

1 TAC §81.39

The new rule is adopted under Texas Election Code, §31.002, which provides the Office of the Secretary of State with the authority to maintain uniformity in the application, operation, and interpretation of the Texas Election Code and of the election laws outside the Texas Election Code. MOVE is effective for the November 2, 2010 General Election. Accordingly, this rule is necessary for compliance until the Texas Legislature can statutorily address implementation of MOVE.

Statutory Authority: Election Code §31.002.

Cross Reference to Statute: Texas Election Code, Chapter 101 is affected by this rule.

§81.39.E-mailing and Tracking Balloting Materials Required by the Federal Military and Overseas Voter Empowerment Act (MOVE).

(a) Authorization for e-mailing of unmarked ballots to absent uniformed services voters, including their spouse and dependents (collectively "uniformed services voters"), absent from their county of residence and overseas voters in elections for federal office.

(1) Pursuant to §578(a) of the MOVE Act, uniformed services voters, temporarily residing outside their county of residence and United States citizens currently residing overseas ("overseas citizen") may request by e-mail the e-mail transmission of blank balloting materials from the appropriate county early voting clerk for an election in which a federal office is on the ballot. The request may be submitted to the early voting clerk by e-mail or, if the e-mail is different from the one shown on the federal postcard application (FPCA) on file, on a newly-submitted FPCA.

(2) If no preference for ballot transmittal is indicated, the early voting clerk shall send the balloting materials to the applicant via regular mail.

(3) E-mail addresses are not subject to public disclosure to the extent provided by §552.337 of the Texas Government Code. Early voting clerks shall ensure that the applicant's e-mail address is excluded from public disclosure.

(4) The e-mail transmission of ballots shall be limited to elections in which an office of the federal government is on the ballot. Ballots for other elections shall be mailed to the applicant in the usual manner, unless the election is part of a joint election ballot containing a federal office.

(b) Voter's are eligible to request ballots via e-mail if the following conditions in paragraphs (1) - (8) of this subsection are met:

(1) The voter meets the eligibility requirements of voting by mail pursuant to §101.001 of the Texas Election Code (hereinafter referred to as applicant);

- (2) The applicant has submitted a valid FPCA;
- (3) If the applicant is an overseas citizen, he/she must provide a current mailing address that is located outside of the United States, and the applicant must be voting from outside of the United States;
- (4) If the applicant is an absent uniform services voter, he/she must provide a mailing address that is located outside his or her county of residence, and he/she must be voting from outside the county of residence;
- (5) The applicant must provide an e-mail address to which the unmarked ballot shall be transmitted that corresponds to the e-mail address provided on his or her previously filed FPCA. If the applicant wishes the unmarked e-mail ballot to be transmitted to an e-mail address other than the one provided on his or her FPCA on file at the time of the request, the applicant must submit a new, signed FPCA which contains that e-mail address;
- (6) The applicant submits the request that his or her ballot be e-mailed on or before the 7th day before election day;
- (7) A marked voted ballot for the requested election has not yet been received from the applicant by the early voting clerk; and
- (8) The request is received on or after October 28, 2009, the effective date of the MOVE Act.

(c) Balloting materials which must be transmitted via e-mail include:

- (1) the appropriate ballot;
- (2) ballot instructions, including instructions that informs applicants that their ballots must be returned by mail in order to be counted;
- (3) Office of the Secretary of State instructions on about how to print a return envelope from the Federal Voting Assistance Program (FVAP) website;
- (4) Office of the Secretary of State instructions explaining how to create a carrier envelope for the ballot; and
- (5) the list of certified write-in candidates, if applicable.

(d) Approved methods of e-mailing the ballot and accompanying materials include the following:

- (1) an attached copy of the ballot in PDF format and accompanying materials;
- (2) a scanned copy of the ballot and accompanying materials; or

(3) any other method of transmitting the ballot and accompanying materials approved in writing by the Office of the Secretary of State.

(4) The Office of the Secretary of State recommends that the ballot be transmitted in an 8 1/2 x 11 format, if possible.

