

No. 08-17094

**In the United States Court of Appeals
for the Ninth Circuit**

MARIA M. GONZALEZ, et al.,
Plaintiff-Appellants,

v.

STATE OF ARIZONA, et al.,
Defendant-Appellees,

THE INTER TRIBAL COUNCIL OF ARIZONA, INC., et al.,
Plaintiff-Appellants,

v.

STATE OF ARIZONA, et al.,
Defendant-Appellees,

**On Appeal from the United States District Court
for the District of Arizona**

Case Nos. CV-06-1268-PHX-ROS and CV06-1362-PCT-JAT

**BRIEF *AMICUS CURIAE* OF
THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES
IN SUPPORT OF THE GONZALEZ PLAINTIFF-APPELLANTS
AND REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the League of Women Voters of the United States hereby states that it has no parent corporation, and no publicly held corporation owns 10% or more of the League's stock.

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INTEREST OF *AMICUS CURIAE**

The League of Women Voters of the United States is a nonpartisan, community-based organization that promotes political responsibility by encouraging Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 150,000 members and supporters, and is organized in more than 850 communities and in every State.

For nearly 90 years, the League has worked to protect every American citizen's right to vote. As part of its mission, the League has been a leader in the effort to remove the unnecessary barriers that too many Americans face in registering to vote and casting a ballot. To that end, the League has strongly supported the enactment and enforcement of the National Voter Registration Act of 1993, which aims to increase the number of eligible citizens who register to vote by providing for uniform, nondiscriminatory voter-registration procedures.

* All parties have consented to the filing of this brief.

STATEMENT OF THE ISSUES

1. Whether the National Voter Registration Act of 1993 (NVRA), Pub. L. No. 103-31, 107 Stat. 77, and its implementing regulations preempt the State of Arizona from requiring voter-registration applicants to submit documentary proof of United States citizenship, when the voter-registration application form mandated by federal law and prescribed by the U.S. Election Assistance Commission already requires applicants (1) to attest that they meet all eligibility requirements, including U.S. citizenship; (2) to check a box answering “Yes” to the question “Are you a citizen of the United States of America?”; and (3) to sign the form “under penalty of perjury,” punishable by up to five years’ imprisonment.

2. Whether the court below clearly erred by ignoring Congress’s decision to delete from the bill that became the NVRA a provision expressly permitting States to “requir[e] presentation of documentary evidence of the citizenship of an applicant for voter registration.”

CONSTITUTIONAL AND STATUTORY BACKGROUND

The Federal Constitution

The Elections Clause of Article I, Section 4 of the United States Constitution vests state legislatures with the authority to prescribe the “Times, Places and Manner of holding Elections for Senators and Representatives.” U.S. Const. art. I, § 4, cl. 1. However, “Congress may at any time by Law make or alter such Regulations.” *Id.*

The National Voter Registration Act

Exercising this constitutional authority, Congress passed the National Voter Registration Act of 1993 (NVRA). Having found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation,” 42 U.S.C. § 1973gg(a)(3), Congress enacted the NVRA to “establish procedures that will increase the number of eligible citizens who register to vote,” *id.* § 1973gg(b)(1).

One of the NVRA’s new procedures was a uniform national mail voter-registration application form that all States were required to “accept and use.” *Id.* § 1973gg-4(a)(1). As enacted in 1993, the NVRA vested the Federal Election Commission (FEC) with the sole authority to develop this application form (in consultation with the States’ chief election officers). *Id.* § 1973gg-7(a)(2).

The NVRA also prescribed the application form's content, setting forth six requirements. *First*, the application form can “require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” *Id.* § 1973gg-7(b)(1). *Second*, the form must specify that U.S. citizenship is an eligibility requirement for voting. *Id.* § 1973gg-7(b)(2)(A); *see* 11 C.F.R. § 8.4(b)(1). *Third*, the form must contain an attestation that the applicant meets all eligibility requirements, including U.S. citizenship. 42 U.S.C. § 1973gg-7(b)(2)(B). *Fourth*, the form must require that the applicant sign under penalty of perjury. *Id.* § 1973gg-7(b)(2)(C). *Fifth*, the form must list the “penalties provided by law for submission of a false voter registration application.” *Id.* §§ 1973gg-6(a)(5)(B), 1973gg-7(b)(4)(i). *Sixth*, the form “may not include any requirement for notarization or other formal authentication.” *Id.* § 1973gg-7(b)(3).

The NVRA's Legislative History

Congress thoroughly debated what information was needed for state election officials to assess whether an applicant was a U.S. citizen. Most Members of Congress thought applicants should be required to attest, under penalty of perjury, that they were U.S. citizens; others wanted to go further, demanding *documentary* proof of citizenship, such as a passport or birth certificate.

The Senate Committee was in the former camp. Its report expressed “confiden[ce] that this Act provides sufficient safeguards to prevent noncitizens from registering to vote,” given that (1) every application “must include a statement that sets forth all the requirements for eligibility, including citizenship, and requires that the applicant sign an attestation clause, under penalty of perjury, that the applicant meets those requirements” and (2) the Act included criminal penalties of up to five years in prison for anyone who falsifies a registration form. S. Rep. No. 103-6, at 11, 37 (1993) [hereinafter “Senate Report”].

The dissenters on the Senate Committee complained that “mail registration under this bill would preclude” a State from requiring documentary “proof of citizenship at the time of registration.” *Id.* at 55 (minority views). On the floor of the Senate, the Committee dissenters sponsored an amendment stating that “[n]othing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration.” 139 Cong. Rec. 5094, 5098 (1993). The amendment passed in the Senate, but the House took the opposite position. *See* H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.) [hereinafter “Conference Report”].

The Conference Committee sided with the House and rejected the Senate amendment. The conferees found that the Senate amendment was “not necessary or consistent with the purposes of this Act” and “could be interpreted by States to

permit registration requirements that could effectively eliminate, or seriously interfere with, the [Act's] mail registration program.” *Id.*

After the bill was reported out of conference, its House opponents moved to recommit the bill to the Committee on House Administration, specifically to direct the Committee to reinsert the Senate amendment permitting States to require documentary proof of citizenship. That motion was defeated, 259 to 164. *See* 139 Cong. Rec. 9219, 9231-32 (1993). Thus, the final version of the NVRA passed by both Houses of Congress did not include any provision permitting States to require documentary proof of citizenship.

The Agency Regulations and the Federal Form

Following the NVRA's enactment, the FEC commenced official notice-and-comment rulemaking proceedings to develop the Federal Form for mail registration. *See* Nat'l Voter Registration Act of 1993, 59 Fed. Reg. 32,311 (June 23, 1994). As illustrated in the addendum to this brief and detailed in the regulations, the Federal Form developed by the FEC includes a single sheet of cardstock that the applicant can simply fill out, stamp, and mail as a postcard to the appropriate state election official. *See* 11 C.F.R. § 8.5. The Federal Form does not require applicants to submit any documentation; indeed, it would be odd to do so, as the Federal Form is designed to be mailed as a self-contained postcard. *See* 11 C.F.R. § 8.5(b).

Next to the place where the applicant must sign and date the Federal Form is the following attestation:

I have reviewed my state's instructions and I swear/affirm that:

- I am a United States Citizen.
- I meet the eligibility requirements of my state and subscribe to any oath required.
- The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.

Addendum at 29-30.

The Help America Vote Act

The Federal Form remained largely unchanged until 2002, when Congress passed the Help America Vote Act. HAVA transferred from the FEC to the newly created Election Assistance Commission (EAC) the responsibility for the Federal Form. 42 U.S.C. § 15532. HAVA also added requirements to the Form, which now must include the question, “Are you a citizen of the United States of America?” and check-boxes for the applicant to answer that question. *Id.* § 15483(b)(4)(A)(i). The EAC accordingly revised the Federal Form to meet these new requirements. No change was made to the NVRA directives that the Form include an attestation of eligibility (including citizenship) and that the applicant sign under penalty of perjury.

Arizona's Proposition 200

In 2004, Arizona voters passed Proposition 200 over the unanimous and bipartisan opposition of Arizona's entire congressional delegation. Proposition 200 mandates that an Arizona "county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship" and lists the documents that must be submitted to prove citizenship. Ariz. Rev. Stat. § 16-166(F). An applicant's attestation that she is a U.S. citizen, signed under penalty of perjury, is no longer satisfactory evidence of citizenship. *See id.* § 16-166(F)(1)-(6).

Arizona's Secretary of State asked the EAC to apply Proposition 200's documentation requirement to the Federal Form. *See* Addendum at 31. The EAC's Executive Director replied that Proposition 200 was "preempted by Federal law" and that Arizona "may not mandate additional registration procedures that condition the acceptance of the Federal Form." *Id.* at 33. The Executive Director explained that "[t]he Federal Government, through the NVRA and the Federal Form, has regulated the process of registering voters in Federal Elections. Acceptance of the Federal Form is mandated by the NVRA. The Federal Form sets the proof required to demonstrate voter qualification. No state may condition acceptance of the Federal Form upon receipt of additional proof." *Id.* at 32-33. Despite the EAC's directive, Arizona continues to require voter-registration

applicants to submit with the Federal Form documentary proof of citizenship. Arizona's county recorders have rejected more than 31,500 voter-registration applications for failure to submit documentary proof of citizenship. *Gonzalez* Excerpt of Record 3 at 13 & n.13.

SUMMARY OF ARGUMENT

1. The 2007 decision affirming the denial of a preliminary injunction in this case is not binding here. The preliminary-injunction panel devoted only two short paragraphs to the NVRA preemption claim and concluded merely that the plaintiffs had not demonstrated a "likelihood" of succeeding on the merits of that claim. *Gonzalez v. Arizona*, 485 F.3d 1041, 1051 (9th Cir. 2007). Moreover, the panel flatly misread the NVRA's plain text and ignored the statute's purpose, legislative history, and consistent administrative interpretation — rendering a decision that was clearly erroneous as a matter of law and, if adhered to here, would be manifestly unjust to thousands of Arizona citizens.

2. Under the Elections and Supremacy Clauses, Congress has broad power to preempt state voting laws. This is a classic case of conflict preemption for two reasons. *First*, it is literally impossible for Arizona election officials to comply with both the NVRA's express mandate to accept the Federal Form, which requires no documentary proof of citizenship, and Proposition 200's express

mandate to reject the Federal Form when unaccompanied by documentary proof of citizenship. *Second*, Proposition 200 stands as an obstacle to accomplishing Congress's express purpose for enacting the NVRA — to increase the number of eligible citizens who register to vote.

3. Every tool of statutory interpretation points to the same result here: The NVRA preempts Proposition 200. *First*, the NVRA's plain text mandates that each State "shall accept" the Federal Form prescribed by the EAC. 42 U.S.C. § 1973gg-4(a)(1). And the statutory text sets forth precisely what constitutes satisfactory proof of U.S. citizenship on the Federal Form: the applicant's attestation, signed under penalty of perjury, punishable by up to five years' imprisonment. *Second*, the NVRA's purpose — stated directly in the statute's text — was to replace state laws that harm voter participation with uniform national procedures that increase voter registration. *Third*, Congress rejected an amendment to the NVRA that would have expressly permitted state laws like Proposition 200. *Fourth*, the EAC, exercising authority that Congress delegated to it in the NVRA, has determined that documentary proof of citizenship is not needed with the Federal Form and that Arizona's Proposition 200 therefore is preempted by federal law.

ARGUMENT

I. THIS PANEL IS NOT BOUND BY THE DECISION OF THE PRELIMINARY-INJUNCTION PANEL.

As an initial matter, this Court can and should reach the merits of the *Gonzalez* plaintiffs' NVRA preemption claim. The Court is not bound by the prior panel decision from the preliminary-injunction stage of this case in *Gonzalez v. Arizona*, 485 F.3d 1041, 1050-51 (9th Cir. 2007), because the decision did not fully consider the NVRA preemption claim, was clearly erroneous, and would result in manifest injustice.

A. The Law-of-the-Case Doctrine Does Not Apply Here Because the Preliminary-Injunction Decision Did Not Fully Consider Plaintiffs' Arguments.

As a general rule, appellate decisions on preliminary injunctions — precisely because they are “preliminary” — do not constitute law of the case. *S. Or. Barter Fair v. Jackson Cty.*, 372 F.3d 1128, 1136 (9th Cir. 2004). An appellate court’s “conclusions on pure issues of law” made at the preliminary-injunction stage, however, may be binding in a subsequent appeal if those conclusions were “fully considered.” *See, e.g., Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA*, 499 F.3d 1108, 1115 (9th Cir. 2007) (citation omitted). That is not the case here. *First*, “the prior panel did not hold that the plaintiffs were [not] *entitled* to succeed; instead, it concluded that they were [not] *likely* to succeed.” *Council of Alternative Political Parties v. Hooks*, 179 F.3d 64,

70 (3d Cir. 1999) (Alito, J.); *see Gonzalez*, 485 F.3d at 1051. Accordingly, law-of-the-case principles “do not dictate” the outcome in this appeal. *Hooks*, 179 F.3d at 70. **Second**, as explained *infra*, the prior decision did not even consider — much less “fully” consider — the entirety of the NVRA’s relevant text, or the statute’s purpose, or its legislative history, or its interpretation by the federal agencies that Congress charged with implementing the statute. Indeed, the panel’s entire discussion of this issue consumed less than half a page in a 12-page published opinion that focused mainly on other issues. *See Gonzalez*, 485 F.3d at 1050-51.

B. The Preliminary-Injunction Decision Cannot Be Binding Because It Was Clearly Erroneous and Would Cause a Manifest Injustice.

Moreover, the panel’s prior decision was clearly erroneous, and its continued application would result in manifest injustice. Law of the case is a discretionary doctrine that in no way limits this Court’s power to correct judicial error or to prevent injustice. “The effect of the doctrine is not dispositive, particularly when a court is reconsidering its own judgment, for the law of the case ‘directs a court’s discretion, it does not limit the tribunal’s power.’” *Mendenhall v. NTSB*, 213 F.3d 464, 469 (9th Cir. 2000) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). A court may depart from its previous decision when “(1) the first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3) the evidence on remand is substantially different; (4) other changed circumstances exist; or (5) a manifest injustice would otherwise result.” *Id.*; *see*

also *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 216 F.3d 764, 787 & n.43 (9th Cir. 2000), *aff'd in part*, 535 U.S. 302 (2002).

Here, the prior decision was clearly erroneous because the panel plainly misread the NVRA. **First**, the panel claimed that the statute allows States “either” to accept and use the Federal Form, “or, in the alternative,” to develop and use their own form. *Gonzalez*, 485 F.3d at 1050. In fact, the statute says “a State **may** develop and use” its own form “[i]n addition to accepting and using” the Federal Form. 42 U.S.C. § 1973gg-4(a)(2) (emphasis added). The statute mandates that “[e]ach State **shall** accept and use” the Federal Form, regardless of whether it develops and uses its own form. *Id.* § 1973gg-4(a)(1) (emphasis added); *see also Diaz v. Cobb*, 435 F. Supp. 2d 1206, 1214 (S.D. Fla. 2006) (noting that whether or not a State uses its own form, “in any event, all states must accept the national registration form”). The prior panel failed to recognize that the NVRA’s plain language mandates acceptance of the Federal Form prescribed by the EAC.

The prior panel further misread the NVRA in concluding that the statute vested **States** with the authority to require information on the Federal Form that would help them assess eligibility. *See Gonzalez*, 485 F.3d at 1050. To the contrary, the statute charges the EAC, not the States, with the responsibility to identify which information will be required on the Federal Form to enable election officials to assess eligibility. *See* 42 U.S.C. § 1973gg-7(a)(2); *see also id.*

§ 1973gg-7 (section titled “***Federal*** coordination and regulations” (emphasis added)).

The panel’s misreading of these provisions of the NVRA render its conclusion regarding the plaintiffs’ claims clearly erroneous as a matter of law. With thousands of Arizonans being denied the right to vote due to Proposition 200’s documentary proof-of-citizenship requirement, failure to revisit the panel’s prior decision would cause a manifest injustice.

II. THE ELECTIONS CLAUSE AND THE SUPREMACY CLAUSE GRANT CONGRESS THE POWER TO DISPLACE STATE VOTER-REGISTRATION LAWS.

The Elections Clause grants Congress “a general supervisory power over the whole subject” of federal elections. *Ex Parte Siebold*, 100 U.S. 371, 387 (1879). Under the Elections Clause, Congress has the authority to provide “a complete code for congressional elections,” including details regarding “registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.” *Voting Rights Coal. v. Wilson*, 60 F.3d 1411, 1413-14 (9th Cir. 1995) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). Congress has such wide-ranging power because the Elections Clause “is a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to preempt state legislative choices.” *Foster v. Love*, 522 U.S. 67, 69 (1997) (citation omitted).

