

APA-1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency Secretary of State

Rule No. Chapter 820-2-10

Rule Title: Procedures for Implementing the Uniformed and Overseas
Citizens Absentee Voting Act ("UOCAVA")

X New _____ Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Jim Bennett

Date 1-17-14

Office of the Secretary of State
Administrative Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Secretary of State

RULE NO. & TITLE: Chapter 820-2-10 Procedures for Implementing the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff et seq., as Amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§575-589, 123 Stat. 2190, 2318-2355 (2009) ("MOVE Act") and Act of Alabama 2011-619.

INTENDED ACTION: New Rules.

SUBSTANCE OF PROPOSED ACTION:

Provide procedures for implementing the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973FF et seq.

TIME, PLACE, MANNER OF PRESENTING VIEWS:


Views may be presented orally or in writing and should be addressed to Jean Brown, Chief Legal Advisor, Office of the Secretary of State, P.O. Box 5616, Montgomery, Alabama 36103; 334-242-7202.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

March 7, 2014

CONTACT PERSON AT AGENCY:

Jean Brown, Office of the Secretary of State, State Capitol, 600 Dexter Avenue, Suite S-205, Montgomery, Alabama 36104; 334-242-7202



(Signature of officer authorized to promulgate and adopt rules or his or her deputy)

NEW

OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE CODE

CHAPTER 820-2-10
PROCEDURES FOR IMPLEMENTING THE UNIFORMED AND OVERSEAS
CITIZENS ABSENTEE VOTING ACT ("UOCAVA")

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820-2-10-.01 Purpose. The purpose of this chapter is to provide for implementation of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973FF *et seq.*, as Amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§575-589, 123 Stat. 2190, 2318-2355 (2009) ("MOVE Act") and Act of Alabama 2011-619, for those qualified individuals requesting to vote by absentee ballot pursuant to the Federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The procedures in this chapter are promulgated under authority granted the Secretary of State as Chief Elections Official pursuant to the UOCAVA and Code of Alabama, 1975, sections 17-11-42 and 17-1-3(a).

Author: Edward Packard; Jean Brown; William Sutton

Statutory Authority: Code of Alabama, 1975, sections 17-11-40 *et seq.*, 17-1-3(a), 17-11-4, and 17-11-5(d).

History: New Rule: Filed January 17, 2014.

820-2-10-.02 Applicability. This chapter applies to absentee balloting for all elections for individuals eligible to vote by absentee ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Author: Edward Packard; Jean Brown; William Sutton

Statutory Authority: Code of Alabama, 1975, sections 17-11-40 *et seq.*, 17-1-3(a), 17-11-4, and 17-11-5(d).

History: New Rule: Filed January 17, 2014.

820-2-10-.03 Application and Procedures for Issuance of Absentee Ballot.

(1) Individuals voting by absentee ballot pursuant to UOCAVA may apply for an absentee ballot by utilizing an application adopted by the State of Alabama pursuant to §§17-11-4 or 17-11-5(d) or by utilizing the Federal Postcard Application provided for by UOCAVA. The application must be submitted by the voter by U.S. mail or hand-delivery to the absentee election manager in the county in which the prospective absentee voter is registered to vote. The application prescribed by the Secretary of State pursuant to §17-11-5(d) shall provide the UOCAVA applicant the means to request delivery of the blank absentee ballot by U.S. mail, by hand-delivery or by electronic transmission.

(2) A voter who chooses to have the blank absentee ballot transmitted to him or her electronically must designate that choice on the Federal Postcard Application or on the state-prescribed absentee ballot application prescribed pursuant to §17-11-5(d). If the voter does not make such designation, the blank absentee ballot shall be delivered to the voter by U.S. mail or hand-delivery.

(3) If the voter requests to have the blank absentee ballot transmitted electronically, the absentee election manager shall:

(a) verify the voter registration status of the applicant;

(b) record in the Alabama Voter Registration and Election Management System the request for the absentee ballot;

(c) deliver to the voter the blank absentee ballot by electronic transmission utilizing the electronic blank ballot transmission developed by the Secretary of State;

(d) shall notify the voter that to be properly cast and counted, the voted absentee ballot must be returned to the appropriate absentee election manager by the date specified in state law and provide the voter said date;

(4) Each absentee ballot delivered to a voter pursuant to UOCAVA shall include a "UOCAVA Affidavit" which shall read as prescribed in §17-11-7, Code of Alabama, 1975, except:

(a) the instructions to the voter regarding signing and witnessing of the affidavit shall not include any reference to notarization and shall read "IF YOUR AFFIDAVIT IS NOT SIGNED (OR MARKED), AND IF YOUR AFFIDAVIT IS NOT WITNESSED BY TWO WITNESSES 18 YEARS OF AGE OR OLDER, PRIOR TO BEING DELIVERED OR MAILED TO THE ABSENTEE ELECTION MANAGER, YOUR BALLOT WILL NOT BE COUNTED.", and

(b) the affidavit shall not include a section for completion by a notary public.

