Sutton of BLR, in part addressing the federal law issue:

Q. I’m really confused how this “additional identification requirement for certain first-time voters” works. Are they required under every circumstance to provide proof of identity? Or are you saying that if they don’t have proof of identity, they can provide any of the other items, like utility bill, bank statement, etc. The voter id rules state that if their photo id is expired, they can provide one of those other things. But what if they don’t have proof of identity, current or otherwise? If you could just clarify this for me, I would appreciate it.
A. Our proposed rule would require flagged first-time voters to provide POI. If their POI is also a current and valid photo ID (an unexpired driver license, for instance) that is all they are required to present, as an unexpired DL is a "current and valid photo identification."

However, POI is not required to be current and valid. For instance, an expired driver’s license can be acceptable POI if it expired no more than four years before the election. Other forms of acceptable POI may not contain an expiration date or any other facial evidence of its currency and validity. So, if a flagged first-time voter presents POI that is not "current and valid" the voter, under our proposed rule, must additionally submit a current and valid photo ID or a utility bill, bank statement, government check, etc.

If a flagged voter does not present POI and either does or does not present a (non-POI) current and valid photo, utility bill, bank statement, etc. the ballot would be made provisional, but it would be considered as non-POI provisional ballots are considered – if the voter is determined to be a registered voter (usually by signature check against the voter registration signature) the provisional ballot would count.

This is very confusing. The confusion stems partly from the legislative decision to retain both the additional identification requirement for flagged first-time voters as required by the Help America Vote Act and (42 U.S.C. Sec. 15483(b)) and the requirement that notice of the “additional identification requirements” appear on the voter registration form. See Amendment 51 Section 6(a)(7)(C) and 42 U.S.C. Sec. 15483(b)(4). Arguably, these provisions did not have to be retained in state law upon the passage of the more strict requirements of Act 595 (see 42 U.S.C. Sec15484). Some states that have passed ID laws retain the additional requirements and some do not.

The difficulty lies in trying to discern legislative intent from the statutory (and constitutional) scheme in place after the passage of Act 595, and this rule represents our best efforts to do so. However, if BLR has different ideas regarding this issue we would be most grateful to be able to discuss them and I’m sure our board would be interested in and thoughtfully consider any different viewpoint(s).

20. Comment (Washington Co. CBEC): $805 regarding post-election submission of POI, the commenter suggests a rule prohibiting voters from bringing POI to the clerk until the Wednesday after the election day.

Staff Response: Act 595 states in Section 5 (new A.C.A. §7-5-321(c)) that a provisional ballot of a voter who failed to present POI at the polls "shall be counted if... the voter returns ...by 12pm on the Monday following the election" and provides POI or an affidavit. So, Act 595 does not rule out election day "returns" and legislation would be required to accomplish the commenter’s goal.
21. **Comment (RPA):** §810 regarding the absentee voting ID requirement, commenter suggests establishing a procedure for returning and “protecting” original ID documents such as drivers licenses and student ID’s that might be sent in with absentee ballots.

**Staff Response:** Staff suggests that perhaps the board could better ascertain whether there is a need for such a rule after an election cycle has passed.

22. **Comment (RPA):** §810, eliminate the requirement to include notice of the absentee voter ID provisions in the absentee ballot application form and the voter statement because the requirement exceeds the authority of and varies from past practice of the SBEC. In support of this objection to the rule, commenter asserts:

(a) That current law spells out what can appear on the application and voter statement. The proposed rule exceeds the scope of that legislation and the SBEC does not have specific authority to regulate absentee ballot applications and voter statements by adding requirements in those areas. This is a substantive area where the legislature has provided specific details as to how to handle “that substantive area of law.”

(b) Voters or groups” may create their own absentee ballot application” which will be accepted if the application includes the information required by the statute. It will be confusing for voters, clerks and third party organizations that create their own applications if the rule is adopted because there is no specific statutory authority for SBEC to promulgate rules regulating applications and voter statements; litigation could result;

(c) A bill was filed in the 2013 legislative session that would have provided for notice of the ID requirement on the voter statement and since that bill did not pass, SBEC cannot make a rule requiring notice of the ID requirement on the application or voter statement;

(d) The board has not traditionally regulated areas like applications and voter statements.

