

Secretary of State
Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 1:00 p.m. Friday, August 5, 2022, in the second floor auditorium at Memorial Hall, 120 SW 10th Ave., Topeka, KS, regarding the amendment of Kansas Administrative Regulation 7-36-7 and the adoption of Kansas Administrative Regulation 7-36-9, pertaining to signature verification on mail ballot applications and mail ballot envelopes. The regulations govern procedures if a signature is missing or is inconsistent with the voter's signatures recorded in the voter registration database, procedures for contacting voters with signature deficiencies, and training requirements for county election staff performing signature verification.

The statutory authority for the Secretary of State to promulgate these regulations are K.S.A. 25-124, K.S.A. 25-440, K.S.A. 25-1122, and K.S.A. 25-1131. The regulations implement provisions of K.S.A. 25-124, K.S.A. 25-433, K.S.A. 25-1122, K.S.A. 25-1123, and K.S.A. 25-1124.

Adopting these regulations imposes only small economic burdens on county election staff and imposes no environmental impact.

This 60-day notice of the 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 Clay Barker, General Counsel, Office of the Secretary of State, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594, or to clay.barker2@ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views. Additionally, interested parties wanting to participate remotely may contact Clay Barker at clay.barker2@ks.gov to obtain remote access information. It may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Clay Barker at 785-296-3483 or the Kansas Relay Center at 1-800-766-3777.

Copies of the full text of the regulations and economic impact statement may be obtained at the address above for the Office of the Secretary of State or by contacting Lara Murphy, Director of Administrative Regulations and Publications, at 785-296-0082 or lara.murphy@ks.gov. The proposed regulations are also available on the Secretary of State's website at www.sos.ks.gov.

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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.~~ comply with the procedures specified in K.A.R. 7-36-9.

(c) If the application does not contain the number of the applicant's ~~Kansas driver's license or Kansas nondriver's identification card~~ current and valid Kansas driver's license number or nondriver's identification card number or a photocopy of any other identification specified in K.S.A. 25-2908 and amendments thereto or if the number or photocopy 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~~ current and valid Kansas driver's license number or nondriver's identification card number or a photocopy of any other identification specified in K.S.A. 25-2908, and amendments thereto ~~by any legal means.~~ If the county election

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officer obtains ~~applicant provides~~ the necessary identification number or photocopy and the identification number or photocopy 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 K.S.A. 25-1122; and implementing K.S.A. 2010 Supp. 25-1122, K.S.A. 25-1123, and K.S.A. 25-1124 as amended by L. 2011, ch. 56, sec. 2; effective Feb. 24,

2012; amended, T-_____, _____; amended P-_____.)

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7-36-9. Signature verification for advance voting by mail. (a) For purposes of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Application" means the submission by a registered voter to apply for an advance voting ballot to be transmitted by mail on which the voter affixes a signature, as specified in K.S.A. 25-1122 and K.S.A. 25-1122d, and amendments thereto.

(2) "Inconsistent," when used regarding a signature, means that the signature differs in multiple, significant, or obvious respects from the voter's signature in the voter registration database.

(3) "Mail ballot envelope" means the envelope containing a completed ballot on which the voter affixes a signature, as specified in K.S.A. 25-1124 and K.S.A. 25-433(b) and amendments thereto.

(4) "Match," when used regarding a signature, means that the signature is generally uniform and consistent with the voter's signature in the voter registration database.

(5) "Signature verification" means the process to verify the authenticity of a voter's signature on applications, as required by K.S.A. 25-1122(e)(1) and amendments thereto, and on mail ballot envelopes, as required by K.S.A. 25-1124(d) and (h) and K.S.A. 25-433(e) and amendments thereto.

(b) When a county election officer receives from a voter either an application or a mail ballot envelope, the county election official shall conduct signature verification as follows:

(1) If the signature matches the voter's signature on file, the application or mail ballot envelope shall be processed pursuant to K.S.A. 25-1134, K.S.A. 25-1135, and K.S.A. 25-1136, and amendments thereto.

