



FEDERAL VOTING ASSISTANCE PROGRAM

Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

#

Suggested Template Cover Page for a State Undue Hardship Waiver Request

1. State Name (Delaware) and postal abbreviation (DE)

2. Chief State Election Official (CSEO)

First Name: Elaine Last Name: Manlove
Title: State Election Commissioner
Address: 905 S. Governor's Avenue
City: Dover State: DE Zip: 19904 +4:
Email: Phone: Fax:

Signature (digital signature accepted):

Date:

3. Preferred State Election Contact:

First Name: Elaine Last Name: Manlove
Title: State Election Commissioner
Address: 905 S. Governor's Avenue
City: Dover State: DE Zip: 19904 +4:
Email: Phone: Fax:

4. Acknowledgement of UOCAVA voters' right to vote

(State) recognizes that the purpose of 42 USC 1973ff-1(a)(8)(A) is to allow absent uniformed services voters and overseas voters sufficient time to vote in an election for federal office.

Type initials: EM Date: 8/3/10

5. Type of hardship claimed (check one)

- X 2(b)i. Undue hardship due to a late primary.
2(b)ii. Undue hardship due to a legal challenge
2(b)iii. Undue hardship caused by a state constitutional prohibition.

Please indicate location in package that identifies your plan to resolve the problem: #5, #6

6. Please indicate the location in the package that contains the section in the comprehensive plan identifying the State's explanation for the necessity of the waiver request. #1, #2

7. On what date(s) will the State require ballots to be available and sent? 9/18/10

8. Please indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to provide sufficient time for UOCAVA voters, who have timely submitted an absentee ballot request, to receive, mark, and submit their ballots in time to have those ballots counted? #5, #6

9. If included, indicate the location in the package that contains the section in the comprehensive plan identifying how the State plans to resolve the underlying issue prior to the next election for federal office, including steps already taken, to be taken, timelines, and supporting documentation? #9



STATE OF DELAWARE
office of the
STATE ELECTION COMMISSIONER

Elaine Manlove
Commissioner of Elections

PHONE (302) 739-4277
FAX (302) 739-6794

May 3, 2010

Rebecca J. Wertz, Deputy Chief
Voting Section
Civil Rights Division - Room 7254 - NWB
U S Dept of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: MOVE Act

Dear Deputy Chief Wertz:

Delaware's Primary Election is the second Tuesday in September, which this year will fall on September 14. Our Primary Election will be certified on September 16 and ballot preparation will begin immediately. History shows us that we should be able to mail military and overseas ballots on the Monday following certification: September 20. This date is 42 days before the General Election. Therefore, we are hereby submitting an application for a waiver from the 45 day requirement for the 2010 General Election.

As it pertains to Delaware plans to come into compliance with MOVE:

- Does electronically transmit and receive ballots from military and overseas
- Have expressed our intention to use the FVAP Electronic Voting Support Wizard and are currently detailing those requirements
- Have a free access system to allow voters to determine if their ballots have been received by the appropriate jurisdiction and are working to add improvements to that system
- Have pending legislation that will change the deadline for candidates to file for office. That additional time will bring us into compliance for the 2012 Primary Election.

We, in Delaware, realize that timing is important in elections in general and for military and overseas voters in particular. We realize that the lateness of the 2010 Primary Election puts us out of compliance by 3 days; however, the waiver for this election will give us the flexibility to

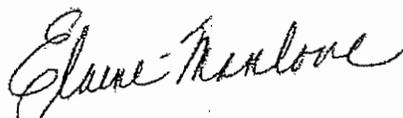
Deputy Chief Rebecca J. Wertz

May 3, 2010

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make the technology improvements needed to maintain Delaware's status as "the first state". If you need more information, please contact me. Thank you for your prompt attention to this request.

Very truly yours,

A handwritten signature in cursive script that reads "Elaine Manlove".

Elaine Manlove
State Election Commissioner

**Delaware Plan
FVAP Compliance
Election 2010**

1. Delaware's 2010 Primary Election is September 14 (the latest it could possibly be) and the General Election is the earliest it could possibly be giving Delaware a "perfect storm" regarding compliance with the 45-day mailing mandate from the MOVE legislation.
2. Delaware passed legislation that moved back our candidate filing deadline to provide the time necessary to mail ballots in our Primary Elections going forward. To increase the mailing time before the General Election, the next option would have been to change the date of the Primary Election. If it were moved back a week, it would be in conflict with a Jewish holiday. Delaware moved its Primary Election from Saturday to Tuesday due to pressure from the Jewish community, so making this change did not appear to be an option.
3. If the Primary Election were moved back to August, problems would arise because many schools are not open yet. The state would then be faced with additional expenses to hire maintenance personnel to open these buildings. Lack of air-conditioning in late August would be an additional problem.
4. Legislation was discussed that would allow us to extend the time period to accept military and overseas ballots to two days following Election Day, however, two of Delaware's three counties would not agree to this change.
5. Legislation was passed that would allow Delaware to both send and receive ballots electronically.
6. Delaware elections are certified on the second day following the election, therefore, the September 14 Primary will be certified on September 16. To meet the requirements of MOVE, ballots need to be in the mail on September 18. Our plan is to mail paper ballots, knowing that it will be necessary to duplicate the returned ballots so that they can go through the scanning process. We will Federal Write-In Absentee Ballot for all races. Delaware is also working with the FVAP Wizard program.
7. In the 2008 Election, Delaware served over 2,100 UOCAVA voters; over 500 were served electronically. However, we do not expect to reach those numbers in a non-Presidential election.
8. As indicated above, Delaware plans to mail ballots to UOCAVA voters on September 18 – the 45-day limit. We are requesting the waiver in the event that we are faced with an unanticipated complication: technology failure, recount, etc. We expect to be able to mail the ballots by the deadline and the waiver is our failsafe.