**Staff Response:** Staff responds to RPA’s comment as follows:

**Staff’s reason for the rule**

First, it is important to fully explain the reasons for the proposed rule. Staff believes that absentee voters need to be informed of the new absentee ID requirement in the most effective way possible.

Act 595 requires that the voter include a copy of her/his ID document when they return their absentee ballot – if ID is not included the ballot is rejected. On belief, many voters will not have ready access to a copy machine. Some of those voters will not wish to send in their only copy of a bank statement, utility bill, current and valid photo ID, etc. Therefore the sooner in the process that a voter receives direct notice of the ID requirement, the more likely the voter will be able to lay hands on the proper ID and get it copied in time to send it in with his/her ballot. Staff believes this early, direct notice of the ID requirement on a document that the voter must sign in order to get an absentee ballot could save many absentee ballots from rejection.
Likewise, Staff believes that the instruction should appear directly on the voter statement, which must be signed by the voter. This is the best way to remind absentee voters to include ID when they send in their ballots and thus avoid rejection of their ballots.

While SOS has informed Staff that SOS has a plan for voter education that would include absentee voter ID, and Staff has no reason to believe that SOS’s efforts will not be as effective as such a campaign can possibly be, staff nonetheless believes it is critical that information about the new ID requirement be at absentee voters’ fingertips both when they are applying for an absentee ballot and when they are returning it to the clerk.

Objection: (a) Current law spells out what can appear on the application and voter statement, the proposed rule exceeds the scope of that legislation, and the SBEC does not have specific authority to regulate absentee ballot applications and voter statements by adding requirements in those areas; This is a substantive area (presumably absentee applications and voter statements) where the legislature has provided specific details as to how to handle “that substantive area of law”

RPA first objects to the proposed rule on the grounds that the rule is contrary to statutes setting out the information that must appear on the absentee ballot application and the voter statement. RPA cites A.C.A. §7-5-410, which states that it is “unlawful for any person to place any notice, advertising material, or other advice with the material delivered or mailed to the applicant, other than instructions as to the method of casting an absentee ballot including a procedure to be followed by absentee voters such as express information covering the type or types of writing instruments which may be used to mark the absentee ballot, preferably pen or indelible pencil, the consequences of voting for more than one (1) candidate for a particular office, and notice of the last day on which the ballot may be received and counted. The instructions and notice shall not be signed by the name of any person.” They assert that A.C.A §7-5-404 (which essentially establishes deadlines and other procedures for the delivery of the application – RPA may intend to refer to §7-5-405, which states that the SOS prescribed form “shall contain the following information,” and goes on to list the information) and 7-5-409 (which in (b)(4)(ii)-(v) states that the “voter statement shall include” specific items which follow) set out specifically and exclusively what must be included in the absentee ballot application and the voter statement.

Staff response to objection (a)

Staff respectfully disagrees with RPA’s assertion that the proposed rule is contrary to law.

A.C.A. §7-5-410, cited by RPA, specifically contemplates and allows “instructions as to the method of casting an absentee ballot including a procedure to be followed by absentee voters ....” The statute goes on to list examples, but not an exclusive list of allowable topics of instruction (“including a procedure to be followed by absentee voters such as express information covering the type or types of writing instruments which may be used to mark the absentee ballot, preferably pen or indelible pencil, the consequences of voting for more than one (1) candidate for a particular office, and notice of the last day on which the ballot may be received and counted.” (emphasis supplied)).
The proposed rule is for instructions to be included on the application form (“an absentee ballot application form shall include instructions regarding the absentee voter identification requirement”) and the voter statement (“a voter statement under A.C.A. §7-5-409 shall include instructions regarding the absentee voter identification requirement”). Such instructions are clearly permitted by §7-5-410.

It might be that RPA is asserting that even if voter ID instructions are allowed “with” the materials delivered to the clerk, as per the language in §7-5-410, they are not allowed on the forms themselves. Staff believes there is substantial legal support for adding the instruction to the forms themselves. The question is whether A.C.A. §§7-405 and 7-409, by listing certain information that must be included on them, purport to exclude instructions about absentee voter ID from the face of applications and voter statements.