(e) If the initial e-mail transmission is unsuccessful, the clerk should print out the bounced e-mail and file it with the applicant's original FPCA form. The early voting clerk then shall at least twice attempt to send the applicant a notice without the ballot attachment to notify the applicant the ballot was not successfully transmitted. In forwarding the notice, the early voting clerk shall take additional care to re-review the applicant's indicated e-mail address on the original FPCA document. If the early voting clerk is able to verify a mistake on his or her part in the original e-mail transmission, or receives an acknowledgement from the applicant that the e-mail address is correct, the clerk shall attempt to re-send the ballot to the correct address. If the early voting clerk is ultimately unable to forward the ballot e-mail to the applicant, the clerk shall submit a notice by mail to the applicant's FPCA mailing address or contact the applicant by phone if the applicant has provided a telephone number. The notice shall apprise the applicant of his or her ability to submit a new FPCA either with a valid e-mail address or requesting the ballot to be sent by mail. The early voting clerk must provide a uniform level of contact with FPCA applicants. A failed e-mail transmission does not by itself authorize the clerk to forward the ballot to the applicant by mail. To change the transmission method to mail, the applicant would have to submit a new FPCA to the clerk by the appropriate deadline.

(f) Permissible method of returning ballot sent to applicant via e-mail.

(1) Applicants who receive balloting materials from the early voting clerk via e-mail must return their marked ballots by regular mail, unless eligible to return the ballot by facsimile under Chapter 105, Texas Election Code, which is limited to military voters in war zones and/or receiving hostile fire pay.

(2) Marked ballots may not be returned via e-mail. Any ballot returned via e-mail must be treated as a ballot not timely returned and is not forwarded to the early voting ballot board for processing.

(3) The deadline for a ballot to be received by the early voting clerk is the same as set out in §86.007, Texas Election Code.

(g) Processing and qualifying ballots.

(1) Upon receipt of a voted ballot provided to the applicant via e-mail, the early voting clerk shall place the carrier envelope containing the marked ballot into a jacket envelope, in which the applicant's FPCA should already be included. If the applicant's ballot was returned by facsimile under Chapter 105, Texas Election Code, the signature sheet shall also be included in the jacket envelope.

- (2) The early voting clerk shall note on the early voting by mail roster any ballots e-mailed to absent uniformed services voters and overseas citizens under this rule.
- (3) All jacket envelopes containing marked ballots voted in compliance with this rule must be delivered to the early voting ballot board.
- (4) The board should make sure that each jacket envelope contains:
 - (A) a copy of the applicant's FPCA;
 - (B) the envelope in which the applicant returned their ballot; and
 - (C) the carrier envelope containing the marked ballot.
- (5) The board must compare the applicant's signature as it appears on the carrier envelope (or the signature sheet if the ballot was returned by facsimile under Chapter 105, Texas Election Code) with the applicant's signature as it appears on the FPCA. If the board determines that the signatures could have been written by the same person, the ballot shall be accepted.
- (6) The early voting clerk must allow all applicable deadlines to expire before sending either an original mail ballot or an e-mailed ballot to the early voting ballot board. If within the applicable deadlines, an applicant returns both an original mail ballot and an e-mailed ballot, only the e-mail ballot may be accepted. The original mail ballot is not forwarded to the early voting ballot board, but instead treated as a ballot not timely returned, and but is retained for the elections retention period.
- (7) If the applicant returned only the mail ballot by the applicable deadline, the mail ballot may be accepted.
- (h) Counting ballots. The qualified, accepted ballot is handled in the following manner:
 - (1) Open the carrier envelope and remove the ballot envelope.
 - (2) Place the unopened ballot envelope in a ballot box.
 - (3) Enter the applicant's name on the poll list for early voters.
 - (4) Place the copy of the applicant's FPCA, the carrier envelope, the signature sheet, and any accompanying papers back in the jacket envelope.
 - (5) Count the ballot(s), either by hand counting or electronically, in the manner established for the election by the early voting clerk.