Likewise, under Article VI's Supremacy Clause, "state laws that 'interfere with, or are contrary to the laws of congress, made in pursuance of the constitution' are invalid." *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (quoting *Gibbons v. Ogden*, 22 U.S. 1, 9 (1824)). A federal statute may preempt state law in three broad ways: by express provision, by leaving no room for supplementary state regulation, or by virtue of a conflict with state law. See *Altria Group, Inc. v. Good*, 129 S. Ct. 538, 543 (2008). This is a classic case of conflict preemption, because "compliance with both federal and state regulations is a physical impossibility" for Arizona's county recorders, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), and because state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

The NVRA mandates that state and local election officials must accept Federal Forms that prove citizenship by way of a check-box, attestation, and signature under penalty of perjury. But Proposition 200 requires county recorders to reject new applications for failure to provide additional, documentary proof of citizenship. In thousands of cases, it will be literally impossible for Arizona's county recorders to comply with both federal and state law.

Moreover, Arizona's additional documentation requirement, which has already caused the rejection of more than 31,500 applications, frustrates

Congress’s goal of “increas[ing] the number of eligible citizens who register to vote.” 42 U.S.C. § 1973gg(b)(1). That Proposition 200 actively impedes the accomplishment of Congress’s goal to enfranchise eligible citizens is of paramount importance here because the “purpose of Congress is the ultimate touchstone in every preemption case.” *Altria Group*, 129 S. Ct. at 543 (citations and internal quotation marks omitted).

III. THE NVRA CLEARLY PREEMPTS AND PROHIBITS ARIZONA’S REFUSAL TO ACCEPT THE FEDERAL FORM DEVELOPED BY THE ELECTION ASSISTANCE COMMISSION.

Here, as with every case involving the construction of a statute, the “starting point . . . is the language itself.” *Ordlock v. Comm’r*, 533 F.3d 1136, 1140 (9th Cir.) (quoting *Greyhound Corp. v. Mt. Hood Stages, Inc.*, 437 U.S. 322, 330 (1978)), *cert. denied*, 129 S. Ct. 627 (2008). To determine the NVRA’s plain meaning, “the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” *Id.* (quoting *McCarthy v. Bronson*, 500 U.S. 136, 139 (1991)). “Where the statutory language is clear and consistent with the statutory scheme at issue, the plain language of the statute is conclusive and the judicial inquiry is at an end.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 732 (9th Cir. 2007) (citation and internal quotation marks omitted). On the other hand, where “the words of a statute are not conclusive as to congressional

intent, they should be placed in their proper context by resort to legislative history.” *Ordlock*, 533 F.3d at 1140.

The NVRA on its face plainly preempts Proposition 200’s requirement that Arizona election officials reject Federal Forms that are not accompanied by documentary proof of citizenship. When read, as it must be, in light of its overall legislative purpose to create a uniform, simple system of postcard registration to increase the number of registered eligible voters, the NVRA clearly prohibits Arizona from rejecting Federal Forms due to a failure to comply with Proposition 200’s documentary-proof requirement.

However, to the extent the Court finds the NVRA ambiguous, it may consult the legislative history of the statute, as well as the federal agencies’ interpretations of it. Here, Congress considered the precise issue facing this Court when it rejected an amendment to the NVRA that would have given States the express authority to require documentary proof of citizenship. Indeed, Congress stated that laws like Arizona’s Proposition 200 would be inconsistent with the NVRA’s purpose. Moreover, the federal agency charged with designing the Federal Form has determined that Arizona’s law conflicts with, and is preempted by, the NVRA’s requirement that the State accept and use the Federal Form. That determination demands deference.

A. The NVRA's Plain Language Requires Arizona to Accept the Federal Form Prescribed by the EAC.

The NVRA is clear on its face that the Arizona law cannot stand. The NVRA unambiguously requires that “[e]ach State *shall accept* and use the mail voter registration form prescribed by the [Election Assistance] Commission . . . for the registration of voters in elections for Federal office.” 42 U.S.C. § 1973gg-4(a)(1) (emphasis added); *see id.* § 15532. Arizona law unambiguously requires that Arizona county officials “*shall reject* any application for registration that is not accompanied by satisfactory evidence of United States citizenship.” Ariz. Rev. Stat. § 16-166(F) (emphasis added). Because Arizona law does not consider the evidence of United States citizenship provided on the Federal Form — an applicant’s attestation, along with her affirmative answer to the question, “Are you a citizen of the United States of America?” and her signature under penalty of perjury — to be “satisfactory” evidence of citizenship, *see id.*, Arizona officials reject Federal Forms that are not accompanied by additional, documentary evidence. Clearly, Arizona is violating the NVRA’s mandate that it “shall accept” the Federal Form to register eligible voters.

This Court’s prior decision at the preliminary-injunction stage and the subsequent District Court opinion granting the defendants summary judgment on the plaintiffs’ NVRA claim assume that because the NVRA allows States to “develop and use [their own] form,” in addition to “accept[ing] and us[ing]” the

Federal Form, Arizona is permitted to add a citizenship-documentation requirement for applicants submitting *either* state or federal registration forms. See *Gonzalez*, 485 F.3d at 1050 (first bracket in original). That is wrong. “The Federal statutory scheme provides that states may design their own voter registration forms The statutes provide further, however, that *in any event, all states must accept the national registration form.*” *Diaz*, 435 F. Supp. 2d at 1214 (emphasis added). “Congress simply did not allow the states to impose restrictions that would permit denial of an application that otherwise satisfies the federal requirements.” *Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358, 1367 (N.D. Ga. 2004), *aff’d*, 408 F.3d 1349 (11th Cir. 2005).

The plain language of the statute is mandatory, not precatory. As this Court has recognized, “[w]hen Congress specifies an obligation and uses the word ‘shall,’ this denomination usually connotes a mandatory command.” *Our Children’s Earth Found. v. EPA*, 527 F.3d 842, 847 (9th Cir. 2008). The preliminary-injunction panel’s prior decision in this case ignored the mandatory command in the text of the statute and instead opined that the NVRA permits States “either” to accept and use the Federal Form “or, in the alternative,” to develop and use their own forms. *Gonzalez*, 485 F.3d at 1050. That was clearly erroneous. What the statute actually says is that “a State *may* develop and use” its own mail registration form “[i]n addition to accepting and using” the Federal

Form. 42 U.S.C. § 1973gg-4(a)(2) (emphasis added). Under the statute’s plain language, the State simply does not have the “either/or” choice described by this Court and subsequently relied upon by the District Court in granting the defendants summary judgment. Regardless of whether a State develops and uses its own form, the NVRA mandates that all States must accept and use the Federal Form prescribed by the EAC. 42 U.S.C. § 1973gg-4(a)(1).

The NVRA delegated to the EAC all authority for developing the Federal Form and directed the EAC to “provide information to the States with respect to [their] responsibilities” under the Act. *See* 42 U.S.C. §§ 1973gg-7(a)(1), (2), (4). The statute contains no concomitant delegation of responsibility to state officials for developing the Federal Form or for deciding whether or not to accept it. Indeed, the chief election officers of each State were to serve only in a consultative capacity while the EAC developed the Federal Form. *See id.* § 1973gg-7(a)(2). Arizona’s Secretary of State has essentially usurped the authority of the EAC by deciding that documentary proof of citizenship must accompany the Federal Form. And she has ignored the EAC’s direction as to her responsibility under the NVRA, which is to cease and desist from refusing to accept the Federal Form. Under the statute’s plain text, the Arizona Secretary of State has no authority to set conditions for Arizona to accept the Federal Form.

Consequently, the District Court clearly erred in determining that the “plain meaning” of the statute is that “if the state deems some information necessary to identify [an] applicant, the information can be required.” *Gonzalez v. Arizona*, 435 F. Supp. 2d 997, 1002 (D. Ariz. 2006). It is the EAC, not the State of Arizona, that Congress charged with deciding what information is “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. § 1973gg-7(b)(1). As a leading election-law scholar has explained, “the district court’s analysis is in error” and, if replicated by other courts, could undermine “the NVRA’s mail registration” program, cause “considerable voter confusion,” and eviscerate “the EAC’s ability to ensure [nationwide] consistency.” Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 493-94 (2008).

The panel’s prior decision in this case repeated the mistake of the District Court in concluding that the “statute permits *states* to ‘require[] such identifying information . . . as is necessary to enable . . . election official[s] to assess the eligibility of the applicant.’” *Gonzalez*, 485 F.3d at 1050 (emphasis added; alterations in original; citation omitted). In fact, the statute charges the EAC, not the States, with this responsibility; and it is the EAC, not the States, that determines what information should be required on the Federal Form as necessary to enable state election officials to assess eligibility, including U.S. citizenship.

See 42 U.S.C. §§ 1973gg-7(a)(2), 1973gg-7(b)(1). Indeed, the section of the statute in which this provision is found is entitled “**Federal** coordination and regulations.” *Id.* § 1973gg-7 (emphasis added).

Following the statutory text, the EAC has determined that an applicant’s attestation of eligibility, affirmative answer to the question “Are you a citizen of the United States of America?” and signature under penalty of perjury on the Federal Form are the “**only** . . . information . . . necessary” for election officials to determine citizenship. *Id.* (emphasis added). With respect to the Federal Form, Arizona is not free to amend the EAC’s determinations as to the “only” information necessary. It simply must accept and use the Federal Form as developed by the EAC.

Significantly, the preliminary-injunction panel’s prior decision omitted the key word “only” when quoting the statute’s text. See *Gonzalez*, 485 F.3d at 1050. But Congress uses the word “only” as a limiting factor. See, e.g., *In re Ferrell*, 539 F.3d 1186, 1191 (9th Cir. 2008) (statute’s “use of the word ‘only’” was a significant limitation); *FDIC v. McSweeney*, 976 F.2d 532, 537 (9th Cir. 1992) (had Congress wanted to limit certain claims, “it would have inserted the word ‘only’ in the sentence”). The Court is not free to read this modifier out of the statute.

B. The NVRA's Language Must Be Read in Light of Its Stated Purpose to Increase Registration of Eligible Voters.

“It is a cardinal canon of statutory construction that statutes should be interpreted harmoniously with their dominant legislative purpose.” *Spilker v. Shayne Labs., Inc.*, 520 F.2d 523, 525 (9th Cir. 1975). Here, the dominant legislative purpose is expressly stated in the statute itself. *See* 42 U.S.C. § 1973gg (section titled “Findings and purposes”). Read in light of Congress’s express purposes, the NVRA clearly preempts state laws such as Arizona’s Proposition 200.

In the NVRA, Congress expressly found that “the right of citizens of the United States to vote is a fundamental right” and that it was the “duty of the Federal, State, and local governments to promote the exercise of that right.” 42 U.S.C. § 1973gg(a)(1)-(2). Congress further found that “discriminatory and unfair [state] registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office.” *Id.* § 1973gg(a)(3). Thus, the purposes of the NVRA were “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” and “to make it possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office.” *Id.* § 1973gg(b)(1)-(2).

Arizona's requirement of documentary proof of citizenship has already resulted in the rejection of more than 31,500 voter-registration applications. Clearly, Arizona's determination that it will not accept the Federal Form to register eligible citizens to vote unless it is accompanied by documentary proof of citizenship is frustrating the NVRA's stated purpose of "establish[ing] procedures that will *increase* the number of eligible citizens who register to vote." 42 U.S.C. § 1973gg(b)(1) (emphasis added).

C. The NVRA's Legislative History Indisputably Establishes that Congress Rejected the Very Requirement Arizona Has Imposed.

"Although the Supreme Court has advised that recourse to legislative history is not necessary where a statute's plain meaning is clear, the Court does suggest that [an appellate court] review the legislative history to ensure that there is no clearly contrary congressional intent." *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 884 (9th Cir. 2001) (en banc) (citations omitted). Fortunately, "[t]his happens to be a case in which the legislative history is pellucidly clear." *Zuni Pub. Sch. Dist. No. 89 v. Department of Educ.*, 127 S. Ct. 1534, 1550 (2007) (Stevens, J., concurring). Congress addressed the precise issue facing this Court when it considered and rejected an amendment to the NVRA that expressly would have permitted States to require documentary evidence of citizenship at the time of registration.

Whether to permit States to require documentary proof of citizenship was a topic of fierce debate during congressional deliberations on the NVRA. The House bill contained no such provision, but the Senate passed an amendment stating: “Nothing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration.” 139 Cong. Rec. at 5098. As its sponsor stated, the amendment’s purpose was to “allow[] States to check documents to verify citizenship” at the time of registration. *Id.* (statement of Sen. Simpson).

In reconciling the House and Senate bills, the Conference Committee explicitly rejected this amendment. The Conference Report states: “The conferees agree with the House bill and do not include this provision from the Senate amendment. ***It is not necessary or consistent with the purposes of this Act.*** Furthermore, there is concern that it could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act.” Conference Report at 23 (emphasis added).

The Court should recognize this Conference Report “as the most reliable evidence of congressional intent because it represents the final statement of the terms agreed to by both houses.” *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 835 (9th Cir. 1996) (internal quotation marks omitted); see *In re Silicon*

Graphics Inc. Sec. Litig., 183 F.3d 970, 977 (9th Cir. 1999); *see also Garcia v. United States*, 469 U.S. 70, 76 (1984). Here, as the Conference Report details, the conferees found that allowing States to require documentary proof of citizenship was inconsistent with the NVRA's purpose and could "seriously interfere" with the mail registration procedures established by the Act. Conference Report at 23.

Not only did the conferees explicitly reject this amendment, the entire House voted not to include it in the final bill. After the NVRA was reported out of conference, its opponents moved to recommit the bill to the Committee on House Administration, specifically to direct the Committee to reinsert the Senate amendment permitting States to require documentary proof of citizenship. The motion was defeated by a vote of 259 to 164. *See* 139 Cong. Rec. at 9231-32. Thus, the final version of the NVRA passed by both Houses of Congress did not include any provision permitting States to require documentary proof of citizenship. The bill's opponents lamented that "mail registration under this bill would preclude" a State from requiring documentary "proof of citizenship at the time of registration." Senate Report at 55 (minority views).

The legislative history could not be clearer that Congress did not intend to permit States to require documentary proof of citizenship. Yet the District Court found that Arizona was permitted to require documentary proof of citizenship along with the Federal Form, in part because "Congress did not specifically bar

any other type of information [from] being required for registration.” *Gonzalez*, 435 F. Supp. 2d at 1003. The court even suggested that this was a “‘deliberate decision’ by Congress.” *Id.* (citation omitted). That finding is clearly erroneous. “Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) (quotation marks omitted). “To read language into a statute that Congress has considered and rejected ‘is not a construction of [the] statute, but, in effect an enlargement of it by the court To supply omissions transcends the judicial function.’” *DeLeon v. Ashcroft*, 105 F. App’x 176, 180 (9th Cir. 2004) (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926) (alterations in original)). The District Court was clearly wrong to suggest that Congress meant to include in the NVRA exactly the amendment it rejected. Especially egregious was the fact that the court refused to look at the statute’s legislative history while nonetheless opining on Congress’s unexpressed “intent.” *See Gonzalez*, 435 F. Supp. 2d at 1003-04.

In sum, the fact that Congress considered and rejected an amendment to the NVRA that would have permitted precisely the state law challenged here — not only in the Conference Report, but also in a vote of the entire House of Representatives — makes it indisputable that Arizona is prohibited from applying

Proposition 200's citizenship-documentation requirement to the Federal Form.

Rarely is there a case in which the legislative history is so "pellucidly clear."

D. The EAC's Determinations Regarding Arizona's Proposition 200 Deserve Deference.

The District Court erred by utterly failing to consider the interpretations of the NVRA by the FEC and the EAC. *See Gonzalez*, 435 F. Supp. 2d at 1003-04 ("[T]he agency decisions . . . are not to be consulted."). These federal agencies have determined that (1) the NVRA preempts Arizona law requiring that documentary proof of citizenship be submitted with the Federal Form and (2) the Federal Form's existing proof-of-citizenship requirements are the "only . . . information . . . necessary" for Arizona (and all States) to assess an applicant's U.S. citizenship. *See Addendum* at 32-33. These determinations are clearly based on permissible constructions of the NVRA. *See Chevron U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (analyzing "whether the agency's answer is based on a permissible construction of the statute").

Proposition 200 is preempted not only by the NVRA but also by the federal regulations implementing the NVRA and establishing the Federal Form's format and contents, 11 C.F.R. §§ 8.1-8.6. It is well established that agency views on the preemptive effects of regulations are entitled to deference. "The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely qualified' to comprehend the likely impact of state requirements." *Geier*

v. American Honda Motor Co., 529 U.S. 861, 883 (2000) (quoting *Medtronic v. Lohr*, 518 U.S. 470, 496 (1996)). “[I]f the agency’s choice to pre-empt ‘represents a reasonable accommodation of conflicting policies that were committed to the agency’s care by the statute, [courts] should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.’” *City of New York v. FCC*, 486 U.S. 57, 64 (1988) (quoting *United States v. Shimer*, 367 U.S. 374, 383 (1961)); *see Hillsborough Cty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 714 (1985) (considering agency understanding of preemptive effect of regulations “dispositive”).

