

The U. S. Election Assistance Commission (EAC) seeks comments on proposed changes to its regulations pertaining to the National Voter Registration Act of 1993 (NVRA).

Section 9(a) of the NVRA requires the responsible agency to issue regulations for developing a national mail voter registration form and for submitting a biennial report to Congress on the impact of the NVRA. EAC proposes to amend its NVRA regulations to ensure that they are consistent with the Help America Vote Act of 2002 (HAVA) and to make some technical amendments.

EAC also invites public comments on additional changes to the NVRA regulations to improve voter registration through the content and format of the Federal form and to change the date by which States are required to submit data to EAC for use in the biennial report to Congress on the impact of the NVRA.

EAC will not make any changes to the NVRA regulations until after the November 2010 Federal election.

EAC anticipates issuing a final rule pertaining to the regulations necessitated by HAVA. EAC may also issue new regulations about the content and format of the Federal form and the biennial report to Congress based on the comments it receives on the topics discussed in Section VI either in the same final rule or in a separate final rule.

This document shows the proposed changes to the regulations pertaining to the NVRA as outlined in the Notice of Proposed Rulemaking (NPRM). You can view the entire NPRM at 75 FR 47729, www.regulations.gov (docket EAC-2010-0025) or on the EAC Web site at http://www.eac.gov/national_voter_registration_act/proposed_regulations.aspx

Deletions are shown in ~~red, strikethrough text~~ with yellow highlighting. Insertions are shown in black, underlined text with light blue highlighting.

Title 11: Federal Elections

Subpart A—General Provisions

- § 9428.1 Purpose & scope.
- § 9428.2 Definitions.

Subpart B—National Mail Voter Registration Form

- § 9428.3 General information.
- § 9428.4 Contents.
- § 9428.5 Format.
- § 9428.6 Chief state election official.

Subpart C—Recordkeeping and Reporting

- § 9428.7 Contents of reports from the states.

Authority: 42 U.S.C. 1973gg–1 *et seq.*, [42 U.S.C. 15301 *et seq.*](#)

Source: 59 FR 32323, June 23, 1994, unless otherwise noted. Redesignated at 74 FR 37520, July 29, 2009.

Subpart A—General Provisions

- § 9428.1 Purpose & scope.

The regulations in this part implement the responsibilities delegated to the [U. S. Election Assistance Commission](#) under Section 9 of the National Voter Registration Act of 1993, Public Law 103–31, 97 Stat. 77, 42 U.S.C. 1973gg–1 *et seq.* (“NVRA”) [as amended by the Help America Vote Act of 2002 \(Pub. L. 107-252, 116 Stat. 1666, 42 U.S.C. 15301 *et seq.*\)](#). They describe the format and contents of the national mail voter registration form and the information that will be required from the states for inclusion in the Commission's biennial report to Congress.

- § 9428.2 Definitions.

As used in this part:

- (a) *Form* means the national mail voter registration application form, which includes the registration application, accompanying general instructions for completing the application, and state-specific instructions.
- (b) *Chief state election official* means the designated state officer or employee responsible for the coordination of state responsibilities under 42 U.S.C. 1973gg–8.

(c) *Active voters* means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(d) *Inactive voters* means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with 42 U.S.C. 1973gg-6(d) and have not since offered to vote.

(e) *Duplicate registration application* means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

(f) *State* means a state of the United States and the District of Columbia not exempt from coverage under 42 U.S.C. 1973gg-2(b).

(g) *Closed primary state* means a state that requires party registration as a precondition to vote for partisan races in primary elections or for other nominating procedures.

Subpart B—National Mail Voter Registration Form

§ 9428.3 General information.

(a) The national mail voter registration form shall consist of three components: An application, which shall contain appropriate fields for the applicant to provide all of the information required or requested under 11 CFR 9428.4; general instructions for completing the application; and accompanying state-specific instructions.

(b) The state-specific instructions shall contain the following information for each state, arranged by state: the address where the application should be mailed and information regarding the state's specific voter eligibility and registration requirements.

(c) States shall accept, use, and make available the form described in this **section** **subpart**.

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

§ 9428.4 Contents.