First, it must be noted that SBEC’s rule-making authority is broad – it may adopt “all necessary rules to assure ... fair and orderly election procedures.” As noted above, Staff believes that the proposed rule is necessary to assure that the absentee ID requirement is implemented fairly.

Second, the statutes setting out the contents of the application and voter statements contain no language that indicates the legislature wished to exclude additional information relating to the absentee voting process. Indeed, traditionally, the absentee ballot application and other election-related documents have long contained information in addition to that prescribed in the code. For instance the current prescribed application form includes, in addition to the requirements of §7-5-405, information regarding bearer limitations, a note that anyone may distribute blank absentee ballot applications, a note to the effect that the form may be distributed by the county clerk beginning 60 days before the election, a note to return the application to the county clerk, a title (“Application for Absentee Ballot”), a revision date, a notation “For Office Use Only”, a space for a Precinct #, and The County Clerk’s name, office address and telephone and fax numbers.

Finally, Arkansas’s courts have long held that election laws are mandatory before an election but directory afterwards. This means that an election official can be ordered by a court to fix an error in a prescribed form before the election, but once an election is held the official’s error will not invalidate the election or call into question any voter’s ballot. This judicial maxim, along with the authority given to SBEC in A.C.A. §7-4-101(c)(6) to make rules assuring fair election procedures reflects Arkansas’s liberal policy in favor of legitimate voters being able to cast votes that will count.

In light of the critical need to make absentee voters aware of new ID requirements, SBEC’s broad authority to make rules to assure fair election procedures, the tradition of including relevant and necessary information on election-related forms, the policy of the state to interpret election laws broadly to ensure that every valid vote counts, and the extremely small likelihood (in Staff’s opinion) of litigation challenging this requirement, Staff asserts that the proposed rule would be a proper and desirable exercise of SBEC’s rule-making authority.

Objection (b), Voters or groups “may create their own absentee ballot application” which will be accepted if the application includes the information required by the statute.
This objection to the rule is grounded in the fact that some political groups send out flyers in the mail before elections urging the recipients to vote absentee, and include as part of the flyer an absentee ballot application “form” that is not the prescribed form, but usually supplies enough information to qualify as a “letter or postcard” application pursuant to A.C.A. §7-5-404(a)(6)(l). Commenter is concerned that it will be confusing to “voters, clerks and third party organizations that create their own absentee ballot applications” if the requirements are added by the rule.

Staff response to objection (b)

The current wording of the rule may indeed cause some confusion and Staff will recommend that the rule be changed to clarify that the requirement for the voter ID instruction is required to appear only on the forms sent out by the county clerks. Please note that the rule is not intended to nor would it cause any form to be rejected for lack of the instruction. Also note that the original version of the rule submitted to the SBEC required SOS to include the instruction on the form that office prescribes under A.C.A. §7-7-405, and the change to the current wording was made at the last SBEC meeting after discussion with SOS staff, who objected to the original wording of the rule.

Objection (c), a bill was filed in the 2013 legislative session that would have provided for notice of the ID requirement on the voter statement. Since that bill did not pass, SBEC cannot make a rule requiring notice of the ID requirement on the application or voter statement.

Staff response to objection (c)

HB 2068 was passed by the House and died in Senate committee. Staff is not aware of any legal authority for the proposition that a bill that did not pass has any evidentiary bearing on the issue of a regulatory agency’s ability to make a rule on the same subject matter, and commenter has cited no such authority. As noted above, Staff is of the opinion that the board has the authority to make this rule.

Objection (d) the board has not traditionally regulated areas like applications and voter statements.

Staff response to objection (d)

Commenter asserts that SBEC’s current rules dealing with “election-day procedures, poll workers counting votes, election monitors, filing fees for nonpartisan positions,…and… [reimbursement] for …election expenses,” should be sufficient and that SBEC should not “expand its rules to govern new areas like absentee ballot applications and voter statements” because that could appear to be “an effort to assume roles granted other areas of government.