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(2) If the signature on the application or mail ballot envelope is inconsistent with the voter's signature on file or there is no signature, the county election official shall attempt to contact the voter as follows:

(A) If the voter's phone number is reasonably available, the county election official shall attempt to call the voter at least three times. The county election official shall inform the voter or leave a message with another person who answered the call or on voice mail of the apparently inconsistent or missing signature and the way to verify the voter's identity or correct the missing signature.

(B) The county election official shall send to the voter by first-class mail a notice informing the voter of the apparently inconsistent or missing signature, with instructions on how to verify the voter's identity or correct the missing signature.

(C) The county election official may also attempt to contact the voter by any other means, including electronic mail or personal visit at the voter's residence.

(c) The county election official shall record the following:

(1)(A) For contact by phone, the date, time, and phone number for each call and specification of whether instructions were left by voice mail, by conversation with the voter, or by conversation with another individual;

(B) for contact by mail, the date the letter was sent to the voter, the address to which the letter was sent, and a copy of the letter; or

(C) for other means of contact, a general description of the means of voter contact; and

(2) for all means of contact, specification of whether the voter corrected the missing or inconsistent signature.

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(d) If a voter receives notice of a signature that is inconsistent with the voter's signature on file, the signature deficiency may be corrected as follows:

(1) On a mail ballot envelope, by providing an updated signature consistent with the signature on file at any time until the commencement of the county board of canvassers; or

(2) on an application, by providing an updated signature consistent with the signature on file at any time through the Tuesday of the week preceding the election.

(e) If a voter receives notice of a missing signature, the signature deficiency may be corrected as follows:

(1) On a mail ballot envelope, by appearing in person before a county election official and providing a signature at any time until the commencement of the county board of canvassers; or

(2) on an application, by submitting a new application with a signature or by appearing in person before a county election official and providing a signature at any time through the Tuesday of the week preceding the election.

(f) Before performing signature verification, the county election official shall complete training approved by the secretary of state on procedures to determine whether a voter's signature is consistent with the signature in the voter registration database.

(g) When conducting signature verification, the following shall apply:

(1) The voter's signature shall be compared to as many recorded signatures as possible from the voter registration database.

(2) Signature verification may occur by electronic device or by human inspection.

(3) All signatures that match those in the voter registration database shall be accepted.

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(4) Before a signature on any application or mail ballot envelope is deemed inconsistent, at least two election officials who have been trained by the secretary of state shall agree that the signatures are inconsistent.

(5) Signature verification shall not be required if a voter has a disability preventing the voter from signing the ballot or preventing the voter from having a signature that matches the voter's registration form. (Authorized by K.S.A. 25-124, K.S.A. 25-440, K.S.A. 25-1122, and K.S.A. 25-1131; implementing K.S.A. 25-124, K.S.A. 25-433, K.S.A. 25-1122, and K.S.A. 25-1124; effective, T-_____, _____; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Secretary of State
Agency

Clayton Barker
Agency Contact

785-296-3483
Contact Phone Number

7-36-7, 7-36-9
K.A.R. Number(s)

☒ Permanent ☒ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

These regulations relate to the process used by county election officials for signature verification – ensuring that a voter’s signature on a mail ballot application or mail ballot envelope match the signature on file. K.A.R. 7-36-9 is a new regulation providing standardized procedures for all county election officers. K.S.A. 7-36-7 was the previous, less detailed, directive on signatures, which required some unrelated updating. In the past, the procedures for signature verification were governed by general guidance, not regulations

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The approach to signature verification is generally consistent with the approach used by other states.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

None

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

None

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

None

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

Standardizes procedures for signature verification among the 105 county election offices and ensures the procedures meet U.S Constitutional standards

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Analysis of various options to select the least costly option that still met the need for standardized procedures.

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$ de minimis

Costs to Members of the Public – \$0

Total Annual Costs – \$ de minimis

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

County election offices are already performing signature verification. Additional costs could include additional staff time and additional postage for mailing. Given the wide variation in the number of ballot envelopes or applications with signature issues, it is difficult to estimate additional costs.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Requested input and advice from county election officers

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Click here to enter agency response.

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

Click here to enter agency response.

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