Here, as the agency charged with developing the Federal Form, the EAC is uniquely qualified to opine on the NVRA’s preemptive effect on Proposition 200. Regardless of whether its letter ruling carries the force of law, the EAC’s determination “certainly may influence courts facing questions the agencies have already answered.” *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001).

But the formal regulations clearly do carry the force of law. *See, e.g., Watson Land Co. v. Commissioner*, 799 F.2d 571, 579 (9th Cir. 1986) (“[L]egislative regulations, if consistent with statutory authorization, adopted pursuant to proper procedure, and reasonable, have the force of law.”). Through its regulations at 11 C.F.R. § 8.4, the Commission determined that an applicant’s

attestation of eligibility (including U.S. citizenship), affirmative answer to the question “Are you a citizen of the United States of America?” and signature under penalty of perjury are the “only [information] . . . necessary” on the Federal Form to allow state officials to determine an applicant’s citizenship. 42 U.S.C.

§ 1973gg-7(b)(1); *see id.* § 15483(b)(4)(A)(i). Indeed, during the rulemaking proceeding to develop the Federal Form, the Commission specifically found that “[t]he issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury.” 59 Fed. Reg. at 32,316; *see also id.* at 32,311 (describing extensive notice and comment during the Commission’s rulemaking proceedings).

Amicus does not contest that additional, documentary proof of citizenship might be helpful to state officials in assessing some applicants’ eligibility to vote. But Congress’s clear mandate to the Commission was to require on the Federal Form “**only** such . . . information . . . as is **necessary**,” not “all” or “any” such information as “might be helpful” to state election officials. *Compare* 42 U.S.C. § 1973gg-7(b) (emphasis added) *with* 11 C.F.R. § 8.4; *see also* 59 Fed. Reg. at 32,312 (“The Commission has determined that the following information items are necessary to assess the eligibility of the applicant or to administer voter registration or other parts of the election process, and thus has included them on the national mail voter registration form as specified at 11 CFR 8.4.”). The Commission’s

determination that documentary proof of citizenship is not necessary to enable state election officials to assess voter eligibility is certainly a permissible construction of the statute, especially since the NVRA expressly committed to the federal agency's discretion the decision as to what information is or is not necessary. Federal courts accord *Chevron* deference "because of a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows." *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 740-41 (1996).

Under the NVRA, the EAC is the sole agency charged with promulgating regulations to develop a national voter-registration form. *See* 42 U.S.C. § 1973gg-7(a)(2). It did so in the rulemaking that resulted in 11 C.F.R. §§ 8.1 to 8.6. These regulations do not include requests for documentary proof of citizenship. Indeed, the Federal Form developed by the EAC is a self-contained postcard that would make it impossible to insert documentary proof of citizenship. *See* 11 C.F.R. § 8.5(b). Because the EAC's construction of the NVRA's requirements is not only permissible, but eminently reasonable, this Court must defer to it.

CONCLUSION

This Court should reverse the judgment below and hold that the National Voter Registration Act of 1993 and its implementing regulations preempt Arizona Proposition 200's documentary proof-of-citizenship requirement.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached *amicus* brief is proportionally spaced, has a typeface of 14 points or more, and contains 7,000 words or less.

January 27, 2009

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeal for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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ADDENDUM

The National Voter Registration Act of 1993, Public Law No. 103-31, 107 Stat. 77, *codified as amended at* 42 U.S.C. §§ 1973gg to 1973gg-10.Add. 1

The Federal Election Commission’s Regulations Implementing the National Voter Registration Act, 11 C.F.R. §§ 8.1 to 8.7.Add. 10

The Federal Election Commission’s Promulgation of Regulations Implementing the National Voter Registration Act of 1993, 59 Fed. Reg. 32,311-25 (June 23, 1994).Add. 14

Front and Back of the Voter Registration Application (the postcard component of the National Mail Voter Registration Form, known as the “Federal Form”), available at the U.S. Election Assistance Commission’s Web site, http://www.eac.gov/files/voter/nvra_update.pdf.Add. 29

March 6, 2006 Letter from U.S. Election Assistance Commission Executive Director Thomas R. Wilkey to Arizona Secretary of State Jan Brewer.Add. 31

SUBCHAPTER I-H—NATIONAL VOTER
REGISTRATION

§ 1973gg. Findings and purposes

(a) Findings

The Congress finds that—

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are—

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this sub-

chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

(Pub. L. 103-31, § 2, May 20, 1993, 107 Stat. 77.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 103-31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

EFFECTIVE DATE

Section 13 of Pub. L. 103-31 provided that: "This Act [see Short Title note set out under section 1971 of this title] shall take effect—

"(1) with respect to a State that on the date of enactment of this Act [May 20, 1993] has a provision in the constitution of the State that would preclude compliance with this Act unless the State maintained separate Federal and State official lists of eligible voters, on the later of—

"(A) January 1, 1996; or

"(B) the date that is 120 days after the date by which, under the constitution of the State as in effect on the date of enactment of this Act, it would be legally possible to adopt and place into effect any amendments to the constitution of the State that are necessary to permit such compliance with this Act without requiring a special election; and

"(2) with respect to any State not described in paragraph (1), on January 1, 1995."

SHORT TITLE

This subchapter is known as the "National Voter Registration Act of 1993", see Short Title note set out under section 1971 of this title.

PROOF OF CITIZENSHIP

Pub. L. 104-132, title IX, §902, Apr. 24, 1996, 110 Stat. 1317, provided that: "Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship."

Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, §211, Jan. 26, 1996, 110 Stat. 37.

§ 1973gg-1. Definitions

As used in this subchapter—

(1) the term "election" has the meaning stated in section 431(1) of title 2;

(2) the term "Federal office" has the meaning stated in section 431(3) of title 2;

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;

(4) the term "State" means a State of the United States and the District of Columbia; and

(5) the term "voter registration agency" means an office designated under section 1973gg-5(a)(1) of this title to perform voter registration activities.

(Pub. L. 103-31, § 3, May 20, 1993, 107 Stat. 77.)

§ 1973gg-2. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg-3 of this title;

(2) by mail application pursuant to section 1973gg-4 of this title; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg-5 of this title.

(b) Nonapplicability to certain States

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this subchapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103-31, § 4, May 20, 1993, 107 Stat. 78; Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104-99, title II, §211, Jan. 26, 1996, 110 Stat. 37.)

REFERENCES IN TEXT

Upon the enactment of this subchapter, referred to in subsec. (b)(2), means the date of enactment of Pub. L. 103-31, which was approved May 20, 1993.

CODIFICATION

Amendment by Pub. L. 104-91 is based on section 116(a) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104-91.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-91, as amended by Pub. L. 104-99, substituted "August 1, 1994" for "March 11, 1993" wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 116(b) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, §211, Jan. 26, 1996, 110 Stat. 37, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the provisions of the National Voter Registration Act of 1993 [Pub. L. 103-31]."

§ 1973gg-3. Simultaneous application for voter registration and application for motor vehicle driver's license**(a) In general**

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license—

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to—

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that—

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other

format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, § 5, May 20, 1993, 107 Stat. 78.)

§ 1973gg-4. Mail registration**(a) Form**

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 1973gg-6(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg-6(d) of this title.

(Pub. L. 103-31, § 6, May 20, 1993, 107 Stat. 79.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (c)(2)(A), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I-G (§1973ff et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

§ 1973gg-5. Voter registration agencies**(a) Designation**

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies—

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which

is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 1973gg-7(a)(2) of this title, including a statement that—

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 1973gg-7(a)(2) of this title,

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes—

(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of

assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

(d) Transmittal deadline

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, § 7, May 20, 1993, 107 Stat. 80.)

EX. ORD. NO. 12926. IMPLEMENTATION OF NATIONAL VOTER REGISTRATION ACT OF 1993

Ex. Ord. No. 12926, Sept. 12, 1994, 59 F.R. 47227, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to ensure, as required by section 7(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) [42 U.S.C. 1973gg-5(b)] ("the Act"), that departments, agencies, and other entities of the executive branch of the Federal Government cooperate with the States in carrying out the Act's requirements, it is hereby ordered as follows:

SECTION 1. *Assistance to States.* To the greatest extent practicable, departments, agencies, and other entities of the executive branch of the Federal Government that provide, in whole or in part, funding, grants, or assistance for, or with respect to the administration of, any program of public assistance or services to persons with disabilities within the meaning of section 7(a) of the Act shall: (a) provide, to State agencies administering any such program, guidance for the implementation of the requirements of section 7 of the Act, including guidance for use and distribution of voter registration forms in connection with applications for service;

(b) assist each such State agency administering any such program with the costs of implementation of the

Act [42 U.S.C. 1973gg et seq.], consistent with legal authority and the availability of funds, and promptly indicate to each State agency the extent to which such assistance will be made available; and

(c) designate an office or staff to be available to provide technical assistance to such State agencies.

SEC. 2. *Armed Forces Recruitment Offices.* The Secretary of Defense is directed to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices as required by section 7(c) of the Act.

SEC. 3. *Acceptance of Designation.* To the greatest extent practicable, departments, agencies, or other entities of the executive branch of the Federal Government, if requested to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(i) of the Act, shall: (a) agree to such a designation if agreement is consistent with the department's, agency's, or entity's legal authority and availability of funds; and

(b) ensure that all of its offices that are located in a particular State will have available to the public at least one of the national voter registration forms that are required under the Act to be available in that State.

WILLIAM J. CLINTON.

§ 1973gg-6. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 1973gg-3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg-4 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineli-

gible voters from the official lists of eligible voters by reason of—

- (A) the death of the registrant; or
- (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section;
- (5) inform applicants under sections 1973gg-3, 1973gg-4, and 1973gg-5 of this title of—
 - (A) voter eligibility requirements; and
 - (B) penalties provided by law for submission of a false voter registration application; and
- (6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

- (1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and
- (2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or

(ii) correction of registration records pursuant to this subchapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) of this section. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an

address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d) of this section.

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 1973gg-8 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

- (A) the name of the offender;
- (B) the offender's age and residence address;
- (C) the date of entry of the judgment;
- (D) a description of the offenses of which the offender was convicted; and
- (E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term "registrar's jurisdiction" means—

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103-31, §8, May 20, 1993, 107 Stat. 82; Pub. L. 107-252, title IX, §903, Oct. 29, 2002, 116 Stat. 1728.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as

amended, which is classified generally to subchapters I-A (§ 1973 et seq.), I-B (§ 1973aa et seq.), and I-C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 8 of Pub. L. 103-31. Subsec. (h) of section 8 of Pub. L. 103-31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107-252 inserted before period at end “, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

“(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

“(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office”.

§ 1973gg-7. Federal coordination and regulations

(a) In general

The Election Assistance Commission—

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this subchapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) of this section—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(Pub. L. 103-31, § 9, May 20, 1993, 107 Stat. 87; Pub. L. 107-252, title VIII, § 802(b), Oct. 29, 2002, 116 Stat. 1726.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-252 substituted “Election Assistance Commission” for “Federal Election Commission” in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of this title, see section 15534(a) of this title.

§ 1973gg-8. Designation of chief State election official

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this subchapter.

(Pub. L. 103-31, § 10, May 20, 1993, 107 Stat. 87.)

§ 1973gg-9. Civil enforcement and private right of action

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this subchapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws

(1) The rights and remedies established by this section are in addition to all other rights and

remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this subchapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this subchapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 103-31, §11, May 20, 1993, 107 Stat. 88.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (d), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (§1973 et seq.), I-B (§1973aa et seq.), and I-C (§1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1973gg-10. Criminal penalties

A person, including an election official, who in any election for Federal office—

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for—

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this subchapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by—

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(Pub. L. 103-31, §12, May 20, 1993, 107 Stat. 88.)

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agency employees to refuse to participate in any such appearance or to accept any such communication;

- (b) Issuing a letter of reprimand;
- (c) Issuing a letter of admonishment;
- (d) Prohibiting a former employee from making formal or informal appearances or communications in connection with a particular matter or on behalf of a particular party.

(e) Taking other appropriate disciplinary action.

PART 8—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg-1 et seq.)

Subpart A—General Provisions

Sec.

- 8.1 Purpose & scope.
- 8.2 Definitions.

Subpart B—National Mail Voter Registration Form

- 8.3 General Information.
- 8.4 Contents.
- 8.5 Format.
- 8.6 Chief state election official.

Subpart C—Recordkeeping and Reporting

- 8.7 Contents of reports from the states.

AUTHORITY: 42 U.S.C. 1973gg-1 et seq.

SOURCE: 59 FR 32323, June 23, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 8.1 Purpose & scope.

The regulations in this part implement the responsibilities delegated to the Commission under Section 9 of the National Voter Registration Act of 1993, Public Law 103-31, 97 Stat. 77, 42 U.S.C. 1973gg-1 et seq. ("NVRA"). They describe the format and contents of the national mail voter registration form and the information that will be required from the states for inclusion in the Commission's biennial report to Congress.

§ 8.2 Definitions.

As used in this part:

- (a) *Form* means the national mail voter registration application form, which includes the registration application, accompanying general instruc-

tions for completing the application, and state-specific instructions.

(b) *Chief state election official* means the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg-8.

(c) *Active voters* means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(d) *Inactive voters* means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

(f) *State* means a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg-2(b).

(g) *Closed primary state* means a state that requires party registration as a precondition to vote for partisan races in primary elections or for other nominating procedures.

Subpart B—National Mail Voter Registration Form

§ 8.3 General information.

(a) The national mail voter registration form shall consist of three components: An application, which shall contain appropriate fields for the applicant to provide all of the information required or requested under 11 CFR 8.4; general instructions for completing the application; and accompanying state-specific instructions.

(b) The state-specific instructions shall contain the following information for each state, arranged by state: the address where the application should be mailed and information regarding the state's specific voter eligibility and registration requirements.

(c) States shall accept, use, and make available the form described in this section.

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§ 8.4 Contents.

(a) *Information about the applicant.* The application shall provide appropriate fields for the applicant's:

(1) Last, first, and middle name, any suffix, and (optional) any prefix;

(2) Address where the applicant lives including: street number and street name, or rural route with a box number; apartment or unit number; city, town, or village name; state; and zip code; with instructions to draw a locational map if the applicant lives in a rural district or has a non-traditional residence, and directions not to use a post office box or rural route without a box number;

(3) Mailing address if different from the address where the applicant lives, such as a post office box, rural route without a box number, or other street address; city, town, or village name; state; and zip code;

(4) Month, day, and year of birth;

(5) Telephone number (optional); and

(6) Voter identification number as required or requested by the applicant's state of residence for election administration purposes.

(1) The application shall direct the applicant to consult the accompanying state-specific instructions to determine what type of voter identification number, if any, is required or requested by the applicant's state.

(ii) For each state that requires the applicant's full social security number as its voter identification number, the state's Privacy Act notice required at 11 CFR 8.6(c) shall be reprinted with the instructions for that state.

(7) Political party preference, for an applicant in a closed primary state.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine if the applicant's state is a closed primary state.

(ii) The accompanying instructions shall state that if the applicant is registering in a state that requires the declaration of party affiliation, then failure to indicate a political party preference, indicating "none", or selecting a party that is not recognized under state law may prevent the applicant from voting in partisan races in primary elections and participating in political party caucuses or conven-

tions, but will not bar an applicant from voting in other elections.

(8) Race/ethnicity, if applicable for the applicant's state of residence. The application shall direct the applicant to consult the state-specific instructions to determine whether race/ethnicity is required or requested by the applicant's state.

(b) *Additional information required by the Act.* (42 U.S.C. 1973gg-7(b) (2) and (4)). The form shall also:

(1) Specify each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as a universal eligibility requirement and include a statement that incorporates by reference each state's specific additional eligibility requirements (including any special pledges) as set forth in the accompany state instructions;

(2) Contain an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state's specific eligibility requirements;

(3) Provide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;

(4) Inform an applicant on the application of the penalties provided by law for submitting a false voter registration application;

(5) Provide a field on the application for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form if the applicant is unable to sign the application without assistance;

(6) State that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(7) State that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) *Other information.* The form will, if appropriate, require an applicant's former address or former name or request a drawing of the area where the

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applicant lives in relation to local landmarks.

[59 FR 32323, June 23, 1994; 59 FR 40639, Aug. 9, 1994]

§ 8.5 Format.

(a) The application shall conform to the technical specifications described in the Federal Election Commission's National Mail Voter Registration Form Technical Specifications.

(b) *Size.* The application shall consist of a 5" by 8" application card of sufficient stock and weight to satisfy postal regulations. The application card shall be attached by a perforated fold to another 5" by 8" card that contains space for the information set forth at 11 CFR 8.4(c).

