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**IDAPA 34
TITLE 02
CHAPTER 02**

**34.02.02 - RULES GOVERNING COMPLAINT PROCESS
UNDER THE HELP AMERICA VOTE ACT**

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 34-216, Idaho Code, and 42 U.S.C. Section 15512. Federal law requires the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act, 42 U.S.C. Section 15481, et seq. (3-20-04)

001. TITLE AND SCOPE.

01. Title. The rules in this chapter shall be known as IDAPA 34.02.02, "Rules Governing Complaint Process Under the Help America Vote Act," and may be cited as IDAPA 34.02.02. (3-20-04)

02. Scope. This chapter provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 United States Code Sections 15481, et seq., including a violation that has occurred, is occurring, or is about to occur. The procedure set out in this chapter does not apply to an election recount under Sections 34-2301 et seq., Idaho Code, or to an election contest under Sections 34-2001 et seq., and 34-2101 et seq., Idaho Code. A Complainant who wishes to challenge the validity of any primary, general or special election, or to determine the validity of any ballot or vote must seek relief as otherwise provided by law. (3-20-04)

002. WRITTEN INTERPRETATIONS.

Written Interpretations of this chapter are available by mail from the Idaho Secretary of State. (3-20-04)

003. ADMINISTRATIVE APPEALS.

Administrative appeals are not available within the Secretary of State's Office. (3-20-04)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into this Chapter. (3-20-04)

005. CONTACT INFORMATION.

Office of Secretary of State, 8 a.m. - 5 p.m. Monday through Friday, 700 W. Jefferson, Rm. 203, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, ID 83720-0080. The Election Division telephone number is (208) 334-2852 and the facsimile machine is (208) 334-2282. (3-20-04)

006. PUBLIC RECORDS ACT COMPLIANCE.

This chapter and its contents are subject to the Idaho Public Records Law. (3-20-04)

007. -- 009. (RESERVED)

010. DEFINITIONS.

In this chapter, the following terms have the meanings indicated. (3-20-04)

01. Complainant. Means the person who files a complaint with the Secretary of State under this rule; (3-20-04)

02. Respondent. Means any State or County election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III; (3-20-04)

03. Title III. Means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code Sections 15481-15485. (3-20-04)

011. WHO MAY FILE.

Any person who believes that there is a violation of any provision of Title III may file a complaint. (3-20-04)

012. FORM OF COMPLAINT.

01. Writing and Notarization. A complaint shall be in writing and notarized, signed and sworn under oath by the Complainant. The complaint must identify the Complainant by name and mailing address. The complaint must identify the section of Title III for which a violation is alleged. The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the Respondent and the hearing officer or arbitrator of the claimed violation. The complaint procedure is limited to allegations of violations of Title III in a federal election. (3-20-04)

02. Prescribed or Other Form. The Complainant may use: (3-20-04)

a. The form prescribed by the Idaho Secretary of State, which is available from the Idaho Secretary of State Election Division, or which may be downloaded from the Idaho Secretary of State Election Division's website at <http://www.sos.idaho.gov/>; or (3-20-04)

b. Any other form satisfying the requirements of Subsection 012.02.a. of this rule. (3-20-04)

013. PLACE AND TIME FOR FILING, COPY FOR RESPONDENT.

01. Place for Filing. A complaint shall be filed with the Election Division, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent. (3-20-04)

02. Time for Filing. A complaint may be filed no later than ninety (90) days after the final certification of the federal election and at issue. A complaint may be filed anytime prior to an election. (3-20-04)

03. Copy for Respondent. The Complainant shall mail or deliver a copy of the complaint to each Respondent. (3-20-04)

04. Rejection of Complaint. The Election Division shall examine each complaint, and may reject it for filing if: (3-20-04)

a. It is not signed and notarized under oath; (3-20-04)

b. It does not identify the Complainant or include an adequate mailing address; (3-20-04)

c. Does not, on its face, allege a violation of Title III with regard to a federal election; or (3-20-04)

d. More than ninety (90) days have elapsed since the final certification of the federal election at issue. (3-20-04)

