

EX. ORD. No. 12642. DESIGNATION OF SECRETARY OF DEFENSE AS PRESIDENTIAL DESIGNEE

Ex. Ord. No. 12642, June 8, 1988, 53 F.R. 21975, provided: By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410) ("the Act") [42 U.S.C. 1973ff(a)], it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated as the "Presidential designee" under Title I of the Act [42 U.S.C. 1973ff et seq.].

SEC. 2. In order to effectuate the purposes of the Act [see Short Title note above], the Secretary of Defense is hereby authorized to delegate any or all of the functions, responsibilities, powers, authority, or discretion devolving upon him in consequence of this Order to any person or persons within the Department of Defense.

RONALD REAGAN.

§ 1973ff-1. State responsibilities

(a) In general

Each State shall—

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 1973ff-2 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this subchapter, use the standard oath prescribed by the Presidential designee under section 1973ff(b)(7) of this title;

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures—

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot applica-

tion be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter—

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office—

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in manner¹ that gives them sufficient time to vote in the runoff election;

(10) carry out section 1973ff-2a(b)(1) of this title with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under subsection (c) and such other data as the Presidential designee determines appropriate in accordance with the standards developed by the Presidential designee under section 1973ff(b)(11) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications,

¹ So in original. Probably should be "in a manner".

and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002 [42 U.S.C. 15301 et seq.]) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(e) Designation of means of electronic communication for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications, and for other purposes related to voting information

(1) In general

Each State shall, in addition to the designation of a single State office under subsection (b), designate not less than 1 means of electronic communication—

(A) for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications under subsection (a)(6);

(B) for use by States to send voter registration applications and absentee ballot applications requested under such subsection; and

(C) for the purpose of providing related voting, balloting, and election information to absent uniformed services voters and overseas voters.

(2) Clarification regarding provision of multiple means of electronic communication

A State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.

(3) Inclusion of designated means of electronic communication with informational and instructional materials that accompany balloting materials

Each State shall include a means of electronic communication so designated with all

informational and instructional materials that accompany balloting materials sent by the State to absent uniformed services voters and overseas voters.

(4) Availability and maintenance of online repository of State contact information

The Federal Voting Assistance Program of the Department of Defense shall maintain and make available to the public an online repository of State contact information with respect to elections for Federal office, including the single State office designated under subsection (b) and the means of electronic communication designated under paragraph (1), to be used by absent uniformed services voters and overseas voters as a resource to send voter registration applications and absentee ballot applications to the appropriate jurisdiction in the State.

(5) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under subsection (a)(6)(C), the State shall transmit the voter registration application or absentee ballot application by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(6) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(6) protect the security and integrity of the voter registration and absentee ballot application request processes.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(6) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected throughout the process of making such request or being sent such application.

(f) Transmission of blank absentee ballots by mail and electronically

(1) In general

Each State shall establish procedures—

(A) to transmit blank absentee ballots by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (B)) to absent uniformed services voters and overseas voters for an election for Federal office; and

(B) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such blank absentee ballot be transmitted by mail or electronically.

(2) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate

a preference under paragraph (1)(B), the State shall transmit the ballot by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(3) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(7) protect the security and integrity of absentee ballots.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(7) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter to whom a blank absentee ballot is transmitted under such subsection is protected throughout the process of such transmission.

(g) Hardship exemption

(1) In general

If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include—

(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;

(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;

(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and

(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes—

(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;

(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and

(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.

(2) Approval of waiver request

After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:

(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.

(B) One or more of the following issues creates an undue hardship for the State:

(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).

(ii) The State has suffered a delay in generating ballots due to a legal contest.

(iii) The State Constitution prohibits the State from complying with such subsection.

(3) Timing of waiver

(A) In general

Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.

(B) Exception

If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.

(4) Application of waiver

A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.

(h) Tracking marked ballots

The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) Prohibiting refusal to accept applications for failure to meet certain requirements

A State shall not refuse to accept and process any otherwise valid voter registration applica-

tion or absentee ballot application (including the official post card form prescribed under section 1973ff of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

- (1) Notarization requirements.
- (2) Restrictions on paper type, including weight and size.
- (3) Restrictions on envelope type, including weight and size.