(c) *Layout.* (1) The application shall be sealable.

(2) The outside of the application shall contain an appropriate number of address lines to be completed by the applicant using the state information provided.

(3) Both sides of the application card shall contain space designated "For Official Use Only."

(d) *Color.* The application shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(e) *Signature field.* The application shall contain a signature field in lieu of a signature line.

(f) *Type size.* (1) All print on the form shall be of the largest practicable type size.

(2) The requirements on the form specified in 11 CFR 8.4(b)(1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 8.4(b)(2).

§ 8.6 Chief state election official.

(a) Each chief state election official shall certify to the Commission within 30 days after July 25, 1994:

(1) All voter registration eligibility requirements of that state and their corresponding state constitution or statutory citations, including but not limited to the specific state requirements, if any, relating to minimum age, length of residence, reasons to disenfranchise such as criminal conviction or mental incompetence, and

whether the state is a closed primary state.

(2) Any voter identification number that the state requires or requests; and

(3) Whether the state requires or requests a declaration of race/ethnicity;

(4) The state's deadline for accepting voter registration applications; and

(5) The state election office address where the application shall be mailed.

(b) If a state, in accordance with 11 CFR 8.4(a)(2), requires the applicant's full social security number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974 (5 U.S.C. 552a note).

(c) Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements or other information reported under this section.

Subpart C—Recordkeeping and Reporting**§ 8.7 Contents of reports from the states.**

(a) The chief state election official shall provide the information required under this section with the Commission by March 31 of each odd-numbered year beginning March 31, 1995 on a form to be provided by the Commission. Reports shall be mailed to: National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington DC 20463. The data to be reported in accordance with this section shall consist of applications or responses received up to and including the date of the preceding federal general election.

(b) Except as provided in paragraph (c) of this section, the report required under this section shall include:

(1) The total number of registered voters statewide, including both "active" and "inactive" voters if such a distinction is made by the state, in the federal general election two years prior to the most recent federal general election;

(2) The total number of registered voters statewide, including both "active" and "inactive" voters if such a distinction is made by the state, in the most recent federal election;

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(3) The total number of new valid registrations accepted statewide between the past two federal general elections, including all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction;

(4) If the state distinguishes between "active" and "inactive" voters, the total number of registrants statewide that were considered "inactive" at the close of the most recent federal general election;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both "active" and "inactive" voters if such a distinction is made by the state, between the past two federal general elections;

(6) The statewide number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address, name or party changes) that were received from or generated by each of the following categories:

(i) All motor vehicle offices statewide;

(ii) Mail;

(iii) All public assistance agencies that are mandated as registration sites under the Act;

(iv) All state-funded agencies primarily serving persons with disabilities;

(v) All Armed Forces recruitment offices;

(vi) All other agencies designated by the state;

(vii) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of duplicate registration applications statewide that, between the past two federal general elections were received in the appropriate election office and generated by each of the categories described in paragraphs (b)(6) (i) through (vii) of this section;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) Answers to a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA or any significant changes to the state's voter registration program; and

(10) Any additional information that would be helpful to the Commission for meeting the reporting requirement under 42 U.S.C. 1973gg-7(a)(3).

(c) For the State report due March 31, 1995, the chief state election official need only provide the information described in paragraph (b)(2) of this section and a brief narrative or general description of the state's implementation of the NVRA.

[59 FR 32323, June 23, 1994, as amended at 59 FR 64560, Dec. 15, 1994]

Rules and Regulations

Federal Register

Vol. 59, No. 120

Thursday, June 23, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 1994-8]

National Voter Registration Act of 1993

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is promulgating regulations governing the national mail registration form and recordkeeping and reporting requirements under the National Voter Registration Act of 1993 ("NVRA" or "the Act").

DATES: These rules will take effect July 25, 1994.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or 1-800-242-9530.

SUPPLEMENTARY INFORMATION: Under section 9 of the National Voter Registration Act of 1993, Public Law 103-31, 197 Stat. 77, 42 U.S.C. 1973gg-1 *et seq.*, the Federal Election Commission is required to develop a national mail voter registration form ("form") for elections to Federal office, and to submit to Congress no later than June 30 of each odd-numbered year (beginning June 30, 1995), a report that assesses the impact of the Act and recommends improvements in Federal and state procedures, forms, and other matters affected by the Act. 42 U.S.C. 1973gg-7(a). The Commission has no interpretive authority beyond these areas, and no enforcement powers under the NVRA.

On September 30, 1993, the Commission published an Advance Notice of Proposed Rulemaking ("ANPRM") to gain general guidance from the regulated community and other interested persons on how best to carry out these responsibilities. 58 FR 51132.

The Commission received 65 comments from 63 commenters in response to the ANPRM. In addition, the Commission's National Clearinghouse on Election Administration conducted surveys of state election officials to obtain information on state laws and procedures that impact on Commission responsibilities under the NVRA.

The Commission published a Notice of Proposed Rulemaking ("NPRM") on March 10, 1994 to seek comments from the regulated community and other interested parties on the specific items of information that it proposed to include on the mail registration form, and on the specific items of information that it proposed be required from the states to carry out the Act's reporting requirements. 59 FR 11211. 108 comments were received in response to this notice.

Several of the comments addressed issues outside the Commission's rulemaking authority. The Commission's rulemaking authority does not, for example, extend to superseding regulations of the U.S. Postal Service, to revising specific state voter eligibility requirements, or to interpreting how decisions on the national form affect state voter registration forms.

In addition to the comments received, the Commission conducted several surveys of state election officials to ascertain whether or not they plan to develop and use their own state mail and agency registration forms (or use the national form), and to clarify certain state voter registration requirements and procedures. These surveys are also part of the rulemaking record on which the final rules are based.

The Commission notes that this rulemaking does not apply to states where, on and after March 11, 1993, there was no voter registration requirement for any voter in the state with respect to an election for Federal office, or all voters in the state may register to vote at the polling place at the time of voting in the general election for Federal office, because such states are exempt from complying with provisions of the National Voter Registration Act under 42 U.S.C. 1973gg-2(b).

Statement of Basis and Purpose

The Commission is charged with developing a single national form, to be accepted by all covered jurisdictions,

that complies with the NVRA, and that: Contains all elements necessary for jurisdictions to determine voter qualification and to administer voter registration and other parts of the election process (42 U.S.C. 1973gg-7(b)(1)); specifies each eligibility requirement (including citizenship) (42 U.S.C. 1973gg-7(b)(2)(A)); contains an attestation that the applicant meets each such requirement (42 U.S.C. 1973gg-7(b)(2)(B)); and requires the signature of the applicant, under penalty of perjury (42 U.S.C. 1973gg-7(b)(2)(C)).

In addition, 42 U.S.C. 1973gg-7(a)(3) requires the Commission to submit to the Congress not later than June 30 of each odd-numbered year a report assessing the impact of the NVRA on the administration of elections for Federal office during the preceding 2-year period. The report shall also include recommendations for improvements in Federal and state forms, procedures, and other matters affected by the Act.

General Provisions

Section 8.1 of the final rules summarizes the purpose and scope of this new part of the Code of Federal Regulations.

Section 8.2 defines various terms used in this part. Paragraph (a) defines "form" as the national mail voter registration application form, which includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.

Comments received in response to the NPRM suggested a number of minor revisions to this definition. Some of the comments were directed at ensuring the application could be separate from the instructions and that the application could be reproduced. The issues of separate applications and the reproduction of applications are addressed below in Section E "Production of Forms", rather than in the definition.

Paragraph (b) defines "Chief State Election Official" as the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg-8. This is the same definition proposed in the NPRM and no comments were received.

Paragraph (c) defines "Active voters" to mean all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C.

1973gg-6(d) and have not since offered to vote. Paragraph (d) defines "inactive voters" to mean registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

Several commenters questioned the definitions of "active" and "inactive" voter. According to the NVRA's legislative history, states may designate registrants, under certain circumstances, as "inactive". See, e.g. S. Rep. No. 6, 103d Cong., 1st Sess. 33 (1993). The term "inactive" as used in the legislative history refers to registrants who have neither responded to the confirmation mailing required in 42 U.S.C. 1973gg-6(d) nor since offered to vote. The term "active", therefore, encompasses all registered voters except those who have been declared "inactive".

Paragraph (e) defines "Duplicate registration application". Several commenters to the NPRM expressed concern that the proposed definition of duplicate registration could be construed to include registration applications that have been submitted to inform the election official of important changes to a registrant's information. The Commission, therefore, modified the definition to mean an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

New paragraph (f) defines "State" to mean a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg-2(b).

New paragraph (g) defines "Closed primary state" to mean a state that requires party registration as a precondition to vote for partisan races in primary elections, or to participate in other nominating processes such as political party caucuses or conventions. Some commenters expressed concern that the term "closed primary" is not universally understood and could confuse the applicant. The term, therefore, is used in the final rules for the sake of convenience but will not be included in the instructions for the national form.

The National Mail Voter Registration Form

In developing the regulations for the national form, the Commission considered what items are deemed necessary to determine eligibility to register to vote and what items are deemed necessary to administer voter registration and other parts of the election process in each state. The

Commission also considered how to accommodate such administrative and legal requirements as electronic imaging, additional information space for office use, and the bilingual provisions of the Voting Rights Act ("VRA"). Finally, the Commission considered what layout and format would best meet the requirements of the NVRA, the administrative needs of election officials, and the Commission's goal of a form that is as "user friendly" and clear as possible to the applicant.

I. Items To Be Included on the Form

Some comments in response to the NPRM suggested that the regulations clearly state which items are required and which are optional. The final rules indicate which items are only requested (optional) and which are required only by certain states and under certain circumstances (such as the declaration of party affiliation in order to participate in partisan nominating procedures in certain states). The remaining items, by inference, are considered to be required for registration in all covered states. In making this determination, however, the Commission expresses no opinion on whether or not election officials may process applications when applicants fail to complete any of the required items, as this is beyond its authority under the Act.

The Commission has determined that the following information items are necessary to assess the eligibility of the applicant or to administer voter registration or other parts of the election process, and thus has included them on the national mail voter registration form as specified at 11 CFR 8.4.

A. Full Name of Applicant

Paragraph 8.4(a)(1) requires the applicant's name (last name first, then first name, and then the middle name), and the inclusion of an area for designating any suffix to the name (such as Jr., Sr., II, III, or IV). No commenters opposed this approach.

The NPRM also sought comments on the desirability of requesting gender on the application. In response to commenters requesting that the form ask the applicant's gender to assist in voter identification in cases of ambiguous or similar names, paragraph 8.4(a)(1) includes an optional prefix. The Commission intends to provide an area on the national application where the applicant may choose to circle the appropriate prefix (such as Mr., Mrs., Ms., Miss).

B. Former Name, If Applicable

In order to facilitate the maintenance of accurate voter registration records,

paragraph 8.4(c) of the final rules includes on the form a field for this information. The form will also contain instructions explaining that if the application is to be used to report a change of name, then the applicant should complete both the application and item B on a detachable portion of the application. No comments were received opposing this provision.

C. Address Where You Live

The NPRM proposed that the applicant be required to provide a complete residential address. Many commenters supported this proposal in its entirety. The NPRM also proposed that the form include an area in the detachable portion of the application for applicants to sketch a map identifying the physical location of their residence in cases where street names, numbers, or rural route box numbers alone are insufficient. There was no opposition to this proposal.

However, the NPRM would have required the national form to include an instruction not to use rural route numbers for residential address. One state election official noted that rural route with a box number was as acceptable for residence address as street address with house number. In response to a survey, several others agreed with this comment. Another election official noted that a locational map would still be needed for rural route addresses to identify the applicant's election district because the box number may be physically located across the street from the dwelling and the street may serve as the dividing line for local election districts. A representative of the U.S. Postal Service confirmed that the post office is assigning box numbers to all rural routes and star routes.

Paragraph 8.4(a)(2), therefore, contains modified language to note that a rural route with box number is an acceptable residential address. Paragraph 8.4(c) continues to provide a place for applicants to draw a simple locational map. While rural or star route numbers are sufficient residential addresses if they include a box number, applicants in rural areas will still need to complete the locational map in order that they may be placed in the proper election districts. The instructions will note that this map also may be used by individuals with non-traditional residences (such as those living on city streets) to show where they live.

D. Address Where You Get Your Mail (If Different from the Address Where You Live)

The NPRM proposed that the applicant's mailing address be included if it is different from the physical address. No objections were received to this proposal. This information would be provided by applicants with post office boxes, rural or star routes without box numbers, and mailing addresses for non-traditional residences. Paragraph 8.4(a)(3), however, has been modified to reference rural and star routes without box numbers because those with box numbers are now considered acceptable for residential address.

E. Former Address, If Applicable

The NVRA requires at 42 U.S.C. 1973gg-4(a) that the national form be usable as a change of address form as well as an original registration application. In addition, the states have indicated that the applicant's former address is necessary on new registrations to facilitate canceling prior registrations. The NPRM proposed that the form include instructions explaining that if the application is used for a new registration or change of address, then the applicant should provide in the detachable portion of the application the former address at which he or she was registered. There were no objections to this proposal; accordingly, this provision is retained in paragraph 8.4(c) of the final rules.

F. Date of Birth

Since there were no objections to requiring the date of the applicant's birth as proposed in the NPRM, paragraph 8.4(a)(4) of the final rules continues to require the applicant's date of birth on the form in the standard month-day-year sequence.

G. Telephone Number (Optional)

Although not absolutely necessary, the applicant's telephone number is thought to be necessary or desirable by most of the election officials responding to a state survey, primarily as a means to enable registrars to clarify or complete required items of information by telephone rather than rejecting questionable applications outright. The NPRM proposed that the form request the applicant's telephone number as an optional item, so as to avoid undue intrusion into the applicant's privacy.

There were a few objections to this proposal. One commenter wanted the phone number to be mandatory and another wanted the Commission to exclude this element. A third commenter wanted the form to designate "daytime" or "evening"

phone number. For the reasons listed above, paragraph 8.4(a)(5) of the final rules continues to request the telephone number as an optional item, permitting the applicant to decide which number is appropriate.

H. Voter Identification Number (for States That Require or Request It)

States currently use voter identification numbers in the administration of voter registration to assist in identifying name changes for individuals already registered; to differentiate between individuals of the same or similar name and the same birth date to prevent duplicate registrations; to identify registrants who have moved within a jurisdiction and facilitate the transfer of change of address information from motor vehicle and agency registration sites; and to combat voter fraud through removal of registrants who are no longer eligible to vote in a particular jurisdiction. The identification number is also the primary key for many computer operations related to the administration of elections (such as voter registration and review of ballot access petitions), without which staff would have to enter significantly more information or run through several iterations of an operation to find the record of a particular individual, slowing the process and increasing the possibility of duplicate registrations.

The issue of requesting or requiring an identification number from voter registration applicants raises difficult questions. The ANPRM sought comment on the alternative of requiring only the last four digits of the applicant's social security number as a means of meeting privacy concerns while still allowing the use of these numbers for identification purposes. State and local election officials, however, made compelling arguments in support of the need for full voter identification numbers. They argued that the last four digits were insufficient to differentiate between individuals, particularly in large areas with highly mobile populations where the incidence of individuals having the same or very similar last four digits increases. Several also contended that the last four digits do not provide a sufficient identifier for use with a number of established automated voter registries, driver's license records, and other agency records.

The Commission was also concerned that requiring only the last four digits would arbitrarily impose on the states an identification system that might conflict with current state needs and practices, and ultimately conflict with

future individual identification systems currently under discussion or development in the public and private sectors. The NPRM proposed that the application provide a field for whatever identification number might be required or requested from the applicant's state of residence. The general instructions would direct the applicant to the instructions for that state, where the request or requirement would be identified.

A number of commenters, primarily election officials, supported this proposal. These commenters repeated arguments originally made in response to the ANPRM on the need for the full social security or other identification number in the administration of voter registration and other parts of the election process.

Commenters who opposed it felt that the requirement should either be eliminated or simplified by requiring only the last four digits of the social security number. Some commenters protested that the proposed procedure would be onerous because it would require the applicant to look up the appropriate state requirements and provide a number that might not be easily remembered. Some argued that the number cannot be deemed necessary because only a minority of states currently require it. Others were concerned about confidentiality issues associated with providing a social security number for records that may be accessible to the public. One commenter expressed concern that the Commission's proposal would encourage states that do not now request a voter identification number to begin doing so.

While only 13 states may and do require the applicant to provide their full social security number under provisions of the Federal Privacy Act of 1974 (5 U.S.C. 552a note), 21 others (including some states that do not now request such information) stated in response to a Commission survey that they consider the social security number or other number such as the driver's license number either necessary or desirable for the administration of voter registration. Some states prohibited by the Privacy Act from requiring the social security number find that by requesting it, the majority of registrants will provide the number, thereby facilitating the maintenance of accurate voter registration records.