(a) *Information about the applicant.* The application shall provide appropriate fields for the applicant's:

(1) Last, first, and middle name, any suffix, and (optional) any prefix;

(2) Address where the applicant lives including: street number and street name, or rural route with a box number; apartment or unit number; city, town, or village name; state; and zip code; with instructions to draw a locational map if the applicant lives in a rural district or has a non-

traditional residence, and directions not to use a post office box or rural route without a box number;

(3) Mailing address if different from the address where the applicant lives, such as a post office box, rural route without a box number, or other street address; city, town, or village name; state; and zip code;

(4) Month, day, and year of birth;

(5) Telephone number (optional); and

(6) Voter identification number as required or requested by the applicant's state of residence for election administration purposes or as required by Federal law.

(i) The application shall direct the applicant to consult the accompanying State-specific instructions to determine what type of voter identification number is required or requested by the applicant's State or by Federal law affecting that State.

(ii) For each State that requests or requires the applicant's full social security number as its voter identification number, the state's Privacy Act notice required at 11 CFR 9428.6(c) shall be reprinted with the instructions for that state.

(7) Political party preference, for an applicant in a closed primary state.

(i) The application shall direct the applicant to consult the accompanying state-specific instructions to determine if the applicant's state is a closed primary state.

(ii) The accompanying instructions shall state that if the applicant is registering in a state that requires the declaration of party affiliation, then failure to indicate a political party preference, indicating "none", or selecting a party that is not recognized under state law may prevent the applicant from voting in partisan races in primary elections and participating in political party caucuses or conventions, but will not bar an applicant from voting in other elections.

(8) Race/ethnicity, if applicable for the applicant's state of residence. The application shall direct the applicant to consult the state-specific instructions to determine whether race/ethnicity is required or requested by the applicant's state.

(b) *Additional information required by the Act Federal law.* (42 U.S.C. 1973gg-7(b) (2) and (4) and the Help America Vote Act of 2002, 42 U.S.C. 15483(b)(4)(i)-(iv)). The form shall also:

(1) Include the question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) Include the question “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(3) With regard to the statements required in paragraphs (b)(1) and (b)(2) of this section, include the statements “If you checked ‘no’ in response to either of these questions, do not complete this form.” and “(Exception: If you will be under 18 years of age as of the next election, you may complete this form if your State-specific instructions for item 9 on the form indicate that you are eligible to register to vote now.)”

(4) Include instructions for first-time voters who register by mail that include the list of acceptable voter identification documents, reference to the State instructions so that applicants may determine if they must provide this documentation with the application to avoid having to provide it the first time they vote, and the reference to Federal statutes under which certain persons are entitled to vote by absentee ballot and are exempt from providing such documentation.

(5) Include an instruction advising applicants how to mail their completed application.

(6) Specify each eligibility requirement (including citizenship). The application shall list U.S. Citizenship as a universal eligibility requirement and include a statement that incorporates by reference each state's specific additional eligibility requirements (including any special pledges) as set forth in the accompany state instructions;

(7) Contain an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state's specific eligibility requirements;

(8) Provide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature;

(9) Inform an applicant on the application of the penalties provided by law for submitting a false voter registration application;

(10) Provide a field on the application for the name, address, and (optional) telephone number of the person who assisted the applicant in completing the form if the applicant is unable to sign the application without assistance;

(11) State that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(12) State that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) *Other information.* The form will, if appropriate, require an applicant's former address or former name or request a drawing of the area where the applicant lives in relation to local landmarks.

[59 FR 32323, June 23, 1994; 59 FR 40639, Aug 9, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

§ 9428.5 Format.

(a) The application shall conform to the technical specifications described in ~~the Commission's National Mail Voter Registration Form Technical Specifications.~~ this Chapter.

(b) *Size.* The application shall consist of ~~a 5" by 8" application card of sufficient stock and weight to satisfy postal regulations. The application card shall be attached by a perforated fold to another 5" by 8" card that~~ the top half of an 8.5" by 11" sheet of paper. ~~The bottom half of the paper shall~~ contains space for the information set forth at 11 CFR 9428.4(c) of this part.

(c) *Layout.*

~~(1) The application shall be sealable.~~

~~(2) The outside of the application shall contain an appropriate number of address lines to be completed by the applicant using the state information provided.~~

~~(3)~~ Both sides of the application card shall contain space designated "For Official Use Only."

(d) *Color.* The application shall be of ink and paper colors of sufficient contrast to permit for optical scanning capabilities.

(e) *Signature field.* The application shall contain a signature field in lieu of a signature line.