(c) item (5) in paragraph (b) of §17-11-7 shall read "(5) I am entitled to vote an absentee ballot because I am a member of or a spouse or dependent of a member of the Armed Forces of the United States or am otherwise entitled to vote pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff."

(5) For voters requesting electronic transmission of the absentee ballot, the "UOCAVA Affidavit" shall be provided in electronic format to the voter; otherwise the "UOCAVA Affidavit" shall be provided printed on the ballot return envelope.

(6) For purposes of the MOVE Act and Section 104 of the Uniformed and Overseas Citizens Absentee Voting Act, the Federal Postcard Application (FPCA) for absentee balloting provided for by Section 101(b)(2), of the Uniformed and Overseas Citizens Absentee Voting Act shall be processed as follows:

(a) An FPCA marked to request delivery of the absentee ballot by e-mail shall be processed as a request for electronic delivery of the blank absentee ballot.

(b) An FPCA marked to request delivery of the absentee ballot by fax shall be processed as a request for delivery by U.S. mail of the blank absentee ballot.

Author: Edward Packard; Jean Brown; William Sutton

Statutory Authority: UOCAVA; Code of Alabama, 1975, sections 17-11-40 *et seq.*, 17-1-3(a), 17-11-4, and 17-11-5(d).

History: New Rule: Filed January 17, 2014.

820-2-10-.04 Return of Absentee Ballots.

(1) After the voter marks his or her choices on the ballot, the voter shall:

(a) complete the "UOCAVA Affidavit", including the section for two witnesses as required by §17-11-7, Code of Alabama, 1975;

(b) when the voter has requested electronic transmission of the blank absentee ballot, insert and seal the ballot in a blank envelope for secrecy and not write any personally identifying information on the envelope and then insert and seal the blank envelope (which contains the voted ballot) and the completed UOCAVA Affidavit into a second envelope to be used for returning the absentee ballot to the appropriate absentee election manager by hand-delivery, U.S. mail, or commercial air or ground carrier;

(c) when the voter has requested that the absentee ballot be delivered by U.S. Mail or hand-delivery, insert and seal the voted ballot into the secrecy envelope and then insert and seal the secrecy envelope into the envelope on which is printed the "UOCAVA Affidavit" and which is used as the return envelope for delivering the ballot to the absentee election manager by hand-delivery, U.S. mail, or commercial air or ground carrier; and

(d) return the absentee ballot by hand-delivery, U.S. mail, or commercial air or ground carrier, to the appropriate absentee election manager using the address information provided by the absentee election manager.

(2) In the event a voter does not place the absentee ballot inside a secrecy envelope, the absentee election manager shall immediately upon discovery insert and seal the voter's ballot into a secrecy envelope and place inside an envelope of sufficient size the secrecy envelope, the UOCAVA Affidavit, and the envelope used by the voter to deliver the ballot.

Author: Edward Packard; Jean Brown; William Sutton
Statutory Authority: UOCAVA; Code of Alabama, 1975, sections 17-11-40 *et seq.*, 17-1-3(a), 17-11-4, 17-11-5(d), and 17-11-9.
History: New Rule: Filed January 17, 2014.

820-2-10-.05 Counting of Absentee Ballots.

(1) As provided in §17-11-10, no poll worker or other election official shall count an absentee ballot unless the appropriate affidavit has been properly completed by the voter.

(2) An affidavit is properly completed if the voter has complied with the provisions of §17-11-7, Code of Alabama, 1975, including the requirement for witnessing, except that the affidavit is not required to be notarized.

Author: Edward Packard; Jean Brown; William Sutton
Statutory Authority: UOCAVA; Code of Alabama, 1975, sections 17-11-40 *et seq.*, 17-1-3(a), 17-11-4, 17-11-5(d), and 17-11-10.
History: New Rule: Filed January 17, 2014.

820-2-10-.06 Minimum Criteria to Ensure Secure Remote Electronic Transmission of Blank Absentee Ballots. The minimum criteria to ensure the secure electronic transmission of blank absentee ballots shall include the following:

(1) The capability for secure access by the overseas voter to the electronic ballot transmission server.

(2) The capability to verify the identity of the overseas voter before granting access to the electronic ballot transmission server.

Author: Edward Packard; Jean Brown; William Sutton

Statutory Authority: Code of Alabama, 1975, section 17-11-40 *et seq.*

History: New Rule: Filed January 17, 2014.

820-2-10-.07 Application of Postmark Deadline to Delivery of Ballots by Commercial Carriers. For the purpose of delivering an absentee ballot to a county absentee election manager by commercial ground or air carrier, the postmark requirement specified in §17-11-18 shall refer to the date on which the absentee ballot is tendered to the commercial carrier for delivery.

Author: Edward Packard; Jean Brown; William Sutton

Statutory Authority: Code of Alabama, 1975, section 17-1-40 *et seq.*

History: New Rule: Filed January 17, 2014.