

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Secretary of State's Office TITLE NUMBER: 153

CITE AUTHORITY: W.Va. Code Section 3-1A-6

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Absentee Voting by Military Voters Who Are Members of Reserve Units
Called to Active Duty

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

TITLE 153

LEGISLATIVE RULE
SECRETARY OF STATESERIES 23
ABSENTEE VOTING BY MILITARY VOTERS
WHO ARE MEMBERS OF RESERVE
UNITS CALLED TO ACTIVE DUTY**§153-23-1. General.**

1.1. Scope. -- This rule provides for absentee voting procedures to be used when a member of the reserves, who has been called to active duty, applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures.

1.2. Authority. -- W.Va. Code §3-1A-6; ~~also see 42 U.S.C. §1973ff-1.~~

1.3. Filing Date. -- ~~April 22, 1996.~~

1.4. Effective Date. -- ~~June 7, 1996.~~

§153-23-2. Absentee Voting for Activated Reservists.

2.1. Any registered voter who is a member of a reserve unit that is called into active duty as a result of an order of the President of the United States and who, as a result of that order, will not be able to vote in any primary, general, or special election held in this state because they will be unable to vote in person or by normal procedures for absentee voting, shall be allowed to cast an absentee ballot by mail or by voting in person at the office of the ~~election clerk~~ county clerk, in the county in which he or she is registered, as provided for in this rule.

2.2. For the purposes of this rule, a reserve unit includes all united that can be called into active duty as part of the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

§153-23-3. Procedures.

3.1. Any person who has been ordered to active duty, pursuant to the terms of section two of this rule, may apply to the ~~election clerk~~ county clerk, in the county where registered, to cast an absentee ballot by completing a federal postcard application (FPCA) or a state Application for Voting an Absent Voters Ballot and Form A-8, entitled "Affidavit of Military Voter Called to Active Service Requesting to Vote Absentee."

3.2. The ~~election clerk~~ county clerk shall examine the application and the affidavit and if the voter requests that an absentee ballot be sent to the voter's home address, then a ballot shall be sent to the address provided by the voter in the affidavit and shall not be challenged for the reason of being returned from within the county. The request shall, in all other respects, be handled as provided for in W. Va. Code §3-3-5.

3.3. If the voter requests permission to cast an absentee ballot in person, and the application is made at the time within forty-two (42) days of the election, then the voter shall be allowed to vote at the ~~election clerk's~~ county clerk's office pursuant to the provisions of W. Va. Code §3-3-3.

**AFFIDAVIT OF MILITARY VOTER CALLED TO ACTIVE SERVICE
REQUESTING TO VOTE ABSENTEE**

I, _____, a registered voter in Precinct _____

in the County of _____, do solemnly swear or affirm under penalty of perjury, that I am required to be absent from the county in which I am registered during the entire period of absentee voting in the office of the ~~Circuit Clerk~~ County Clerk, _____,
dates

and during the hours which polls are open on election day on _____.
date

I further swear of affirm that, because I have been called to active service in the

_____ (branch of service) on _____, I will be unable

to vote by mail at my service date address, therefore, I request: (Check one)

___(1) The official absentee ballot be mailed to my home address within the county at

(address/city)

before my departure, and that I will return the ballot from within the county before my departure to active service.

OR

___(2) To vote an absentee ballot in person at the clerk's office before my departure because I will be unable to receive and return a ballot by mail within the time allowed.

Signature of Voter

Subscribed and sworn before me this _____ day of _____, 19____.

Notary Public or ~~Circuit Clerk~~ County Clerk

My commission expires _____.

(seal)