(f) *Type size.*

(1) All print on the form shall be of the largest practicable type size.

(2) The requirements on the form specified in 11 CFR 9428.4(b)(1), (6), and (7) shall be in print identical to that used in the attestation portion of the application required by 11 CFR 9428.4(b)(2).

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

§ 9428.6 Chief state election official.

(a) ~~Each chief state election official shall certify to the Commission within 30 days after July 25, 1994.~~ The following information shall be included for each state in the State-specific instructions on the form:

(1) All voter registration eligibility requirements of that state and their corresponding state constitution or statutory citations, including but not limited to the specific state requirements, if any, relating to minimum age, length of residence, reasons to disenfranchise such as criminal conviction or mental incompetence, and whether the state is a closed primary state.

(2) Any voter identification number that the state requires or requests; and

(3) Whether the state requires or requests a declaration of race/ethnicity;

(4) The state's deadline for accepting voter registration applications; and

(5) The state election office address where the application shall be mailed.

(b) If a state, in accordance with 11 CFR 9428.4(a)(2), requires the applicant's full social security number, the chief state election official shall provide the Commission with the text of the state's privacy statement required under the Privacy Act of 1974 (5 U.S.C. 552a note).

(c) Each chief state election official shall notify the Commission, in writing, within 30 days of any change to the state's voter eligibility requirements or other information reported under this section.

[59 FR 32323, June 23, 1994. Redesignated and amended at 74 FR 37520, July 29, 2009]

Subpart C—Recordkeeping and Reporting

§ 9428.7 Contents of reports from the states.

(a) The chief state election official shall provide the information required under this section with the Commission by March 31 of each odd-numbered year beginning March 31, 1995 on a form to be provided by the Commission. Reports shall be mailed to: National Clearinghouse on Election Administration, Election Assistance Commission, 1225 New York Avenue, NW., Washington, DC 20005. The data to be reported in accordance with this section shall consist of applications or responses received up to and including the date of the preceding federal general election.

(b) Except as provided in paragraph (c) of this section, the report required under this section shall include:

(1) The total number of registered voters statewide, including both “active” and “inactive” voters if such a distinction is made by the state, in the federal general election two years prior to the most recent federal general election;

(2) The total number of registered voters statewide, including both “active” and “inactive” voters if such a distinction is made by the state, in the most recent federal election;

(3) The total number of new valid registrations accepted statewide between the past two federal general elections, including all registrations

that are new to the local jurisdiction and re-registrations across jurisdictional lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction;

(4) If the state distinguishes between “active” and “inactive” voters, the total number of registrants statewide that were considered “inactive” at the close of the most recent federal general election;

(5) The total number of registrations statewide that were, for whatever reason, deleted from the registration list, including both “active” and “inactive” voters if such a distinction is made by the state, between the past two federal general elections;

(6) The statewide number of registration applications received statewide (regardless of whether they were valid, rejected, duplicative, or address, name or party changes) that were received from or generated by each of the following categories:

(i) All motor vehicle offices statewide;

(ii) Mail;

(iii) All public assistance agencies that are mandated as registration sites under the Act;

(iv) All state-funded agencies primarily serving persons with disabilities;

(v) All Armed Forces recruitment offices;

(vi) All other agencies designated by the state;

(vii) All other means, including but not limited to, in person, deputy registrars, and organized voter registration drives delivering forms directly to registrars;

(7) The total number of duplicate registration applications statewide that, between the past two federal general elections were received in the appropriate election office and generated by each of the categories described in paragraphs (b)(6) (i) through (vii) of this section;

(8) The statewide number of confirmation notices mailed out between the past two federal general elections and the statewide number of responses received to these notices during the same period;

(9) Answers to a series of questions with categorical responses for the state to indicate which options or procedures the state has selected in implementing the NVRA or any significant changes to the state's voter registration program; and

(10) Any additional information that would be helpful to the Commission for meeting the reporting requirement under 42 U.S.C. 1973gg-7(a)(3).

~~(c) For the State report due March 31, 1995, the chief state election official need only provide the information described in paragraph (b)(2) of this section and a brief narrative or general description of the state's implementation of the NVRA.~~

[59 FR 32323, June 23, 1994 as amended at 59 FR 64560, December 15, 1994.
Redesignated and amended at 74 FR 37520, July 29, 2009]