Seventeen states currently do not request or require such an identification number, but most of these have relied upon place of birth information to assist them in distinguishing between individuals with similar names and the

same date of birth. As noted below, final rules will exclude place of birth from the national form; therefore, that information will not be available when applicants use the national form. Such states may thus turn to requesting a voter identification number, in lieu of place of birth. Some are considering the use of an identification number to facilitate the automated transfer of change of address information from motor vehicle offices and agencies designated to register voters.

Voter identification numbers are not necessary for determining the eligibility of the applicant. Nevertheless, a field for this number has been included on the application because a majority of states indicated that it is necessary to effectively administer the voter registration process. The Privacy Act permits (and federal courts have upheld) states' rights to require the social security number for voter registration records if the state had required it by statute or regulation prior to January 1, 1975; and the Public Health and Welfare Code (42 U.S.C. 405) permits agencies that are required to be or that may be designated as voter registration sites under the NVRA (such as state motor vehicle, general public assistance, and tax offices) to require social security numbers for their records administration.

Paragraph 8.4(a)(6) retains the provision referring applicants to their particular state's requirements for an identification number because the Privacy Act permits some states to require the full social security number while others may only request it; some states may choose some other number such as a driver's license number; and some states will be satisfied with the last four digits of the social security number. The Commission will make the instructions as simple as possible to reduce any potential confusion.

While some commenters expressed concern about the issue of maintaining the confidentiality of social security numbers, the Commission believes that this is best left to the states and courts who have begun to address the matter.

I. Political Party Preference (for States Where it is Required to Participate in Partisan Nominating Procedures)

The NPM proposed that a field be provided for applicants to declare political party preference when registering in states that require this information in order to participate in partisan nominating processes. Applicants completing the form would have been directed to consult the accompanying instructions for their state of residence to determine whether

their state requires this designation, and if so, how to determine whether their preferred political party is recognized in their state, and to offer "unaffiliated" as an alternative to designating a political party.

Many commenters supported this proposal, but others objected to certain aspects. Some commenters objected to the proposal that applicants telephone the state election office to determine if a particular party was recognized. Their suggested solutions included modifying the instructions to list qualified political parties by state and providing the state election official's telephone number for information on parties that qualified after the booklet was printed. In addition, some commenters suggested that "no party registration" or "none" would be more easily understood than "unaffiliated".

The Commission, while sensitive to these concerns, has determined that it would be inadvisable to list parties currently recognized by each state, both because such recognition may be removed and because other parties may be recognized subsequently. On the other hand, having applicants call for information on newly qualified parties requires an additional step in the registration process. Furthermore, the Commission notes that the telephone numbers of state election offices often change over short periods of time, a fact which would necessitate frequent revision of the instructions for the national form.

Therefore, paragraph 8.4(a)(7) provides that the instructions direct applicants to consult the accompanying instructions for their state of residence to determine if that state requires this information in order to participate in partisan nominating processes. The instructions will note that if applicants registering in these states list "none", leave the field blank, or list a political party not recognized by the state, they may be prohibited from voting in partisan nominating contests but can still vote in other elections.

J. Signature of Applicant Under Oath

Virtually every state requires the signature of the applicant under penalty of perjury. In addition, the Act requires the signature of the applicant under penalty of perjury. 42 U.S.C. 1973gg-7(b)(2)(C). This requirement is reflected in paragraph 8.4(b)(3).

The Act further requires a statement that "specifies each eligibility requirement (including citizenship)" and "contains an attestation that the applicant meets each such requirement." 42 U.S.C. 1973gg-7(b)(2)(A) and (B). Because states vary

significantly in their specific voter eligibility requirements, the NPRM proposed that the application identify U.S. Citizenship (the only eligibility requirement that is universal) and then incorporate by reference the other specific voter eligibility requirements of each individual state (such as age, residence, criminal conviction, and mental incapacity), directing the applicant to the instructions under the applicant's state for the list of those requirements. Because a few states require a special pledge of allegiance to their state Constitution or other special oath as an eligibility requirement, the NPRM proposed to incorporate by reference any such state pledge in the oath on the national application. This approach is retained in paragraph 8.4(b)(1) of the final rules.

One commenter proposed modifying the oath to attest that signing the application authorizes cancellation of previous registrations. This modification has not been included both because it is not required by the NVRA, and because the applications may be used to change information on the registry, and cancellation of the previous registrations would not be appropriate in such cases.

Some commenters argued that at least some of the states' eligibility requirements could be simplified (especially regarding party affiliation, criminal conviction, and mental incapacity) so that they could be listed on the application along with citizenship. However, there are enough variations in state eligibility requirements that such an approach could misstate the requirements of particular states, mislead the applicant, and unduly complicate the application. Accordingly, paragraph 8.4(b)(1) of the final rules retains the original proposal.

The NPRM also proposed that the applicant sign a statement that he or she has read the accompanying booklet, and to the best of his or her knowledge, meets the requirements as stated on the form and in the accompanying instructions. Numerous commenters noted that this requirement could both constitute a literacy test prohibited by the Voting Rights Act and discriminate against the visually impaired. These commenters urged that the form simply require the applicant to attest to meeting each requirement, in accordance with 42 U.S.C. 1973gg-7(b)(2)(B). The Commission agrees; accordingly, paragraph 8.4(b)(2) of the final rules has been so modified.

K. Date of Signature

While no commenters opposed the proposal in the NPRM that a field be

provided for the date of signature in the standard month-day-year format, one election official suggested that states be permitted to accept applications even when this information has not been provided. The Commission considers this a matter for states to decide; therefore, paragraph 8.4(b)(3) retains this provision.

L. If You Are Unable to Sign Your Name, The Name, Address, and (Optional) Telephone Number of the Person Who Assisted You In Completing This Form

A few commenters expressed concern about the proposal to require the name, address, and telephone number of the person assisting an applicant who is unable to sign his or her name. They noted that such a requirement might have a dampening effect on participants in organized voter registration drives, especially in poor rural areas; and that such a requirement might constitute the kind of "formal authentication" prohibited by the Act.

However, in cases where the applicant is unable to sign the application, and only in such cases, it may be legally or administratively necessary to require the name, address, and (optional) telephone number of the person assisting the applicant as a reasonable means of deterring or detecting fraudulent voter registration applications. Such an important purpose outweighs whatever dampening effect the requirement might have on those providing assistance. Moreover, some states have indicated that they will not process an application without the applicant's signature unless information on the person assisting the applicant has been provided. Paragraph 8.4(b)(5), therefore, retains this requirement.

Such a requirement does not constitute the kind of "formal authentication" prohibited by the Act. The Act's use of "formal authentication" in conjunction with its use of "notarization" refers to an official act by a public officer. The mere identification of the person who provided assistance to an applicant unable to sign the application does not, then, qualify as "formal authentication."

One commenter suggested that the regulations prohibit this item from being used as a means of formal authentication. Since the NVRA already prohibits mail registration forms from including any requirement for notarization or other formal authentication, at 42 U.S.C. 1973gg-7(b)(3), the regulations need not restate this prohibition.

M. Race/Ethnicity

Both the ANPRM and the NPRM sought comments on whether "race/ethnicity" should be included on the national mail registration form. Those who responded to this issue presented a wide range of well-reasoned arguments.

Arguments raised in support of requiring "race/ethnicity" included: it is necessary to monitor the effectiveness of registration efforts under the Act; it is necessary to comply with the intent of the NVRA to eliminate barriers to equal voter registration; it is essential for full enforcement of the NVRA's anti-discrimination provisions concerning confirmation mailings; it would provide a statistical basis for administering and enforcing the Voting Rights Act; it is necessary under the U.S. Constitution to determine whether a jurisdiction unconstitutionally discriminates on the basis of race; and it would serve as a guide to determine minority representation of pollworkers.

Arguments presented against asking "race/ethnicity" included: it is not necessary to determine eligibility to vote; it is not essential for voter registration purposes; it is not necessary to comply with the intent of the NVRA; it is not required by the Voting Rights Act; it could have a chilling effect on voter registration, because applicants may view such a request as personally offensive, an invasion of privacy, or intimidating; it would require an unwieldy and/or emotionally charged classification scheme of possible races or ethnic groups; it could lead to an application's being rejected because the applicant failed to indicate his or her race or ethnicity; and it could result in some applications being more closely scrutinized than others on the basis of the applicant's race or ethnicity.

The Commission considered several options on how best to deal with this issue. These included requiring "race/ethnicity" from every applicant using the national voter registration form in every state; requiring "race/ethnicity" as an optional item in every state; requiring "race/ethnicity" only in those states that currently require it under state law; providing a box for "race/ethnicity" on the application, with instructions to applicants to complete the space in accordance with the state-specific requirements listed for their states; and not requesting or requiring "race/ethnicity" on the application.

Requiring "race/ethnicity" on every form from every applicant using the national voter registration form in every state would facilitate the enforcement and administration of those sections of

the Voting Rights Act that involve determinations of racial impact, along with any monitoring of the racial impact of the NVRA itself. It would also satisfy all of the other arguments in favor of asking "race/ethnicity," and is simple and straightforward for the applicant.

However, adopting this option would raise the difficult question of whether the Commission can impose requirements beyond what many states require under state law. It also fails to accommodate any of the concerns expressed by those opposed to including this item, especially the concern that applications might be rejected simply because applicants failed to respond to the question.

The Commission notes that any approach that does not require "race/ethnicity" nationwide would not be helpful in administering Section 2 of the Voting Rights Act (42 U.S.C. 1973), or in monitoring the racial impact of the NVRA, in states that do not require this information. However, the data generated through the NVRA form in states that do not otherwise seek this information would likely be of limited use either under Section 2 of the VRA, or in monitoring the racial impact of the NVRA.

If "race/ethnicity" were to be requested as an optional item nationwide, states that do not currently require this information would be unlikely to reject applications from those who failed to respond to the question. This approach would also satisfy a number of other concerns from those opposed to including the question. For example, those opposed to providing this information on personal privacy grounds would not be required to do so. Finally, it is simple and straightforward for the applicant.

Its principal disadvantage is that, to the degree that applicants fail to respond, there would be gaps in the data bases of states that currently require this information and use it to help maintain racial statistics to help in administering Section 5 of the VRA (42 U.S.C. 1973c).

Requiring "race/ethnicity" only in those seven states that currently require it under state law would neither enhance nor hinder current data collection efforts pursuant to Section 5 of the VRA. This would be consistent with current state practices to require "race/ethnicity" in states that currently do so but would not impose this requirement on applicants in states that do not. However, this approach would not serve the needs of the two states that currently request but do not require this information.

Omitting "race/ethnicity" entirely would simplify the application form,

booklet, and process, while satisfying all the concerns of those opposed to asking for this information. However, this could diminish data collection efforts pursuant to Section 5 of the VRA by creating gaps in the data bases of those states that currently require this information and use it for this purpose.

After considering all of these options, the Commission has decided to provide a box for "race/ethnicity" on the application, with instructions to applicants to complete the space in accordance with the state-specific requirements for their states. This approach is most consistent with current state practices, in that it requires or requests "race/ethnicity" in states that currently do so without imposing it on applicants in states that do not. It also accommodates changes in state requirements by permitting changes in the booklet portion of the form without having to change the application itself.

Thus, new paragraph 8.4(a)(8) includes a field for "race/ethnicity" on the national mail registration application, to be completed by applicants if applicable for their state of residence. It also states that the application shall direct the applicant to consult the state-specific instructions to determine whether "race/ethnicity" is required or requested by his or her state.

II. Items to be Excluded From the Form

The Commission has determined, in consultation with the states, to exclude the following items from the national mail voter registration form because they do not meet the "necessary threshold" of the NVRA to assess the eligibility of the applicant or to administer voter registration or other parts of the election process.

A. A Checkbox To Identify Whether the Application is a New Registration, Address Change, Name Change, or a Party Change

The NPRM proposed that this information be requested in a checkbox as the first item on the application to facilitate the maintenance of accurate voter registration lists. Some commenters noted that this field is unnecessary so long as the applicant is required to complete the application and also provide former address and, where appropriate, former name. Others noted that they have found the use of such a checkbox to be unreliable.

Accordingly, this provision has been deleted from the final rules.

B. Information on Former Party Affiliation

The NPRM proposed that applicants be required to provide information on

former party affiliation on a detachable portion of the application. One state election official objected to this proposal because the only way to establish or change party affiliation in his state was to vote in the party's primary election. In addition, information on former party affiliation is not considered necessary to maintain accurate voter registration records. Accordingly, this requirement has been deleted.

C. Gender

The NPRM invited comment on the desirability of including a field for gender on the national voter registration application. Comments made in response were mixed.

The principal argument including gender was that it is unnecessary in determining the eligibility of the applicant.

Arguments for including it were twofold: that it is useful in voter identification in cases of ambiguous or similar names, and that it is desirable for generating statistics sought by researchers, candidates, and the media.

Given these legitimate viewpoints, paragraph 8.4(a)(1), as discussed above, provides for an optional prefix to the applicant's name. Although not including a gender field per se, the application will list the possible choices of "Mr.", "Mrs.", "Miss", or "Ms." in a box before the field for the applicant's name.

D. Information Regarding Naturalization

Many commenters agreed that information regarding naturalization should not be included on the national mail voter registration application. While several commenters stated that information regarding whether or not an individual has become a naturalized citizen is essential in order to assess an individual's qualifications for voting, numerous others urged the Commission to exclude any items, including information regarding naturalization, that are not absolutely essential to the registration process.

While U.S. citizenship is a prerequisite for voting in every state, the basis of citizenship, whether it be by birth or by naturalization, is irrelevant to voter eligibility. The issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury. To further emphasize this prerequisite to the applicant, the words "For U.S. Citizens Only" will appear in prominent type on the front cover of the national mail voter registration form. For these

reasons, the final rules do not include this additional requirement.

E. Place of Birth

Comments on whether or not to include place of birth on the national mail voter registration application were divided. The central argument advanced for including place of birth was its usefulness as a vehicle for distinguishing duplicate registrations. One commenter noted that his state had a Constitutional requirement that place of birth be included on registration forms, while another noted that place of birth is often used as a starting point to "investigate" citizenship as it pertains to voting eligibility.

The Commission notes, however, that duplicate registrations can effectively be distinguished given the required information contained on the application, including the optional prefix field, date of birth, and voter identification number in those states that will utilize some form of specific numerical identifier. Seventeen states currently function without requiring place of birth. Given its potential for inviting unequal scrutiny of applications from citizens born outside the United States, such as those born of parents serving overseas in the Armed Forces, the final rules do not include place of birth on the national mail voter registration application.

F. Occupation

All commenters agreed that occupational information is neither essential for determining vote, eligibility nor for the administration of the election process. The final rules do not provide for a field for an individual's occupation on the application.

G. Specific Information Regarding Criminal Conviction or Mental Incapacity

Voter eligibility requirements vary considerably among the states, especially with regard to both disenfranchising for criminal convictions and definitions of mental incapacity; therefore, the NPRM proposed to incorporate these matters into the application by reference to the individual state voter eligibility requirements.

One commenter pointed out that his state currently requires applicants who have been convicted of a disenfranchising crime to provide the date on which the applicant's voting rights were formally restored. A survey of the states suggests, however, that the majority of them do not formally restore a convicted felon's voting rights by any special act or ceremony. Instead, rights

are automatically restored either upon completion of the sentence or upon completion of the period of incarceration. Moreover, the overwhelming majority of states do not request or require the date of the restoration of their voting rights from applicants who have been convicted of a disenfranchising crime.

It appears, then, that the date of restoration of voting rights is not itself essential to determining the eligibility of applicants, provided that applicants affirm in writing and under penalty of perjury that they have not been convicted of a disenfranchising crime, or, if so, that their voting rights have been restored.

For these reasons, paragraph 8.4(b)(1) parallels the NPRM by incorporating matters of criminal conviction and mental incapacity by reference to the individual state voter eligibility requirements.

H. Height, Weight, Hair and Eye Color, or Other Physical Characteristics

Although one response to the NPRM indicated that height was a useful element in identifying voters at the polls, all other commenters on this issue agreed with the NPRM that physical characteristics are essential neither for determining voter eligibility nor for the administration of the election process. The final rules do not include a field on the application for information pertaining to an individual's height, weight, hair and eye color, or any other physical characteristic.

I. Marital Status

All commenters agreed with the NPRM that marital status is essential neither for determining voter eligibility nor for the administration of the election process. The Commission is not including marital status on the application.