(Pub. L. 99-410, title I, §102, Aug. 28, 1986, 100 Stat. 925; Pub. L. 107-107, div. A, title XVI, §1606(a)(1), Dec. 28, 2001, 115 Stat. 1278; Pub. L. 107-252, title VII, §§ 702, 703(a), 705(b)(2), 707, Oct. 29, 2002, 116 Stat. 1723-1725; Pub. L. 108-375, div. A, title V, §566(b), Oct. 28, 2004, 118 Stat. 1919; Pub. L. 111-84, div. A, title V, §§577(a), 578(a), 579(a), (b), 580(c), (d), 582(a), 584(b), Oct. 28, 2009, 123 Stat. 2319, 2321-2323, 2325, 2327, 2330.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, known as the Uniformed and Overseas Citizens Absentee Voting Act, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Help America Vote Act of 2002, referred to in subsec. (c), is Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to chapter 146 (§15301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

CODIFICATION

Pub. L. 111-84, §§577(a)(1), 578(a)(1), 579(a)(1), (b), 580(c), and 584(b), added pars. (6) to (11), respectively, to subsec. (a) of this section. In making the addition of par. (9) to subsec. (a), section 579(b)(1) of Pub. L. 111-84 directed the striking out of “and” at the end of par. (7), which could not be executed because the word “and” did not appear at the end.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111-84, §577(a)(1), added par. (6).

Subsec. (a)(7). Pub. L. 111-84, §578(a)(1), added par. (7).
 Subsec. (a)(8). Pub. L. 111-84, §579(a)(1), added par. (8).
 Subsec. (a)(9). Pub. L. 111-84, §579(b), added par. (9).
 See Codification note above.

Subsec. (a)(10). Pub. L. 111-84, §580(c), added par. (10).
 Subsec. (a)(11). Pub. L. 111-84, §584(b), added par. (11).
 Subsec. (e). Pub. L. 111-84, §577(a)(2), added subsec. (e).

Subsec. (f). Pub. L. 111-84, §578(a)(2), added subsec. (f).
 Subsec. (g). Pub. L. 111-84, §579(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 111-84, §580(d), added subsec. (h).
 Subsec. (i). Pub. L. 111-84, §582(a), added subsec. (i).

2004—Subsec. (a)(3). Pub. L. 108-375 substituted “absent uniformed services voters and overseas voters” for “overseas voters”.

2002—Pub. L. 107-252, §702, designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(5). Pub. L. 107-252, §705(b)(2), added par. (5).

Subsec. (c). Pub. L. 107-252, §703(a), added subsec. (c).
 Subsec. (d). Pub. L. 107-252, §707, added subsec. (d).

2001—Par. (2). Pub. L. 107-107, §1606(a)(1)(A), struck out “general, special, primary, or runoff” before “election for Federal office” and “and” after semicolon and inserted “and absentee ballot application” after “voter registration application”.

Par. (4). Pub. L. 107-107, §1606(a)(1)(B), (C), added par. (4).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title V, §577(b), Oct. 28, 2009, 123 Stat. 2320, provided that: “The amendments made by this section [amending this section] shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.”

Pub. L. 111-84, div. A, title V, §578(b), Oct. 28, 2009, 123 Stat. 2321, provided that: “The amendments made by this section [amending this section] shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.”

Pub. L. 111-84, div. A, title V, §579(c), Oct. 28, 2009, 123 Stat. 2324, provided that: “The amendments made by this section [amending this section] shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.”

Amendment by section 580(c), (d) of Pub. L. 111-84 applicable with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office, see section 580(f) of Pub. L. 111-84, set out as a note under section 1973ff of this title.

Pub. L. 111-84, div. A, title V, §582(c), Oct. 28, 2009, 123 Stat. 2327, provided that: “The amendments made by this section [amending this section and section 1973ff-2 of this title] shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.”

Amendment by section 584(b) of Pub. L. 111-84 applicable with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office, see section 584(c) of Pub. L. 111-84, set out as a note under section 1973ff of this title.

CLARIFICATION REGARDING DELEGATION OF STATE RESPONSIBILITIES TO LOCAL JURISDICTIONS

Pub. L. 111-84, div. A, title V, §576, Oct. 28, 2009, 123 Stat. 2319, provided that: “Nothing in the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) may be construed to prohibit a State from delegating its responsibilities in carrying out the requirements of such Act, including any requirements imposed as a result of the provisions of and amendments made by this Act [probably means subtitle H (§§575-589) of title V of div. A of Pub. L. 111-84, see Short Title of 2009 Amendment note set out under section 1971 of this title], to jurisdictions in the State.”

DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS

Pub. L. 107-252, title VII, §703(b), Oct. 29, 2002, 116 Stat. 1724, provided that: “The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff-1(c)] (as added by sub-section (a)), and shall make the format available to the States and units of local government submitting such reports.”

§ 1973ff-2. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters

(a) In general

(1) Federal write-in absentee ballot

The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for