(i) Duplicating e-mailed ballots. At the discretion of the central counting station manager, after acceptance by the early voting ballot board, an e-mailed ballot may be duplicated under procedures set out in §127.126, Texas Election Code.

(j) Rejecting ballots.

(1) If the applicant's FPCA and carrier envelope do not meet all the requirements outlined in subsection (f) of this section, the ballot must be rejected and may not be counted.

(2) The rejected ballot should be processed by:

(A) Writing the word "Rejected" on the carrier envelope;

(B) Writing the word "Rejected" on the corresponding jacket envelope;

(C) Placing the unopened carrier envelope containing the rejected ballot in the large envelope or container marked "Rejected Early Ballots";

(D) Having the presiding judge sign and seal the "Rejected Early Ballot" envelope.

(3) The presiding judge must also write the date and nature of the election on the envelope.

(4) A record must be kept of the number of rejected ballots placed in the "Rejected Early Ballot" envelope.

(5) A notation must be made on the carrier envelope of any ballot which was rejected after the carrier envelope was opened, stating the reason the carrier envelope was opened and rejected.

(6) The applicant's FPCA, signature sheet, and any other accompanying papers and affidavits must be placed in the jacket envelope.

(7) The presiding judge of the board must forward a notice of the reason for the rejection to the e-mail address to which the ballot was originally transmitted in addition to the mailed notice of rejection to the applicant's residence address required under §87.0431, Texas Election Code.

(k) Tracking balloting materials. MOVE requires each state to develop a tracking system FPCA applicants may access to determine if their voted ballot has been received back by the early voting clerk. The Office of the Secretary of State will create a military and overseas voter ballot tracking website, and each county will be required to submit specific FPCA application and ballot status data, which will populate the FPCA tracking website.

(1) Submission of FPCA records. The early voting clerk must submit to the Office of the Secretary of State a voter record for each FPCA that is timely received for the November 2, 2010 general election. The three approved submission methods for submitting FPCA data are:

(A) Voter Import Method. The voter import is a prescribed, standard format issued and supported by the Office of the Secretary of State in which data may be submitted in mass to update the Texas Election Administration Management System ("TEAM"). The early voting clerk may submit the voter import or may work in cooperation with the county voter registrar to submit the voter import.

(B) TEAM Data Entry Method. The early voting clerk may directly input FPCA voters into the TEAM application.

(C) Spreadsheet Submission Method. The early voting clerk may submit a spreadsheet which contains required data for all effective FPCA applicants. The spreadsheet format will be prescribed by the Office of the Secretary of State and sent to all counties by July 31, 2010, and will contain the following fields:

(i) County name;

(ii) Election name;

(iii) Voter last name;

(iv) Voter first name;

(v) Voter former name, if any;

(vi) Voter date of birth;

(vii) Voter residential zip code; and

(viii) FPCA status (military or spouse or dependent of military, U.S. citizen temporarily residing outside of U.S., or U.S. citizen indefinitely residing outside of U.S.).

(2) Deadline to submit FPCA voter record.

(A) Records for all FPCAs on file as of September 1, 2010 must be submitted to the Office of the Secretary of State no later than September 7, 2010.

(B) Records for FPCAs that are submitted to the early voting clerk after September 1, 2010, must be submitted to the Office of the Secretary of State within 3 working days of receipt by the early voting clerk.

(3) Submission of voted ballot status. The early voting clerk must submit to the Office of the Secretary of State the following information concerning the ballot status for each FPCA record:

- (A) Date ballot mailed, e-mailed or both;
- (B) Date ballot(s) received; if applicable;
- (C) Date ballot returned by the post office, if applicable;
- (D) Whether the ballot(s) received was accepted or rejected.

(4) The early voting clerk may submit the ballot status data by one of the following three methods:

- (A) Voting History Import to TEAM.
- (B) Data entry directly into TEAM.
- (C) Updates to FPCA Spreadsheet.

(5) Deadline to submit ballot status data. The early voting clerk must submit the ballot status information required under paragraph (3) of this subsection within 3 business days of the status change.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2010.