J. Other Names

A number of commenters agreed with the NPRM that other names, including maiden name, spouse's name, mother's maiden name and others, are neither essential for determining voter eligibility nor for the administration of the election process. One commenter urged that maiden name be required because it is used as the chief identifier to update and cancel voter registrations. Another argued that maiden name was necessary to avoid a dual registration system in his state because it was required by the State Constitution. However, the national application will serve as a notice of name change; and most states indicated in response to a Commission survey that other names are

not necessary. The Commission is not including information regarding other names on the application

K. Miscellaneous Items

A number of comments received in response to the NPRM supported the exclusion from the national form of such items as language preference, the need for assistance by persons with disabilities, and the willingness to serve as a poll worker. One commenter, however, supported a checkbox for language preference and another suggested adding a checkbox to be used for requesting an absentee ballot.

The Commission recognizes the concerns of language minority groups, as well as the language minority requirements of the Voting Rights Act specified in 42 U.S.C. 1973aa-1a and 1973(f)(4). Indeed, the Commission is hoping to develop separate versions of the national mail voter registration form by translating the form into each of the written languages covered by the Voting Rights Act, and to do so to the extent technically possible in a side by side format with the English version. Furthermore, the Commission realizes that local election officials face a challenge due to the dwindling pool of potential poll workers, and that a number of individuals who register by mail may also apply to vote by absentee ballot.

Nevertheless, alternative means exist for eliciting these miscellaneous items other than including such questions on the application. Also, states have the option of implementing a provision of the NVRA permitting them to require persons who register by mail to vote in person the first time after registration, unless the registrant's right to vote absentee is protected under federal law. The final rules, therefore, do not require or request any such miscellaneous information.

III. Format

A. Layout

The ANPRM sought comments on whether the design of the form should be a single sheet, an application with a separate set of instructions, or a tear out application within a booklet of instructions. Sections 8.3 and 8.5 of the NPRM proposed the third approach because it appeared to be the best way to develop a universal form that would accommodate the information requirements under the NVRA and different state requirements. Under this approach, the Commission considered the "form" to include both the application portion and the accompanying booklet of instructions.

The NPRM proposed that the booklet would contain one or more tear out forms, instructions on how to complete the form, and a list of each covered state's eligibility and information requirements. Under this approach, the information contained in the booklet would be critical to the application, and the application could not be used without the accompanying instructions. All of the information relating to a particular state would be consolidated in one place. If the applicant had any questions concerning his or her state's requirements, the applicant would be able to read the relevant information under his or her specific state. Upon completing it, the applicant would forward the form to the appropriate state-level election official, as listed in the booklet.

Although a number of commenters supported this approach as the most practical way of developing a universal form meeting all the requirements of the NVRA, there were also a substantial number who opposed it. Opponents argued that the booklet was likely to be complex; intimidating, confusing, and time-consuming to use; and costly to produce. A number of commenters urged that states, agencies, and voter registration drives be permitted to distribute the national application with only the pertinent state's instructions, instead of a booklet with all state requirements. However, one commenter was concerned that applications might become separated from the booklet and suggested the application include a note warning the applicant not to complete the application if it had been detached from the booklet.

In considering whether or not the application should be made available separate from the general instructions and specific state instructions, the Commission worked to ensure that: (1) the form meet all the requirements of the NVRA and be "user friendly"; (2) the appropriate general instructions and state-specific information always be provided with the application; (3) the form be usable anywhere in the nation, enabling persons temporarily away from home (such as students and travelers) to apply to register to vote from a state other than the one in which they legally reside for voting purposes; and (4) the cost of producing the form be kept to a minimum.

Relating to item 2 above, permitting applications to be distributed without attached general instructions and state voter registration requirements could result in applicants not receiving the information needed to correctly complete the application and attest to their eligibility. Also, if the distribution

of the application with the general instructions and a single state's information is permitted, states and voter registration drives may not maintain a sufficient supply of information booklets to enable individuals to register in another state where they maintain their voting residence.

The latter concern was reinforced when a recent Commission survey established that 42 states and the District of Columbia are planning to develop or have developed their own state mail registration form as permitted at 42 U.S.C. 1973gg-(a)(2). (The remaining 3 states that responded noted that they did not know yet if they would do so.) Only 7 of the 46 indicated that they might use the national form, under limited circumstances, in their agency registration process. In most instances, therefore, the national form is likely to be used only by students, business travelers, and others who are temporarily away from their state of residence. On the other hand, organized voter registration drives may prefer to use the national form when state forms are not readily available or are extremely complex, or where registrants come from many states.

In weighting all these considerations, the Commission has determined the national application card may be made available without the entire booklet attached. This will enable voter registration drives targeting only one state's residents to distribute with the application only the general instructions and that state's information.

The chief state election official, however, must still make available the complete national mail voter registration form (the application and booklet) as required under 42 U.S.C. 1973gg-4(b). As stated in paragraph 8.3(a), this includes the application, general instructions for completing the application, and each state's instructions for the unique eligibility and voter registration requirements.

Applicants must attest to meeting each of their state's eligibility requirements, and so they have to be familiar with that portion of the instructions. Out-of-state applicants will not be able to use the national application to register if a particular state or organization does not supply instructions for their states.

Because some commenters did not think the regulations stated clearly enough that all information for a specific state would be consolidated in one place, paragraph 8.3(b) states that the information for each state will be arranged by state. And because commenters noted that proposed

regulations in the NPRM did not clearly differentiate between what would be on the application and what would appear elsewhere in the form, section 8.6 provides that distinction.

In the NPRM the Commission considered making the completed application sealable by employing a removable strip covering a pre-glued area along the bottom of the form. The form could be folded at the center perforation and attached to a pre-glued area to the top of the form. Registrars would be able to remove the sealing strip portion (which itself would be perforated) and either remove the ancillary portion or else fold it back and file it along with the application. There were no objections to this proposal, although one commenter did not think that a pre-glued strip was necessary because the postal service is required to hold the information confidential.

The purpose in suggesting that the application be sealable was to ensure that the application meets postal service size specifications and that both parts remain intact through the mail. Paragraph 8.5(c)(1), therefore, retains the provision that the application be sealable. The reason for using a removable strip covering a pre-glued area is to prevent unused applications stored under humid conditions from sticking to one another. The Commission, however, is currently investigating practical and cost-saving alternatives before deciding on one particular method.

The NPRM proposed that the "outside" of the application contain blank address lines. The address of each state registration official would be provided in the accompanying instructions. Applicants would be directed to complete the front of the application with the appropriate address and affix first class postage. Appropriate postal indicia would be preprinted accordingly. Although one commenter suggested that the forms be postage-prepaid, this is not feasible because no federal funds have been appropriated to cover such postage.

Some commenters suggested that the proposed rule be amended to require "Chief Election Official, state of _____" be preprinted on the application with instructions for the applicant to fill in the name of the appropriate state. They argued that a more complicated address is not needed under the NVRA. While this would be a simpler approach, a representative of the national office of the U.S. Postal Service stated that it is unlikely applications with such abbreviated addresses would be delivered. This representative and some election

officials also indicated that even with the addition of the city and zip code, delivery could be significantly delayed. The Commission is mindful that adopting such an approach could result in too many applications not reaching their destination at all or reaching it too late for applicants to be registered for upcoming elections, thus defeating one of the goals of the NVRA. Accordingly, paragraph 8.5(c)(2) retains the provision that application contain blank lines to be completed by the applicant using the state information provided.

B. Size, Weight, and Color of the Form

The NPRM proposed to capture all of the required data elements on a single 5" x 8" application card of sufficient stock and weight to satisfy postal regulations and standard filing requirements. A few commenters objected that this size was either too big in comparison to the size of forms currently used in their state, or too small to accommodate all data elements in a type size large enough for the average voter. Nevertheless, the Commission has determined that this is the best size for the application given postal requirements, the majority of states' requirements, and the need for the form to be readable.

The NPRM suggested that the application card be attached by a perforated fold to another 5" x 8" card containing requests for ancillary information, where applicable, such as former name, previous address, and a locational map. One commenter urged that the fields for former name and address be included on the application itself to ensure that applicants know that they should provide this information. Another commenter recommended this information be included within the application because optical scanning equipment will have to be adjusted to record each combined application and attached lower portion. Including fields for such information on the application, however, would require the use of a smaller type size, making the application difficult to read. Paragraph 8.5(b), therefore, parallels the proposed regulations with regard to size of the application card and the detachable portion. The application will rely on explicit instructions to ensure that this information is provided in the detachable portion.

To accommodate optical scanning capabilities, the NPRM proposed to use ink and paper colors of sufficient contrast for that purpose, to minimize the volume of preprinted material on the application without sacrificing clarity to the applicant, and to designate a signature field rather than a signature

line for the applicant's signature or mark. Commenters supported these provisions, but one suggested that the application also be printed with drop-out ink in areas where the applicant prints his or her information and include tick marks to show the applicant where to print characters representing the information they are required to provide. The Commission will explore to what extent these suggestions can be incorporated in the specifications for producing the form, but has not addressed these matters in the final rules at paragraphs 8.5 (d) and (e).

A number of commenters on the ANPRM expressed their need to add information to the application such as precinct and legislative districts. Accordingly, the NPRM proposed to include, where practicable, blank areas on both sides of the form labeled "For Official Use Only". No objections were received to this proposal and paragraph 8.5(c)(3) parallels the language in the NPRM.

Some comments received in response to the NPRM indicated a need for margins from 1/2" to 1" around the periphery of the application where holes can be punched permitting placement of the card in a binder. The Commission will explore to what extent this is possible given the primary goal of producing a readable form in the largest practicable type size.

C. Type Size

To accommodate applicants with vision impairments, the NPRM proposed that the form employ the largest practicable *sans serif* type size. The Commission has now decided, however, that limiting the type face to *sans serif* would be unduly restrictive. Paragraph 8.5(f), therefore, does not reference a specific type face.

D. Bilingual Requirements

Jurisdictions covered by the NVRA must provide forms which meet the requirements of the Voting Rights Act of 1965 to eliminate language barriers. 42 U.S.C. 1973aa-1(a). To accommodate the needs of language minority groups and the language minority requirements of the Voting Rights Act, the Commission noted in the NPRM that it hopes to develop separate versions of the form in each of the written languages covered by that Act, to the extent technically possible, in a side by side format with the English version.

One commenter suggested amending the regulations to state this requirement. Another suggested that the form, including confirmation mailings, be provided in languages not covered by

the Voting Rights Act. Federal regulations relating to the requirements to provide election materials in a language other than English are the responsibility of the U.S. Department of Justice and, therefore, the Commission has not addressed this topic in these regulations. However, the Commission intends to explore the possibility of developing the national form in the written languages determined necessary by the U.S. Department of Justice as a means of assisting covered states and local jurisdictions in their implementation of the NVRA and the Voting Rights Act. Where more than one written dialect exists for the language, the Commission will seek the advice of the Department of Justice, organizations representing the various language minority groups, and affected election officials before determining which one(s) will be used for the translation.

E. Meeting the Needs of the Disabled

A few commenters objected to the proposed form because they believed it would present particular barriers to Americans with disabilities. The Commission is aware of the needs of persons with disabilities and the requirements of both the Voting Accessibility for the Elderly and Handicapped Act of 1984 and the Americans with Disabilities Act ("ADA"). 42 U.S.C. 1973ee, 42 U.S.C. 12101 *et seq.* The ADA requires that states provide disabled persons with "auxiliary aids and services" where necessary to participate in a program or benefit. Determinations of what must be done to comply with both the NVRA and the ADA must be made by each state in consultation with its state Attorney General.

One commenter pointed out that section 504 of the Rehabilitation Act of 1973 prohibits excluding a person, by reason of handicap, from participation in any program or activity conducted by a federal agency. 29 U.S.C. 794. The Commission proposes below to develop the national voter registration form in the largest practicable type size and to explore the feasibility of reproducing the national form's instructions on audiotape in order to accommodate applicants with vision impairments. Furthermore, the NVRA requires distribution of the form at agencies that are primarily engaged in providing services to persons with disabilities. Therefore, many disabled applicants will have the assistance of agency personnel when completing the form, if assistance is needed.

F. Production of Forms

As noted in the NPRM, the Commission is considering methods of keeping printing and production costs to a minimum while maintaining printing quality control. To achieve these objectives, the Commission will have a modest number of each version (English only and those in a language other than English) of the form (the booklet of consolidated instructions and attached applications) as well as the separate application printed at the Government Printing Office ("GPO"). This will make these items government documents, available for sale through GPO, and will offer the states and other interested groups an opportunity to "ride" the print order for the quantities they feel necessary (and to reorder as needed). Given GPO economies of scale, such an approach should substantially reduce costs and provide an avenue for obtaining large quantities of the form and separate application.

One commenter wanted the Commission to pay for the forms and provide a sufficient number to the states. Another commenter proposed that the forms be made available to 501(c)(3) organizations free of charge. Although the Commission plans to pay for the initial production of the form and the separate application, the Commission does not have the funds to produce enough to meet the states' needs. Each state will have to decide whether or not the forms will be made available to various organizations free of charge.

Several commenters recommended that the regulations be revised to permit the independent reproduction of the application and relevant parts of the instructions. The Commission does not foresee any problem with reprinting or photocopying the general instructions and relevant state information, or their independent reproduction in a format more accessible to the visually impaired (such as in Braille or audiotape).

The reproduction of the application, however, is more problematic. First, some methods of reproduction will not yield a product that meets U.S. Post Office specifications. Although a photocopied application which is too flimsy to go through the mail on its own could be mailed in an envelope or delivered by hand to the appropriate election official, this would require more effort from the applicant than an application that meets these specifications. Second, some methods of reproduction will not result in an application that meets the handling and optical scanning requirements of election offices. Still, the Commission is

sensitive to the issue of forms availability and is aware that a few states permit the acceptance of applications that are not on the usual card stock used in the state.

Accordingly, paragraph 8.5(a) has been rewritten to permit the reprinting of the national application using technical specifications to be set forth by the Commission at a later date. These specifications will incorporate specific instructions on acceptable type size, layout, ink color and quality, paper weight, and the like. The Commission also plans to provide camera-ready copies of the national application, upon request, to interested states and organizations.

Whether or not photocopies of the national application are acceptable is a matter for each state to decide.

G. Obtaining State Information

Pursuant to the Act's requirement that the form specify "each eligibility requirement" of each state (42 U.S.C. 1973gg-7(b)(2)(A)), the NPRM proposed that the chief election official of each state responsible for coordinating activities under the NVRA be required to certify to the Commission each voter eligibility requirement of the state, including the standard deadline for submitting applications (with state Constitutional or statutory citations), within 30 days after the promulgation of the final rule. The NPRM also proposed to require, from officials in states requiring or requesting the applicant's full social security number, the state's privacy statement required under the Privacy Act of 1974, 5 U.S.C. 552a note.

These requirements are retained in section 8.6. This section now also: provides examples of eligibility requirements for which state information is sought; requires what, if any, voter identification number the state requires or requests; whether the state requires or requests a declaration of race/ethnicity; and, as recommended by one commenter, requires the designation and address of the state election office where completed national mail registration applications should be sent.

This section also retains the NPRM's requirement that the chief state election official provide the Commission with notice of any change thereafter to the state's eligibility requirements within 30 days of the change. This provision has been amended in paragraph 8.6(c) to state that such notification also is required for changes to any of the other state-specific information referenced in paragraphs 8.6 (a) and (b), such as deadlines for registration, voter identification number, privacy notice,

title and address of the state election office.

Recordkeeping and Reporting Requirements

Under 42 U.S.C. 1973gg-7(a)(3), the Commission is required to submit to the Congress not later than June 30 of each odd-numbered year a report assessing the impact of the NVRA on the administration of elections for federal office during the preceding 2 year period. The report must also include recommendations for improvements in federal and state forms, procedures, and other matters affected by the Act. The Commission is granted regulatory authority to prescribe, in consultation with the chief election officials of the states, such regulations as are necessary to implement this reporting requirement. 42 U.S.C. 1973gg-7(a)(1).

In order to produce a document that is both useful and comprehensive, the Commission will need several different types of data. For some of this data (such as total voting age population by state and demographic figures on reported voter registration), the Commission will use figures produced by the Bureau of Census. For the data elements identified below, however, the Commission will require the chief election official of each state responsible for coordinating activities under the NVRA to report to the Commission.

Paragraph 8.7(a) requires each state's chief election official to report to the FEC, on a form provided by the Commission, the identified information, no later than March 31 of each odd-numbered year (the year following each regularly scheduled general election for federal office, hereafter referred to as "federal general election") beginning March 31, 1995.

The Commission notes that several persons commenting on the NPRM suggested that the date of the first report be moved to March 31, 1997, to enable the states to provide a comprehensive report covering the entire two year period. However, the NVRA requires a report to Congress in 1995. Paragraph 8.7(c) states that this first report need only include a brief narrative description of the state's NVRA implementation as described below, and the number of registered voters in the state in the 1994 general election to use as a baseline for future reports.

I. Contents of the Report

For the reasons given, the following items are necessary to assess the impact of the NVRA on the administration of elections for federal office.

