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[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.

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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 l ive)

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 life 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 ½" 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 Vehicles 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 wishes 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

Subpart B—National Mail Voter Registration Form

Subpart C—Recordkeeping and Reporting

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 6715–01–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