



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530*

October 4, 2010

VIA EMAIL AND FACSIMILE

The Honorable Ross Miller
Secretary of State
101 North Carson Street, Suite 3
Carson City, Nevada 89701

Dear Secretary Miller:

This letter confirms the steps your office ("the Secretary" or "the Secretary's Office") has indicated it will take to remedy the State of Nevada's violation of Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7. UOCAVA provides that absent uniformed services voters and overseas voters ("UOCAVA voters") shall be permitted "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1. Pursuant to amendments by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) ("MOVE Act"), UOCAVA also provides that UOCAVA voters who request an absentee ballot at least 45 days prior to a federal election are to be sent ballots (by mail or electronically) no later than 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8). For the November 2, 2010 Federal general election the 45 day deadline for sending UOCAVA ballots fell on September 18, 2010.

Following inquiries from the Department of Justice ("the Department") regarding Nevada's compliance with Section 102(a)(8) of UOCAVA, the Secretary's office reported that the ballots of 34 UOCAVA voters from Elko County who had requested ballots on or before September 18, 2010 were not sent out at least 45 days before the November 2, 2010 election. After discovering Elko County's failure to timely send absentee ballots to UOCAVA voters, the Secretary ensured that the affected Elko County UOCAVA voters were sent absentee ballots by email or expedited mail, and all of the ballots were sent to voters by September 23, 2010. Absentee ballots in Nevada are normally mailed by first-class U.S. mail. Nev. Rev. Stat. § 239.323(1). The Secretary also directed the Elko County Clerk's Office to contact the affected UOCAVA voters to confirm that their ballots have been received and to advise the voters of the different methods available to return the ballot. The Secretary has advised that as of this date, 4 of these Elko County voters have returned their ballots to the County Clerk.

In addition, the Secretary has advised that the affected Elko County UOCAVA voters will receive additional time to submit their ballots and will receive notice of the additional time. Nevada law provides that all absentee ballots must be received by elections officials prior to 7 p.m. on election day if they are to be accepted. Nev. Rev. Stat. § 293.317. However, the

Secretary, through the authority granted by Nevada Revised Statutes § 293.247, has drafted and provided us with a regulation, instructing the Elko County clerk to count the ballots of UOCAVA voters who requested ballots on or before September 18, 2010 if the ballots are received before 5 p.m. on November 8, 2010, which provides six additional days for receipt of the ballots. The regulation will become effective once approved by the Governor's office.

The Secretary will also afford eligible UOCAVA voters a reasonable opportunity to learn of the remedial measures by giving notice to the affected Elko County UOCAVA voters that: (1) the deadline for the ballots to be executed and sent is November 2, 2010; and (2) the deadline for receipt of ballots from such voters has been extended to 5 p.m. on November 8, 2010. Such notices will include appropriate contact information within the Secretary's office for assistance and will be delivered telephonically and/or via the method used to send the voter's absentee ballot.

In addition, the Secretary will also keep the Department apprised of its efforts to remedy the aforementioned UOCAVA violations by: (1) informing the Department how and when each voter was notified of the remedial measures, by October 15, 2010; and (2) informing the Department of the number of Elko County UOCAVA ballots returned, when each ballot was received and whether the ballots were counted, no later than December 1, 2010.

These measures have been undertaken by the State to remedy the late transmission of the ballots of Elko County UOCAVA voters who submitted absentee ballot requests by September 18, 2010. If each of these measures is fully implemented, they will provide an appropriate remedy for the UOCAVA violation associated with the late transmission of the Elko County UOCAVA ballots for the November 2, 2010 general election.

We appreciate your cooperation in our efforts to enforce UOCAVA and the MOVE Act.

Sincerely,



F. Christian Herren, Jr.
Chief, Voting Section

cc: Nicole Lamboley, Chief Deputy Secretary of State
Matt Griffin, Deputy Secretary of State for Elections

SECRETARY OF STATE
 FILING DATA
 ROSS MILLER
 SECRETARY OF STATE
 2010 OCT -6 P 3:02
 K Rut
 FILED
 CARSON CITY
 NEVADA

**Form For Filing
 Administrative Regulations**

Agency Secretary of State
Elections

FOR EMERGENCY
 REGULATIONS ONLY
 Effective date Upon adoption
 Expiration date November 23, 2010

 Governor's signature

Classification: PROPOSED ADOPTED BY AGENCY EMERGENCY

Brief description of action A regulation pertaining to the receipt and counting of military
and overseas ballots in Elko County pursuant to the MOVE ACT.

Authority citation other than 233B: NRS 293.124; NRS 293.247

Notice date N/A

Date of Adoption by Agency

Hearing date N/A

Written Statement of Emergency in Support of Emergency Regulations

The Nevada Secretary of State has determined that an emergency exists sufficient to warrant the enactment of emergency regulations pertaining to the receipt and counting of military and overseas ballots pursuant to the National Defense Authorization Act for Fiscal Year 2010, PUBLIC LAW 111-84, Section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1(a)(1)). The reasons for the Secretary of State's determination are as follows:

Pursuant to Section 102 of the Uniformed and Overseas Citizens Absentee Act ("UOCAVA"), as amended by the Military and Overseas Voter Empowerment Act ("MOVE ACT"), a county clerk is required to send a military or overseas voter an absentee ballot not later than 45 days before an election, provided that the voter has requested an absentee ballot at least 45 days before an election for federal office. In 2010, that deadline was September 18.