A. The Total Number of Registered Voters Statewide (Both as "Active" and as "Inactive") in the Federal General Election Two Years Prior to the Most Recent Federal General Election

The Commission believes that in order to assess the impact of the NVRA each two years, it is essential to obtain as a baseline the total number of registrants statewide (both "active" and "inactive" if the state makes such a distinction) in the federal general election prior to the one just preceding the reporting date. For example, for the 1999 report, the number would be the number of voters registered in the November 1996 election.

In the absence of any specific comments on the NPRM opposing this reporting requirement, paragraph 8.7(b)(1) requires this information on each state report. The Commission plans to convey the number of active registrants to the Congress not only in numbers, but also, based on Census figures, as a percentage of voting age population in each state.

B. The Total Number of Registered Voters Statewide (Both as "Active" and as "Inactive") in the Most Recent Federal General Election

In order to determine the overall increase or decrease in voter registration between federal general elections, paragraph 8.7(b)(2) requires from each state the total number of voters registered in the most recent federal general election and the number of "active" and "inactive" registrants if the state makes such a distinction.

C. The Total Number of New Valid Registrations Accepted Statewide Between the Past Two Federal General Elections, Including All Registrations That Are New to the Local Jurisdiction and Re-Registrations Across Jurisdictional Lines, but Excluding All Applications That Are Duplicates, Rejected, or Report Only a Change of Name, Address, or (Where Applicable) Party Preference Within the Local Jurisdiction

Because changes in total voter registration figures between federal general elections result from additions to the list as well as deletions from the list, paragraph 8.7(b)(3) requires of each state the total number of new valid registrations between the date of the most recent federal election and the one prior to the most recent. The Commission expanded the NPRM's language in response to comments seeking clarification of the definition of what constitutes a "new valid registration."

While no commenters specifically objected to this reporting requirement, one commenter suggested that the Commission also require the reporting of the number of registration applications rejected, as well as the reason for their rejection, in order to monitor the effectiveness of NVRA compliance to the Voting Rights Act. The final rules do not require this additional information as the burden it would place on the states and other reporting entities would far outweigh its potential usefulness.

D. If the State Distinguishes Between "Active" and "Inactive" Voters, the Total Number of Registrants Statewide That Were Designated "Inactive" at the Close Of the Most Recent Federal General Election

The language in paragraph 8.7(b)(4) describing this reporting item has been altered from that in the NPRM to reflect the concern shared by several commenters that, since individuals would be added and deleted from the voter roles at various times during the election cycle in each state, no meaningful correlation could be made from the information as proposed. The Commission feels a better basis of comparison will result by uniformly requiring the collection of this information "at the close of the most recent federal general election."

In order to maintain consistency in the numbers of registrants reported, paragraph 8.7(b)(4) requires from those states that adopt the practice of distinguishing between "active" and "inactive" voters, the number of registrants designated as "inactive" at the close of the most recent federal general election and who remained "inactive" after the most recent federal general election (thus ruling out registrants that were designated "inactive" but were restored to "active" status by reason of returning a confirmation notice or voting).

E. The Total Number of Registrations Statewide That Were Deleted From the Registration List Between the Past Two Federal General Elections

Paragraph 8.7(b)(5) requires each state to report the total number of registrations (both "active" and "inactive" if the state makes such a distinction) that were, for whatever reason, deleted from the registration list between the past two federal general elections. Although one commenter opposed this provision, this information is necessary to provide a more complete view of changes in total registration figures than would be available from

information relating solely to additions to the voter registration list.

F. The Statewide Number of Registration Applications That Were Received From or Generated By Each of the Following Categories of Sources: (1) All Motor Vehicle Offices; (2) Mail; (3) All Public Assistance Agencies That Are Mandated As Registration Sites Under the NVRA; (4) All State-Funded Agencies Primarily Serving Persons With Disabilities; (5) All Armed Forces Recruitment Offices; (6) All Other Agencies Designated by the State; and (7) All Other Means (Including In-Person, Deputy Registrars, Organized Voter Registration Drives Delivering Forms Directly to Registrars, etc.)

The wording of paragraph 8.7(b)(6) of the final rules has been revised from that proposed in NPRM to more clearly define the information sought by the Commission. Several commenters were uncertain if the Commission would be asking for the total number of registration applications (regardless of whether they are valid, rejected, duplicative, or other information changes) from the various categories of locations as distinct from individual agency offices throughout the state.

A principal objective of the NVRA is to expand the number and range of locations where eligible citizens may obtain and complete a voter registration application. The final rules, therefore, require information regarding the number of registration applications received from or generated by the sources identified above to provide an indication of the level of voter registration activity from each.

There was no significant opposition to this reporting requirement. A few commenters suggested that the Commission go beyond the proposed requirements to include such things as the total number of registrations received from each individual office of each entity providing registration services, and the total volume of people served by each agency to compare the rate of individuals registered to the total number of people seeking service or assistance from each entity. While this additional information might provide useful statistics for the evaluation and comparison of particular agency sites, the final rules do not seek this information in view of the negative impact more complicated recordkeeping and reporting requirements would impose on the staff of both election offices and agencies or other entities providing voter registration services who are often already burdened with overwhelming caseloads.

The Commission notes, however, that the collection and retention of this information may be deemed necessary by the Department of Justice in those states that require disclosure of race on the voter registration application in order to assist the Department in enforcing the various provisions of the Voting Rights Act.

G. The Total Number of "Duplicate" Registration Applications Statewide That, Between the Past Two Federal General Elections, Were Received in the Appropriate Election Office and Generated by Each of the Following Categories: (1) All Motor Vehicle Offices; (2) Mail; (3) All Public Assistance Agencies That Are Mandated As Registration Sites Under the NVRA; (4) All State-Funded Agencies Primarily Serving Persons With Disabilities; (5) All Armed Forces Recruitment Offices; (6) All Other Agencies Designated by the State; and (7) All Other Means (Including In-Person, Deputy Registrars, Organized Voter Registration Drives Delivering Forms Directly to Registrars, etc.)

The Commission received comments both favoring and opposing this reporting requirement. The nature of the objections varied from concerns regarding the cost and logistical problems of collecting such information, to statements that the state's current data system could not collect this information, to concerns that determining duplicate applications in agencies would result in the applicant's confidentiality being compromised.

The Commission believes that it is important to gauge the level of overlapping voter registration activity from all categories of registration sources. Collecting such information will lead to better registration site selection and can indicate the need for improved voter information regarding the absence of the need to re-register if one is already registered and has not changed address.

Although the collection of this information might present difficulties for some jurisdictions, it is needed to meet the Commission's legal responsibility to accurately report to the U.S. Congress on the impact of the NVRA on the administration of elections. Moreover, mechanisms exist (such as coding techniques using an alpha-numeric identifier) which would allow for the accurate reporting of this information while maintaining the confidentiality of the applicant in those instances in which confidentiality is a primary concern. Accordingly, paragraph 8.7(b)(7) requires the number of duplicate registration applications

received from each category identified above.

H. The Statewide Number of Confirmation Notices Mailed Out Between the Past Two Federal General Elections and the Statewide Number of Responses Received to These Notices During That Same Period

Paragraph 8.7(b)(8) requires that such information be reported, absent any specific objections to the NPRM on the inclusion of this reporting requirement, because the Act requires that registrars mail out confirmation notices to certain types of registrants, and because the Act further requires that states maintain records of all such mailings along with information concerning whether each recipient has responded to the notice. Such information is important in assessing the impact of the NVRA on the administration of elections and, in states which do not distinguish between "active" and "inactive" registrants, such numbers are essential to adjusting overall registration figures.

I. In the State's First Report, a Brief Narrative Description of the State's Implementation of the NVRA; and in Subsequent State Reports, Any Significant Changes to the Program

Because the Act provides the states a number of options in complying with the NVRA, an overall description of how each state has initially implemented the Act is essential to assessing its impact. In order to enhance comparability across states, the Commission will provide on the FEC reporting form a series of questions with categorical responses requiring the state to indicate the options or procedures the state has selected in implementing the NVRA. This requirement is contained in paragraph 8.7(b)(9) of the final rules.

In response to concerns of several commenters, the Commission notes that the last section of the reporting form will be left blank for states to include other information that they may wish to report, such as specific information on forms and systems used by the state to facilitate implementation of the Act, a description of those offices designated by the state as discretionary voter registration agencies, any programs or approaches to implementation that have proved especially innovative or successful in implementing the provisions of the NVRA, and any other additional information not covered in a specific category.

In like manner, the Commission will inquire in all subsequent reports about any significant changes in each state's program.

J. Any Additional Information

The NPRM proposed that no report on the impact of the NVRA on the administration of elections would be complete without identifying the types of problems encountered in its implementation and operation.

Several commenters suggested that the Commission ask not only for problems encountered, but also for successes in the implementation and operation of the NVRA.

New paragraph 8.7(b)(10) requires states to provide any additional information that would be helpful to the Commission in meeting the reporting requirement under 42 U.S.C. 1973gg-7(a)(3). Accordingly, the Commission will provide an area on the reporting form for states to identify and describe any particularly successful program, any specific problems they have encountered (including any financial impact the states wish to report) along with the measures they have taken to address any such problems, and any other information they deem relevant.

K. Miscellaneous Items

Commenters suggested a number of additional items be reported that do not conveniently fit into any of the above categories.

One advocated the inclusion of such miscellaneous items as: The number of bilingual registration forms distributed and the number of bilingual confirmation notices mailed for each covered language; the number of bilingual registration forms distributed and the number of confirmation notices mailed for each covered language, by jurisdiction, for each jurisdiction covered by the Voting Rights Act; voting age population (based on census statistics) by race and ethnicity; and the percent of whites and each protected class under the Voting Rights Act plus the percent of statewide voting age population reflected in each category of information to be reported under paragraph 8.7(b)(6), disaggregated to voter tabulation district and precinct level.

Another commenter suggested that the Commission include a compilation and analysis of racial data relating to the impact of the law on historically disenfranchised groups.

While the Commission acknowledges the concerns of many groups that the NVRA achieve one of its stated goals in opening and simplifying the voter registration process for those traditionally underenfranchised, such detailed statistical reporting would not be necessary to assess the impact of the NVRA on the administration of elections.

As noted previously, however, the collection and retention of these and other types of demographic data relating to race may be necessary in those states that require race be included on the voter registration application in order to assist the Department of Justice in enforcing the Voting Rights Act.

II. Items Not To Be Reported

For the reasons given, the Commission will not request reporting of the following items:

A. The Number of Declinations Filed at Agencies or Motor Vehicle Offices

The Act requires that applicants at public assistance agencies be provided a form on which they may decline in writing to register to vote and permits, though does not require, such a procedure in motor vehicle offices. The majority of commenters agreed with the Commission's proposal not to include the number of declinations filed with the various agencies because of the ambiguous nature of this information and the substantial additional costs for recordkeeping. The person most strongly in favor of requiring information regarding declinations suggested that, if available with the reasons for the declinations, the results could be used to monitor whether states are in compliance with the Voting Rights Act, and if applicants are being denied effective access to the franchise. However, there are any number of reasons why a person may decline to register to vote, including that the person is already registered. Moreover, the same person may decline to register several times during the same two-year period at different agencies or even at the same agency. Retaining records on the number of declinations will therefore not be likely to yield any statistically useful information. The Commission also wishes to avoid discouraging agencies from participating in voter registration activities by imposing on them burdensome reporting responsibilities.

Also, states must retain declinations for 22 months. 42 U.S.C. 1974 *et seq.* States may want to ensure that such declinations are retained in such a manner as to be able to identify originating offices or agencies to permit an examination of declination patterns, if necessary.

B. The Number of Persons Voting Under the "Fail-Safe" Provisions of the NVRA

One commenter requested that the Commission include information on the number of persons voting under the "fail-safe" provisions of 42 U.S.C. 1973gg-6(e) in order to help determine

the efficiency of the Act. These provisions permit certain classes of registrants to vote that were formerly unable to do so because of bureaucratic or legal technicalities.

The NVRA specifically affords states considerable latitude in how to administer the "fail-safe" voting process. The procedures adopted in some states, therefore, will generate statistics on the number of "fail-safe" voters more readily than will the procedures adopted in others. Moreover, in some instances it may be difficult to distinguish between voters utilizing the "fail-safe" procedures developed in accordance with the Act and those utilizing existing state provisions for casting a provisional ballot.

For these reasons, the Commission is not seeking this information.

C. The Number of Persons Newly Registered Between the Past Two Federal General Elections Who Voted in the Past Federal General Election

No comments were received regarding this item. Because whether or not registered persons subsequently vote is a matter driven by a multitude of variables outside the Act, and also because election officials do not routinely undertake the burdensome task of gathering information on the subsequent voting of a specific group of registrants, the Commission is not requiring this information.

D. The Postal Costs Incurred Statewide Between the Past Two Federal General Elections for All Mailings Required Under the NVRA

Comments on the proposal to report the postal costs incurred statewide for all mailings required under the NVRA were generally negative. Most commenters questioned the necessity of collecting this information, and felt that the administrative costs of gathering the information would impose a considerable additional financial burden on localities. Other commenters stated that for many smaller jurisdictions, the data gathered would be incomplete and unreliable.

Of those commenters in favor of including postal costs, a few went beyond the scope of the proposed rules and stated that they would like to see not only postal costs reported, but also all other costs associated with the implementation of the NVRA.

These comments have persuaded the Commission to delete this requirement from the final rules. This would not preclude states from voluntarily providing this information in their biennial report to the Commission.

E. Other Implementation or Operating Costs of the NVRA

As was the case with the ANPRM, a number of commenters to the NPRM wanted to report other implementation and operating costs of the NVRA. For a number of very practical reasons, however, the Commission is not seeking such data.

First, states will approach the NVRA from many different starting points. The costs of newly implementing any of these programs will entail an upfront expenditure which could not be compared to any new costs incurred by states that already administer some or all of the required programs.

Second, states vary considerably in their degree of computerization in election offices as well as in motor vehicle and public assistance agencies. Computerization at both the state and local levels will result in apparent reduced operating costs in states that already employ such technology.

The Commission also recognizes that the different implementation strategies of the various states will likely show different kinds of costs and therefore comparisons and even total cost figures would be misleading.

Finally, it is the experience of this Commission in conducting previous research on election costs, that few election offices are able to isolate their election related costs from the costs of other non-election-related office activities. However, this would not preclude states from voluntarily reporting other costs (e.g., in the brief narrative description of the state's implementation of the NVRA section of the report).

Regulatory Flexibility Act

One commenter argued that the proposed rules would violate the Regulatory Flexibility Act under 5 U.S.C. 605(b) because of the impact on small entities. However, as the commenter notes, both the NVRA and the rules are directed to the covered states and not to local jurisdictions. Under the rules, the covered states will choose their own methods of implementing these requirements.

List of Subjects in 11 CFR Part 8

Elections, National Voter Registration Act, Reporting and recordkeeping requirements.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for

this certification is that few, if any, small entities will be directly affected by these rules.

For the reasons set out in the preamble, new Part 8 is added to Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 8—NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg-1 et seq.)

Subpart A—General Provisions

Sec.

8.1 Purpose & scope.

8.2 Definitions.

Subpart B—National Mail Voter Registration Form

Sec.

8.3 General information.

8.4 Contents.

8.5 Format.

8.6 Chief State Election Official.

Subpart C—Recordkeeping and Reporting

Sec.

8.7 Contents of reports from the states.

Authority: 42 U.S.C. 1973gg-1 et seq.

Subpart A—General Provisions

§ 8.1 Purpose & scope.

The regulations in this part implement the responsibilities delegated to the Commission under Section 9 of the National Voter Registration Act of 1993, Public Law 103-31, 97 Stat. 77, 42 U.S.C. 1973gg-1 et seq. ("NVRA"). They describe the format and contents of the national mail voter registration form and the information that will be required from the states for inclusion in the Commission's biennial report to Congress.

§ 8.2 Definitions.

As used in this part:

(a) *Form* means the national mail voter registration application form, which includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.

(b) *Chief state election official* means the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg-8.

(c) *Active voters* means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(d) *Inactive voters* means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C.

1973gg-6(d) and have not since offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

(f) *State* means a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg-2(b).

(g) *Closed primary state* means a state that requires party registration as a precondition to vote for partisan races in primary elections or for other nominating procedures.

Subpart B—National Mail Voter Registration Form

§ 8.3 General information.

(a) The national mail voter registration form shall consist of three components: An application, which shall contain appropriate fields for the applicant to provide all of the information required or requested under 11 CFR 8.4; general instructions for completing the application; and accompanying state-specific instructions.

(b) The state-specific instructions shall contain the following information for each state, arranged by state: the address where the application should be mailed and information regarding the state's specific voter eligibility and registration requirements.

(c) States shall accept, use, and make available the form described in this section.

§ 8.4 Contents.