9. Delaware will not face this situation for another decade. If technology advances have not mitigated the 45-day mailing issue, we will then work to change our Primary Election date.

SPONSOR: Sen. Katz & Sen. Bunting & Rep. Jaques &
Rep. Brady

DELAWARE STATE SENATE

145th GENERAL ASSEMBLY

SENATE BILL NO. 225

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE REGARDING
ABSENTEE VOTING AND ASSOCIATED ISSUES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, the Defense Authorization Act signed into law in October, 2009 included the Military and Overseas Voter Empowerment Act which made several significant changes in the Uniformed and Overseas Citizen Absentee Voter Act (UOCAVA);

WHEREAS, the Military and Overseas Voter Empowerment Act (MOVE) provides that there should be at least 45 days between the dates absentee ballots are first mailed to UOCAVA voters and the day of the election;

WHEREAS, there are consistently 35 days between the withdrawal deadline and the day of the Primary Election;

WHEREAS, there are 43 days between the day ballots are estimated available to be mailed and the General Election in 2010, 2020, and 2026; and

WHEREAS, the day of the Primary Election will be the Tuesday following Labor Day in 2020 and 2026; and

WHEREAS, certain voters have difficulty submitting applications for absentee ballots.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1303, Title 15 of the Delaware Code by inserting as subsection (5) the following:

(e) The State's election officials shall use email addresses obtained through registration and absentee voting activities for official business only and these addresses shall not be subject to Freedom of Information requests and shall not be disseminated outside of the Departments of Elections on lists of registered voters or in any other manner.

Section 2. Amend §3101 (1), Title 15 of the Delaware Code by deleting "last Friday" where it first appears and replacing in lieu thereof "the second Tuesday" and by deleting the second sentence in its entirety..

Section 3. Amend §3101 (2), Title 15 of the Delaware Code by deleting the words "first Friday in August" wherever they appear in this subsection and substituting in lieu thereof the words "first Friday after the second Tuesday in July". Further amend this subsection by striking the words " 12:00 noon of" and substituting in lieu thereof the words "4:30 p.m. on".

Section 4. Amend §3101 (3), Title 15 of the Delaware Code by inserting the words "after the first Monday" after the words "second Tuesday".

Section 5. Amend §5503, Title 15 of the Delaware Code by inserting the following as subsection (k):

(k) Notwithstanding any other provision of this title, a registered voter eligible to vote by absentee ballot for reasons stated in § 5502 (1), (2), (4), (7) or (8) may apply in writing to the department of elections for the county in which the voter is registered to vote for permanent absentee status. The respective departments of elections shall automatically send an absentee ballot to each person in permanent absentee status for each election in which the person is entitled to vote.

(1) The State Election Commissioner shall promulgate instructions that people shall follow to apply for permanent absentee status.

(2) Overseas citizen and military voters may apply for permanent absentee status by writing that request in the remarks section of the Federal Post Card Application or its' successor.

(3) A department of elections shall cancel a person's permanent absentee

status upon the return of an absentee ballot or other correspondence sent by first-class mail as undeliverable, the person's death or disqualification, the cancellation of the person's voter registration, the receipt of a written request from the person, or receipt of written notification that the reason that the person has stated for voting by absentee ballot is no longer valid.

(4) Persons in permanent absentee status shall keep the department of elections informed of changes in address, changes in name or changes in the reason that the person has listed for voting by absentee ballot.

(5) Each department of elections shall post a list of permanent absentee voters on their web site.

Section 6. Amend §5518 (a), Title 15 of the Delaware Code by striking the words following the word "during" and substituting in lieu thereof the words "the period from receipt of the application following the last general election and the next general election."

Section 7. Amend Chapter 55, Title 15 of the Delaware Code by inserting as §5526 the following:

§5526. System for voters to determine status of their absentee ballots.

The State Election Commissioner in collaboration with the Departments of Elections shall establish a free access system accessible via the internet through which a person who applied for an absentee ballot can determine whether or not his/her application was received, when his/her ballot was transmitted, when his/her voted ballot was received by the appropriate Departments of Elections, and whether or not the ballot was counted.

Section 8. Amend Chapter 55, Title 15 of the Delaware Code by inserting as §5527 the following:

§5527: Authority to implement provisions of the Uniformed and Overseas Citizen Absentee Voters Act.

The State Election Commissioner in collaboration with the Departments of Elections shall implement those provisions of the Uniformed and Overseas Citizen Absentee Voters Act not specifically mandated by this chapter.

SYNOPSIS

This act would protect voters email addresses from being disseminated outside of the Departments of Elections and establish a permanent absentee status for disabled voters and individuals eligible to vote under the provisions of the Uniformed and Overseas Citizen Absentee Voters Act (UOCAVA). It would also permit the State to better comply with the provisions of the Military and Overseas Voter Empowerment Act by providing more time between the withdrawal deadline and the date of the Primary. The act would also mandate the creation of a free access internet accessible system for absentee voters to determine the status of their absentee ballots.

Author: Senator Katz