

APA-1

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Secretary of State

Rule No. 820-2-10-.06

Rule Title: Minimum Criteria to Ensure Secure Remote Electronic
Transmission of Blank Absentee Ballots and Procedures for Secure
Electronic Return of Voted Ballots

 New X 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? N/A

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 *J. H. Merrill*
John H. Merrill
Secretary of State

Date April 13, 2016

(DATE FILED) (STAMP)

APA-2

OFFICE OF THE SECRETARY OF STATE
ELECTIONS DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Office of the Secretary of State

RULE NO. & TITLE: 820-2-10-.06 Minimum Criteria to Ensure Secure Remote Electronic Transmission of Blank Absentee Ballots and Procedures for Secure Electronic Return of Voted Ballots

INTENDED ACTION: Amend existing rule.

SUBSTANCE OF PROPOSED ACTION: This proposed amendment provides minimum criteria to ensure secure remote electronic transmission of blank absentee ballots for UOCAVA voters who have requested electronic transmission of ballots and procedures for secure electronic return of voted ballots for UOCAVA voters who are eligible to return voted ballots electronically.

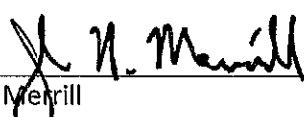
TIME, PLACE, MANNER OF PRESENTING VIEWS:

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

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: June 2, 2016

CONTACT PERSON AT AGENCY:

Jean Brown, Office of the Secretary of State, State Capitol Suite E-201, 600 Dexter Avenue, Montgomery, AL 36130; (334)242-7202.



John H. Merrill
Secretary of State

APA-2
07/04

820-2-10-.06 Minimum Criteria To Ensure Secure Remote Electronic Transmission Of Blank Absentee Ballots and Procedures for Secure Electronic Return of Voted Ballots. (1) The minimum criteria to ensure the secure electronic transmission of blank absentee ballots shall include the following:

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

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

(2) **Procedures for Secure Electronic Return of Absentee Ballots.** (a) Eligibility to Return an Absentee Ballot by Electronic Transmission. Only the following voters are eligible to return an absentee ballot by electronic transmission:

(1) A member of the uniformed services while in the active service, or an eligible spouse or dependent of such a member, who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(2) A member of the Merchant Marine of the United States, or an eligible spouse or dependent of such a member, who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(3) Any other citizen of the United States who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(b) The absentee election manager shall determine the eligibility of the absentee voter to return the absentee ballot by electronic transmission by evaluating the absentee ballot application submitted by said voter.

(1) If a voter requests to receive the absentee ballot by electronic transmission but the absentee ballot application does not provide sufficient information to determine the voter's

eligibility to return an absentee ballot by electronic transmission:

(a) the absentee election manager shall attempt to contact the voter and obtain supplemental information to determine the voter's eligibility to receive and return the absentee ballot by electronic transmission.

(b) Any supplemental information obtained by the absentee election manager shall be documented and kept with the original absentee ballot application.

(2) If the absentee election manager is unable to contact the voter to obtain supplemental information to determine eligibility and the only eligibility requirement that is in question relates to whether the voter is residing outside of the territorial limits of the United States and the District of Columbia, the absentee election manager shall consider the application prima facie evidence that the voter is eligible to return the absentee ballot by electronic transmission and shall document said determination.

(3) If a voter requests to return the absentee ballot by electronic transmission but the information available to the absentee election manager, either on the absentee ballot application or as provided by the voter as supplemental information, establishes that the voter is not residing outside of the territorial limits of the United States and the District of Columbia, the absentee election manager shall not permit the voter to return the ballot by electronic transmission.

(c) Minimum Criteria To Ensure Secure Electronic Return of Voted Absentee Ballots. The minimum criteria to ensure the secure electronic return of voted 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.

(3) The capability for secure transmission of the voted ballot to the local absentee election manager.

(4) The capability to verify the identity of the overseas voter transmitting the voted ballot to the local absentee election manager.

(5) The use of encrypted information, including, but not limited to, ballots, passwords, and both public and private encryption keys.

(a) A public or private key encryption methodology shall include key generation under the control of the Secretary of State.

(b) A password protected private key shall be held secure by the county appointing board, as applicable, and never transmitted or otherwise divulged by any means.

(c) A password protected private key that is unique for each eligible overseas voter to digitally sign the ballot for transmission and storage before decryption by the canvassing board or the absentee election manager.

(6) The capability for auditing the secure remote voting application source code, and the capability for this application to be executed on a clean computer which, at a minimum, has a baseline operating system on its hard disk and no other software or driver installed.

(7) The capability to secure access to and from the overseas voter and the voting server or the voting database platform or both.

(8) The verification of the authenticity of the identity of the overseas voter before granting access to the transmission of election material.

(9) The capability for the overseas voter to determine that the secure transmission of election material was successful.

(10) The capability for the absentee election manager to segregate rejected ballots before decryption.

(11) The capability to record election material received by secure transmission.

(12) The capability for the absentee election manager to produce a marked paper ballot for each vote cast by secure transmission.

(13) The capability for the overseas voter to securely and electronically execute the "Overseas Voter Certificate" as provided for in §17-11-46, if the UOCAVA voter is submitting the voted ballot by secure electronic transmission.

(d) Electronic Return Of Absentee Ballots.

(1) When the voter has requested electronic transmission of the blank absentee ballot, that voter may choose to return the voted ballot and completed Overseas Voter Certificate via secure electronic transmission to the local absentee election manager if the voter is eligible to return the ballot by electronic transmission pursuant to rule 820-2-10-.06(2).

(2) In the event a voter chooses to return the completed ballot via secure electronic transmission to the local absentee election manager as authorized in (1),

(a) the absentee election manager shall determine if the electronic voted ballot is to be accepted or rejected;

(b) the absentee election manager shall print the electronic ballot if accepted, including supporting documentation; and

(c) the absentee election manager shall then place and seal the accepted voted ballot in a secrecy envelope and store with the other voted absentee ballots until they are to be counted on election day by the absentee election officials.

(e) Counting Of Absentee Ballots Returned by Electronic Transmission.

(1) No poll worker or other election official shall count an absentee ballot returned electronically unless the Overseas Voter Certificate has been properly completed and submitted by the voter.

(2) The absentee election manager shall make the determination as to whether the Overseas Voter Certificate is properly submitted.

(3) An Overseas Voter Certificate is properly submitted if it is signed and dated by the overseas voter.

Author: Edward Packard; Jean Brown.

Statutory Authority: Code of Ala. 1975, §§17-11-40 et seq.

History: New Rule: Filed March 28, 2014; effective May 2, 2014. Amended: Filed April 13, 2016.