

**Rule 16. Military and Overseas Voters (UOCAVA)**

## 16.1 General Rules concerning voting by military and overseas electors

- 16.1.1 For the purposes of this Rule 16, elector means a covered voter as defined in section 1-8.3-102(2), C.R.S.
- 16.1.2 In accordance with the Help America Vote Act of 2002 and this Rule 16, each county clerk's office must have a dedicated fax machine for the purpose of fax ballot transmission.
- 16.1.3 The county clerk must mail or electronically transmit a ballot to all active eligible electors. An elector who requests covered-voter status must submit an application affirming his or her eligibility to do so in accordance with section 1-8.3-102(2), C.R.S.
- 16.1.4 If an unregistered elector submits a Federal Write-in Absentee Ballot (FWAB) by the deadline set forth in sections 1-8.3-111 and 1-8.3-113, C.R.S., the FWAB is a timely application for registration and ballot request.
- 16.1.5 Ballots received by the Secretary of State
- (a) If the Secretary of State timely receives a ballot under section 1-8.3-113, C.R.S., and Rule 16, the Secretary of State will immediately notify the appropriate county clerk and forward the ballot by the most efficient means available no later than the next business day.
  - (b) To ensure voter secrecy, any county notified that the Secretary of State has received a ballot must retain a minimum of ten voted ballots to be counted with the ballot received by the State.
- 16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days before the Primary Election to each elector whose record is marked "Inactive." The correspondence may be sent by email or mail and, at a minimum, must notify the electors of:
- (a) The status of the elector's record and ballot request;
  - (b) The upcoming federal elections;
  - (c) How to update the elector's mailing information and request a ballot; and
  - (d) Any other information the county clerk deems appropriate.
- 16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of State the number ballots transmitted to military and overseas electors by the 45-day deadline.
- 16.1.8 Failure to meet the 45-day ballot transmission deadline in section 1-8.3-110, C.R.S.
- (a) If a county fails to meet the 45-day ballot transmission deadline provided for any state or federal election, the county clerk must immediately report the failure and reason for the failure to the Secretary of State.

- (b) The county clerk must provide a plan to the Secretary of State for complying with the deadline in the next state or federal election.
  - (1) The county must submit the plan to the Secretary of State no later than 60 days before the transmission deadline.
  - (2) The county must provide a weekly progress report on implementing the plan to the Secretary of State beginning 50 days before the transmission deadline.
  - (3) The county clerk must provide a daily progress report to the Secretary of State beginning five days before the transmission deadline.

## 16.2 Electronic transmission

16.2.1 In accordance with sections 1-8.3-110 and 1-8.3-113, C.R.S., an elector may request to receive and return his or her ballot by electronic transmission.

- (a) An elector who requests fax transmission must provide a fax number, including the international country code and local area, province, or city code, if applicable, where the ballot is to be faxed.
- (b) An elector who requests email transmission must provide a complete email address where the ballot is to be transmitted. In accordance with section 1-8.3-115, C.R.S., no election official may disclose the email address to the public.
- (c) In accordance with section 1-8.3-113(1), C.R.S., a covered voter who chooses to receive his or her unvoted ballot by electronic transmission may return his or her ballot by fax or email only if the covered voter reasonably determines that a more secure method, such as returning the ballot by mail, is not available or feasible. "Not feasible" means circumstances where the covered voter reasonably believes that if he or she mails the ballot the county clerk will not receive it by the close of business on the eighth day after an election.
- (d) To return a voted ballot and self-affirmation by email, the elector must scan and return the documents as an email attachment.
- (e) If an elector requests to receive his or her ballot by electronic transmission, the county clerk must transmit the elector's ballot electronically for all covered elections until the elector requests otherwise or the elector's electronic transmission method becomes undeliverable.

16.2.2 The electronic transmission must include:

- (a) The county clerk's contact information including mailing address, email address, phone, and fax number;
- (b) A notice that the ballot may not be duplicated for any other elector;
- (c) Instructions for completing and returning the ballot;
- (d) A notice regarding the ballot return deadline;
- (e) Information regarding how the elector may verify that his or her ballot has been received by the county clerk; and

- (f) Any other information deemed necessary by the Secretary of State or the county clerk.
  - (g) The ballot packet, which must be in text format on 8 ½" x 11" white paper and must include:
    - (1) An electronic transmission coversheet to protect voter privacy;
    - (2) The unvoted ballot;
    - (3) The electronic transmission ballot instructions; and
    - (4) The self-affirmation required by section 1-8.3-114, C.R.S., and Rule 16.2.3.
- 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector's name, date of birth, signature, and the following statement: I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot and that Colorado law requires that I return this ballot by a more secure method, such as mail, if available and feasible. (Sections 1-8.3-113 and 1-8.3-114, C.R.S.)
- 16.2.4 If the county clerk transmits a ballot packet to an elector by fax and the transmission is unsuccessful, the county clerk must attempt to fax the ballot at least two more times.
- 16.2.5 The county clerk must maintain a log of each ballot sent by electronic transmission. The county clerk must maintain the log as an election record along with any other email or fax records. The log must include:
- (a) The name of the elector;
  - (b) The fax number or email address to which the ballot packet was transmitted (as applicable);
  - (c) The date the ballot packet was transmitted; and
  - (d) The initials of the election official transmitting the ballot.
- 16.2.6 Upon receipt of a voted ballot sent by electronic transmission, the county clerk must verify the elector's signature in accordance with Rule 7.8. After the affidavit has been verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must not reveal how the elector voted.
- 16.2.7 A military or overseas elector whose registration record is inactive may download an application and ballot using the electronic ballot delivery system.
- (a) The elector must submit the ballot and application in accordance with the deadlines in section 1-8.3-111 and 1-8.3.113, C.R.S., for the ballot to be counted.
  - (b) Every county must use the approved electronic delivery system to implement this Rule, except that a county may obtain a waiver. The Secretary will consider the following factors in approving or denying a request for waiver:
    - (1) Number of military or overseas electors registered to vote in the county;

- (2) Historical data regarding the number of military and overseas electors who have registered and voted in the county; and
- (3) Staff or other resource limitations.

16.2.8 Nothing in this Rule 16.2 permits internet voting. Internet voting means a system that includes remote access, a vote that is cast directly into a central vote server that tallies the votes, and does not require the supervision of election officials.