In response, Staff notes that these proposed rules, and many of the other rules mentioned by commenter, were conceived and proposed in the spirit of the SBEC’s mandate to make rules to assure fair election procedures. With regard to the rule set out in §810, Staff saw that the existing statutory scheme offered an opportunity, through rule-making, to promote fairness in the legal procedure a voter undertakes to obtain an absentee ballot by instructing those voters on the newly enacted necessity to provide ID.
SBEC’s rules have evolved over time. These proposed rules and the existing rules are there to assure fairness in elections through uniform application of the laws in all of our state’s election jurisdictions. Here, it is absolutely critical that absentee voters be provided information about the ID requirement at every opportunity. Unlike voters at the polls who have a second chance to present ID, failure to provide ID with absentee ballots results in the rejection of those ballots. The proposed rule is how Staff proposes SBEC address a procedure for providing this necessary information.

23. Comment (SOS): §810, the requirement that notice of the absentee voter ID requirement be included in the absentee ballot application form – commenter objects to this requirement because “absentee ballot applications are generated by the electronic voter registration system” and it would take well into 2014 to “plan and implement the necessary coding” to include the notice on the form. Commenter “questions” changing the form between the primary and general elections, if the change is possible at all. Commenter also states that Act 595 did not include this requirement and no funds were appropriated for the changes that would result from the rule. The commenter expressed that SOS is committed to ensuring public awareness of Act 595’s ID requirements.

Staff response: This objection to the requirement that the absentee ID instruction be included on the voter absentee ballot application is related to the way the county clerks supply applications to voters. As Staff understands the process, when a voter requests an application from the county clerk, the county clerk does not merely hand or send the voter a blank application. Rather, the clerk goes into the voter registration system and prints out an application that includes much of the information the voter would otherwise be required to fill in. By printing this pre-populated form from the system, the clerk is also able to keep track of voters to whom he/she has sent applications. The proposed rule would require a programming change to this application.

Staff submits the following alternatives for substitute language if the board decides to include this rule:

(a) The Secretary of State shall include on the prescribed absentee ballot application form under A.C.A. §7-5-405 instructions regarding the absentee voter identification requirement, including a statement that the voter’s absentee ballot will not be counted if a copy of a proper voter identification document is not included when the voter returns the absentee ballot. OR

(b) Beginning no later than the date on which the electronic voter registration system is programmed to provide for the addition of an instruction under this rule, The Secretary of State shall include on the prescribed absentee ballot application form under A.C.A. §7-5-405 instructions regarding the absentee voter identification requirement, including a statement that the voter’s absentee ballot will not be counted if a copy of a proper voter identification document is not included when the voter returns the absentee ballot. OR

(c) An absentee ballot application form provided to a voter by a county clerk shall either have printed on the form or attached to the form instructions regarding the absentee voter
identification requirement, including a statement that the voter’s absentee ballot will not be counted if a copy of a proper voter identification document is not included when the voter returns the absentee ballot.

24. Comment (Watson Garland Co. CBEC): §810, absentee voting ID, require POI instead of the different ID requirement for absentee voters. The lesser requirement for absentees promotes absentee ballot fraud. Commenter also notes that absentee voters should try to go to the polls and vote because there are many mistakes on the absentee paperwork that cause ballots to be rejected.

Staff response: Act 595 does not allow this suggestion to be implemented.

25. Comment (AARP): Sections 804-809, commenter is concerned that many provisional ballots will not be counted or will be counted only after a candidate has conceded or declared victory, and asks for a rule establishing procedures to minimize the number of provisional ballots and to fully account for and explain any discrepancy between the number of provisional ballots submitted on election day and the number initially counted by noon on Monday after the election.

Staff response: Commenter suggests additional ballot accounting procedures that would impose a new reporting requirement on county election officials. A new public comment period in the context of a new rule-making process may be desired before consideration of such a rule.

Changes proposed by Staff

§800 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.

§802 change the first sentence of the first paragraph to state as follows:

The proof of identity shall be used to verify the name and appearance of the voter, except that when a voter presents a voter identification card issued by the county clerk pursuant to Act 595 of 2013, the card shall also be used to verify the voter's identification number.