(a) *Information about the applicant.*

The application shall provide appropriate fields for the applicant's:

- (1) Last, first, and middle name, any suffix, and (optional) any prefix;
- (2) Address where the applicant lives including: street number and street name, or rural route with a box number; apartment or unit number; city, town, or village name, state; and zip code; with instructions to draw a locational map if the applicant lives in a rural district or has a non-traditional residence, and directions not to use a post office box or rural route without a box number;
- (3) Mailing address if different from the address where the applicant lives, such as a post office box, rural route without a box number, or other street address; city, town, or village name; state; and zip code;
- (4) Month, day, and year of birth;
- (5) Telephone number (optional); and
- (6) Voter identification number as required or requested by the applicant's

state of residence for election administration purposes.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine what type of voter identification number, if any, is required or requested by the applicant's state.

(ii) For each state that requires the applicant's full social security number as its voter identification number, the state's Privacy Act notice required at 11 CFR 8.6(c) shall be reprinted with the instructions for that state.

(7) *Political party preference*, for an applicant in a closed primary state.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine if the applicant's state is a closed primary state.

(ii) The accompanying instructions shall state that if the applicant is registering in a state that requires the declaration of party affiliation, then failure to indicate a political party preference, indicating "none", or selecting a party that is not recognized under state law may prevent the applicant from voting in partisan races in primary elections and participating in political party caucuses or conventions, but will not bar an applicant from voting in other elections.

(8) *Race/ethnicity*, if applicable for the applicant's state of residence. The application shall direct the applicant to consult the state-specific instructions to determine whether race/ethnicity is required or requested by the applicant's state.

(b) *Additional information required by the Act.* (42 U.S.C. 1973gg-7(b)(2) and (4)).

The form shall also:

- (1) Specify each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as a universal eligibility requirement and include a statement that incorporates by reference each state's specific additional eligibility requirements (including any special pledges) as set forth in the accompany state instructions;
- (2) Contain an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state's specific eligibility requirements;
- (3) Provide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;
- (4) Inform an applicant on the application of the penalties provided by law for submitting a false voter registration application;

(5) Provide a field on the application for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form if the applicant is unable to sign the application without assistance;

(6) State that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(7) State that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) *Other information.* The form will, if appropriate, require an applicant's former address or former name or request a drawing of the area where the applicant lives in relation to local landmarks.

§ 8.5 Format.

(a) The application shall conform to the technical specifications described in the Federal Election Commission's National Mail Voter Registration Form Technical Specifications.

(b) *Size.* The application shall consist of a 5" by 8" application card of sufficient stock and weight to satisfy postal regulations. The application card shall be attached by a perforated fold to another 5" by 8" card that contains space for the information set forth at 11 CFR 8.4(c).

(c) *Layout.*

(1) The application shall be sealable.

(2) The outside of the application shall contain an appropriate number of address lines to be completed by the applicant using the state information provided.

(3) Both sides of the application card shall contain space designated "For Official Use Only."

(d) *Color.* The application shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(e) *Signature field.* The application shall contain a signature field in lieu of a signature line.

(f) *Type size.*

(1) All print on the form shall be of the largest practicable type size.

(2) The requirements on the form specified in 11 CFR 8.4(b)(1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 8.4(b)(2).

§ 8.6 Chief state election official.

(a) Each chief state election official shall certify to the Commission within 30 days after July 25, 1994:

(1) All voter registration eligibility requirements of that state and their corresponding state constitution or statutory citations, including but not limited to the specific state requirements, if any, relating to minimum age, length of residence, reasons to disenfranchise such as criminal conviction or mental incompetence, and whether the state is a closed primary state.

(2) Any voter identification number that the state requires or requests; and

(3) Whether the state requires or requests a declaration of race/ethnicity;

(4) The state's deadline for accepting voter registration applications; and

(5) The state election office address where the application shall be mailed.

(b) If a state, in accordance with 11 CFR 8.4(a)(2), requires the applicant's full social security number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974 (5 U.S.C. 552a note).

(c) Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements or other information reported under this section.

Subpart C—Recordkeeping and Reporting

§ 8.7 Contents of reports from the states.

(a) The chief state election official shall provide the information required under this section with the Commission by March 31 of each odd-numbered year beginning March 31, 1995 on a form to be provided by the Commission. Reports shall be mailed to: National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington DC 20463. The data to be reported in accordance with this section shall consist of applications or responses received up to and including the date of the preceding federal general election.

(b) Except as provided in paragraph (c) of this section, the report required under this section shall include:

(1) The total number of registered voters statewide, including both "active" and "inactive" voters if such a distinction is made by the state, in the federal general election two years prior to the most recent federal general election;

(2) The total number of registered voters statewide, including both "active" and "inactive" voters if such a distinction is made by the state, in the most recent federal election;

(3) The total number of new valid registrations accepted statewide

between the past two federal general elections, including all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction;

(4) If the state distinguishes between "active" and "inactive" voters, the total number of registrants statewide that were considered "inactive" at the close of the most recent federal general election;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both "active" and "inactive" voters if such a distinction is made by the state, between the past two federal general elections;

(6) The statewide number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address, name or party changes) that were received from or generated by each of the following categories:

(i) All motor vehicle offices statewide;

(ii) Mail;

(iii) All public assistance agencies that are mandated as registration sites under the Act;

(iv) All state-funded agencies primarily serving persons with disabilities;

(v) All Armed Forces recruitment offices;

(vi) All other agencies designated by the state;

(vii) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of duplicate registration applications statewide that, between the past two federal general elections were received in the appropriate election office and generated by each of the categories described in paragraphs (b)(6)(i) through (vii) of this section;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) Answers to a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA or any significant changes to the state's voter registration program; and

(10) Any additional information that would be helpful to the Commission for

meeting the reporting requirement under 42 U.S.C. 1973gg-7(a)(3).

(c) For the State report due March 31, 1995, the chief state election official need only provide the information described in paragraph (b)(1) of this section and a brief narrative or general description of the state's implementation of the NVRA.

Dated: June 17, 1994.

Danny L. McDonald,

Vice Chairman.

[FR Doc. 94-15199 Filed 6-22-94; 8:45 am]

BILLING CODE 4715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-SW-12-AD; Amendment 39-8803; AD 94-02-05]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B-1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. Model 214B and 214B-1 helicopters, that currently establishes a mandatory retirement life for the main transmission upper planetary carrier (carrier). This amendment requires changing the retirement life for the carrier from flight hours to high-power events, removing the 2,500 hours' time-in-service magnetic particle inspection (MPI) for the carrier, and making the requirements applicable to the Model 214ST as well as the Model 214B and 214B-1 helicopters. This amendment is prompted by the manufacturer's analysis and retesting that has shown that frequent takeoffs and external load lifts (high-power events) shorten the life of the carrier. The actions specified by this AD are intended to prevent fatigue failure of the carrier, failure of the main transmission, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 28, 1994.

ADDRESSES: This AD and any related information may be examined in the Rules Docket at the Federal Aviation Administration, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham

Voter Registration Application

Before completing this form, review the General, Application, and State specific instructions.

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)		This space for office use only.					
1	(Circle one) Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV		
2	Home Address		Apt. or Lot #	City/Town	State	Zip Code	
3	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code	
4	Date of Birth ____ / ____ / ____ Month Day Year		5	Telephone Number (optional)		6	ID Number - (See Item 6 in the instructions for your state)
7	Choice of Party <small>(see item 7 in the instructions for your State)</small>		8	Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>			
9	I have reviewed my state's instructions and I swear/affirm that: <ul style="list-style-type: none"> ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States. 			Please sign full name (or put mark) ▲ _____ Date: _____ Month Day Year			

If you are registering to vote for the first time: please refer to the application instructions for information on submitting copies of valid identification documents with this form.

Please fill out the sections below if they apply to you.

If this application is for a **change of name**, what was your name before you changed it?

A	Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV
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If you were **registered before but this is the first time you are registering from the address in Box 2**, what was your address where you were registered before?

B	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
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If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

C	<ul style="list-style-type: none"> ■ Write in the names of the crossroads (or streets) nearest to where you live. ■ Draw an X to show where you live. ■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark. 		NORTH ↑
	Example _____ _____ _____	Route #2 _____ _____ _____	_____ _____ _____ _____
	Public School ●	● Grocery Store	X
		Woodchuck Road	

If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

D	
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Mail this application to the address provided for your State.



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

March 6, 2006

Jan Brewer
Arizona Secretary of State
1700 West Washington Street, 7th Floor
Phoenix, AZ 85007-2888

Dear Secretary Brewer,

This letter responds to your office's December 12, 2005 e-mail to the U.S. Election Assistance Commission (EAC) requesting that the EAC apply Arizona state policy (derived from Proposition 200) to the Federal Mail Voter Registration Form ("Federal Registration Form" or "Federal Form"). Specifically, the inquiry sought to apply proof of citizenship requirements for Arizona voter registration to the Federal Form registration process. This request was sent by Robert A. Flores, Voter Outreach Coordinator in response to the EAC's requests for updates pertaining to the Federal Registration Form. As you may know, use and acceptance of the Federal Form are mandated by the National Voter Registration Act of 1993, 42 U.S.C. §1973gg *et seq.*, (NVRA). The EAC is the Federal agency charged with regulating the development and substance of the Federal Form. (42 U.S.C. §1973gg-7(a)). After review of your request, the EAC concludes that the policies you propose would effectively result in a refusal to accept and use the Federal Registration Form in violation of Federal law (42 U.S.C. §1973gg-4(a)).

Arizona's Policy. On December 12, 2005, the office of the Arizona Secretary of State (Chief State Election Official) requested that the EAC apply new Arizona procedural requirements to the Federal Form. These new procedural requirements reflected proof of citizenship provisions recently adopted by the state in Proposition 200. Generally, proposition 200 requires Arizona registrants to submit additional proof of citizenship with their voter registration forms. This usually requires the individual to record, on the form, his or her driver's license number (or non-operating identification license) issued after October 1, 1996. If the registrant cannot provide this information (because they have no license or an older license) he or she will need to provide a copy of an alternative form of identification. These alternative forms include: a birth certificate, passport, certificate of naturalization number and other documents. This portion of Proposition 200 amended Arizona Revised Statute §§ 16-152 and 16-166, which set requirements for the State's registration form and verification of the form. The proposition did not amend Arizona's registration qualifications, found in Arizona Revised Statute §16-101. If Arizona were to apply this policy to its use and acceptance of the Federal Registration Form, the Federal Form's acceptance would be conditioned upon the receipt of supplemental documentation of citizenship. In this way, any registrant who failed to supplement their Federal Registration Form would have their form rejected, resulting in the loss of voting rights.

Federal Authority To Regulate Elections. It is a well settled matter of Constitutional law that the United States Congress, pursuant to Article I, Section 4 and

Article II, Section 1 of the U.S. Constitution, has the authority to pass laws regulating the manner in which Federal elections are held. This Federal authority has been broadly read by the Supreme Court to include the comprehensive Congressional regulation of a States' voter registration process for Federal elections. Voting Rights Coalition v. Wilson, 60 F.3d 1411, 1413-1414 (9th Cir. 1995), *cert. denied*, 516 U.S. 1093 (1996) (citing, Smiley v. Holm, 285 U.S. 355, 366 (1932)); Association of Community Organizations for Reform Now v. Edgar, 56 F.3d 791, 793 -794 (7th Cir. 1995) (citing Smiley, 285 U.S. at 366, Ex parte Siebold, 100 U.S. 371 (1879) and United States v. Original Knights of the Ku Klux Klan, 250 F.Supp 330, 351 - 355 (E.D.La 1965)); Association of Community Organizations for Reform Now v. Miller, 129 F.3d 833, 836 (6th Cir. 1995). The Constitution "explicitly grants Congress the authority either to 'make' laws regarding federal elections... or to 'alter' the laws initially promulgated by the states. Thus... article I, section 4 specifically grants Congress the authority to force states to alter their regulations regarding federal elections." Miller, 129 F.3d at 836.

In this way, while Article I, section 2 and the Seventeenth Amendment authorize States to set requirements regarding voter qualifications in a Federal election (Edgar at 794), this does not limit the Federal authority to set voter registration procedures for such elections. Voting Rights Coalition, at 1413. This is true even where States have declared voter registration to be a voting qualification (Wilson, at 1414) or where Federal registration requirements may indirectly make it more difficult for a State to enforce qualification requirements (Edgar at 794-795).

National Voter Registration Act. Consistent with its authority to regulate voter registration in Federal elections, Congress passed the NVRA. The NVRA's regulation of the voter registration process has been specifically and consistently upheld as constitutional by the Courts. Voting Rights Coalition, 60 F.3d F.3d 1411; Edgar, 56 F.3d 791; Miller, 129 F.3d 833. The NVRA mandates that States "*shall accept and use the mail voter registration application proscribed by the U.S. Election Assistance Commission pursuant to section 9(a)(2) for the registration of voters in elections for Federal office.*" 42 U.S.C. §1973gg-4(a) (emphasis added). The statute further allows States to create, use and accept their own form (in addition to the Federal form) if it meets the minimum NVRA criteria for the Federal form. 42 U.S.C. §1973gg-4(b). The EAC is the Federal agency charged with creating and regulating the Federal Form.¹ The NVRA requires the Federal Voter Registration Form to specify each voter eligibility requirement, contain an attestation that the applicant meets such requirements, and require the signature of the applicant. 42 U.S.C. §1973gg-7(b)(2). The Help America Vote Act (HAVA) has added the requirement that the Federal form include two check boxes for an applicant to affirm their citizenship and age. 42 U.S.C. §15483(b)(4).

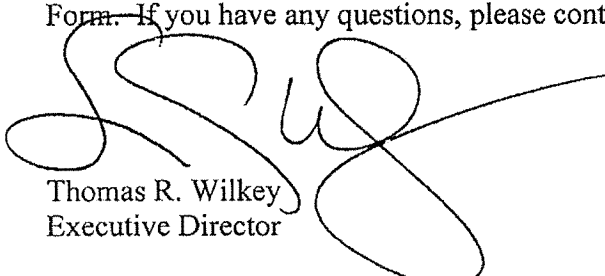
Discussion. While Arizona has authority to determine registrant/voter qualifications, the manner in which it registers voters for Federal elections is subject to Federal regulation. The Federal Government, through the NVRA and the Federal Form has regulated the process of registering voters in Federal Elections. Acceptance of the

¹ The Help America Vote Act amended the National Voter Registration Act transferring regulatory authority over the Federal Form to the EAC. (See 42 U.S.C. §15532 and 42 U.S.C. §1973gg-7(a)).

Federal Form is mandated by the NVRA. The Federal Form sets the proof required to demonstrate voter qualification. No state may condition acceptance of the Federal Form upon receipt of additional proof.

Arizona's voting qualifications remain unchanged and are contained in Arizona Revised Statute §16-101.² These qualifications are presently reflected on the Federal Form. The statutory changes Arizona has initiated in Proposition 200, which require some residents to submit documentary evidence of citizenship, do not alter the state's voter qualifications. Rather, the statutory scheme is merely an additional means to document or prove the existing voter eligibility requirement of citizenship. As such, Arizona's statutory changes deal with the manner in which registration is conducted and are, therefore, preempted by Federal law. The NVRA, HAVA and the EAC have determined the manner in which voter eligibility shall be documented and communicated on the Federal form. State voter requirements are documented by the applicant via a signed attestation and, in the case of citizenship, a "checkbox." (42 U.S.C. §1973gg-7(b)(2) and 42 U.S.C. §15483(b)(4)). This Federal scheme has regulated the area and preempts state action. Congress specifically considered whether states should retain authority to require that registrants provide proof of citizenship, but rejected the idea as "not necessary or consistent with the purpose of [the NVRA]."³ The state may not mandate additional registration procedures that condition the acceptance of the Federal Form. The NVRA requires States to both "accept" and "use" the Federal Form. Any Federal Registration Form that has been properly and completely filled-out by a qualified applicant and timely received by an election official must be accepted in full satisfaction of registration requirements. Such acceptance and use of the Federal Form is subject only to HAVA's verification mandate. (42 U.S.C. §15483).

Conclusion. While Arizona may apply Proposition 200 requirements to the use of its state registration form in Federal elections (if the form meets the minimum requirements of the NVRA), the state may not apply the scheme to registrants using the Federal Registration Form. Consistent with the above, Arizona may not refuse to register individuals to vote in a Federal election for failing to provide supplemental proof of citizenship, if they have properly completed and timely submitted the Federal Registration Form. If you have any questions, please contact the undersigned at (202) 566-3100.



Thomas R. Wilkey
Executive Director

² These qualifications require a registrant to demonstrate that he or she is (1) a citizen of the United States, (2) at least 18 years of age before the date of the next general election, (3) a resident of Arizona for at least twenty-nine days, (4) has not been convicted of a felony unless restored to civil rights and (5) has not been determined mentally incapacitated.

³ *Joint Conference Committee Report on the National Voter Registration Act of 1993*, H. Rept. 103-66 (April 28, 1993).