As confirmed by the title of Section 579 of the MOVE ACT and Section 102 of UOCAVA, the primary purpose of the 45 day transmission deadline is to provide absent uniformed services voters and overseas voters sufficient time to cast a ballot, and the state will take such actions as may be necessary to ensure that absent uniformed services voters and overseas voters may timely cast ballots.

Under Nevada Revised Statute ("NRS") 293.317, an absentee ballot must be received by the county clerk by the close of polls on Election Day to be counted. The purpose of this section is to allow for the county commissions and the Nevada Supreme Court to canvass the returns of the General Election pursuant to NRS 293.387(1) and NRS 293.395, respectively. In 2010, the county commissions' canvass must occur on or between November 3 through November 10, and the Supreme Court will canvass the returns on November 23.

Elko County did not receive their ballots from the printing company in a timely fashion, causing the 34 UOCAVA ballots requested on or before September 18, 2010 to be sent out up to 5 days after the 45 day deadline. Permitting these specific ballots to be counted up and until November 8, 2010, would not interfere with the canvass of returns, and doing so would be consistent with the intent of the MOVE ACT's requirement of allowing a military and overseas voter 45 days to return a voted ballot.

The emergency regulations set forth the procedures and deadlines pertaining to the receipt and tally of the referenced Elko County absentee ballots. These regulations do not apply to any other ballots cast in the 2010 General Election. These regulations are necessary to ensure the military and overseas voters identified herein have the requisite amount of time to cast their ballot and participate in the 2010 General Election.

The Secretary of State intends these regulations to be in effect no longer than the period set forth in NRS 233B.0613 and will not seek to enact these regulations as temporary or permanent regulations, as set forth in Chapter 233B.

EXPLANATION – These regulations pertain to the receipt and tally of ballots cast by identified military and overseas voters residing, pursuant to Chapter 293 of the Nevada Revised Statutes, in Elko County, Nevada, who have requested an absentee ballot by September 18, 2010. Specifically, these regulations set forth the deadlines in which these ballots may be counted by the Elko County Clerk.

AUTHORITY – NRS 293.124; 293.247.

Section 1. Chapter 293 of the NAC is hereby amended by adding thereto the provisions set forth as sections 1 through 3, inclusive, of these regulations.

Section 2. Purpose.

1. The purpose of these emergency regulations is to extend the period in which absentee ballots in Elko County submitted pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) (42 U.S.C. 1973ff-1(a)(1)) will be counted.
2. These regulations apply only to UOCAVA voters in Elko County who requested an absentee ballot on or before September 18, 2010.
3. The emergency regulations apply to the Elko County Clerk’s Office.
4. For the purposes of these regulations, “UOCAVA voter” has the meaning set forth in Section 107 of UOCAVA (42 U.S.C. §1973ff-6).

Section 3. Period in which UOCAVA Ballots Will be Counted.

1. In compliance with Section 102 of the Uniformed and Overseas Citizens Absentee Act (“UOCAVA”), as amended by the Military and Overseas Voter Empowerment Act (“MOVE ACT”), pursuant to the procedures and guidelines set forth in NRS NRS 293.309 through 293.240, inclusive, and NRS 293.3625 through 293.387, inclusive, the Elko County Clerk shall count those ballots that are received not later than 5:00 p.m. on Monday, November 8, 2010, provided those ballots were requested by a UOCAVA voter on or before September 18, 2010.
2. The Elko County Clerk shall provide to the Secretary of State, within 3 business days of the adoption of these regulations, the names, locations, and contact information of the UOCAVA voters referenced in subsection 2 of section 2. This information will be confidential and not subject to disclosure pursuant to Chapter 239 of the Nevada Revised Statutes.
3. If a ballot from a voter described in subsection 2 of section 2 of these regulations is received before November 8, 2010, the Elko County Clerk will notify the Secretary of State of the receipt of the ballot and the information of that voter within 24 hours of receipt.

**LEGISLATIVE REVIEW OF ADOPTED EMERGENCY REGULATIONS
AS REQUIRED BY
NRS 233B.066
Informational Statement**

- 1. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
 - (a) Estimated economic effect on the businesses which they are to regulate.**
 - (b) Estimated economic effect on the public which they are to regulate.**

These emergency regulations do not have any economic effect on any business or on the public.

- 2. The estimated cost to the agency for enforcement of the proposed regulation:**

No additional cost is anticipated to enforce these emergency regulations. These regulations clarify the procedures by which the statewide voter registration list is maintained. They are applicable only to state and local election officials.

- 3. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary.**

The emergency regulations do not duplicate or overlap any other state or government agency regulations.

- 4. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The emergency regulations do not duplicate or overlap any other state or government agency regulations.

- 5. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The emergency regulations do not include provisions that are more stringent than a federal regulation relating to the same activity.

- 6. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The emergency regulations do not establish a new fee or increase an existing fee.