014. PROCESSING OF COMPLAINT.

01. Consolidation. The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. (3-20-04)

02. Preparing the Complaint for Determination. The Secretary of State shall take all necessary steps to prepare the complaint for determination under these rules. In the course of preparing the complaint for determination, the Secretary of State shall allow a party to proceed with the assistance of an English language interpreter if the Complainant is unable to proceed without assistance of an interpreter. It is the responsibility of the party who needs an interpreter to secure the services of the interpreter. The Secretary of State, in coordination with the parties, shall establish a schedule under which the Complainant and Respondent may file written submissions concerning the complaint, and under which the complaint shall be finally determined. (3-20-04)

03. Record. (3-20-04)

a. The Secretary of State shall compile and maintain an official record in connection with each

- complaint under this rule; (3-20-04)
- b.** The official record shall contain: (3-20-04)
 - i. A copy of the complaint including any amendments made with the permission of the Secretary of State; (3-20-04)
 - ii. A copy of any written submission by the Complainant; (3-20-04)
 - iii. A copy of any written response by any Respondent or other interested person; (3-20-04)
 - iv. A written report of any investigation conducted by employees of the Secretary of State or Office of Attorney General who shall not be directly involved in the actions or events complained of, and shall not directly supervise or be directly supervised by any Respondent; (3-20-04)
 - v. Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint; (3-20-04)
 - vi. Originals or copies of any tangible evidence produced at any hearing conducted under Section 015; (3-20-04)
 - vii. The original tape recording produced at any hearing conducted under Subsection 015.07 of these rules, and a copy of any transcript obtained by any board or other party; and (3-20-04)
 - viii. A copy of any final determination made under Sections 016 or 017. (3-20-04)

015. HEARING.

01. Hearing on the Record. At the request of the Complainant, the Secretary of State shall conduct a hearing on the record. (3-20-04)

02. Time Frame for Hearing. The hearing shall be conducted no sooner than ten (10) days and no later than thirty (30) days after the Secretary of State receives the complaint. The Secretary of State shall give at least ten (10) business days' advance notice of the date, time, and place of the hearing: (3-20-04)

a. By mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing; (3-20-04)

b. On the Election Division web site; and (3-20-04)

c. By posting in a prominent place, available to the general public, at the offices of the Election Division; (3-20-04)

03. Hearing Officer. The Secretary of State or his designee shall act as hearing officer. (3-20-04)

04. Who May Appear. The Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing. (3-20-04)

05. Representation by an Attorney Not Necessary. A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not be, represented by an attorney. (3-20-04)

06. Written Presentation. If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer. (3-20-04)

07. Tape Recording of Proceedings. The proceedings shall be tape-recorded by and at the expense of the Election Division. The recording shall not be transcribed as a matter of course, but the Election Division, or any party may obtain a transcript at its own expense. If a party obtains a transcript, the party shall file a copy as part of the record, and any other interested person may examine the record copy. (3-20-04)

08. Filing of Written Brief or Memorandum. Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted except with the specific authorization of the hearing officer. (3-20-04)

016. FINAL DETERMINATION.

01. If No Hearing is Held. If there has been no hearing under Section 015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established. (3-20-04)

02. Determination of Violation. At the conclusion of any hearing under Section 015, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established. (3-20-04)

03. Form of Determination. (3-20-04)

a. If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees. The remedy may not include the denial of certification or the invalidation of any primary, general or special election, or a determination of the validity of any ballot or vote. Remedies addressing the certification of an election, the validity of an election, or of any ballot or vote may be obtained only as otherwise provided by law; (3-20-04)

b. If the complaint is not timely or not in proper form, or if the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred, or that there is not sufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint; (3-20-04)

04. Explanation in Written Decision. The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected. (3-20-04)

05. Issuance of Final Decision. Except as specified in Section 017, the final determination of the Secretary of State shall be issued within ninety (90) days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Division's website and made available on request to any interested person. If the Secretary of State cannot make a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under Section 017. The record compiled under Section 014 of this rule shall be made available for use under Section 017. (3-20-04)

017. ALTERNATE DISPUTE RESOLUTION.

If, for any reason, the Secretary of State or his designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this Section 017. (3-20-04)

01. Time Frames for Choosing and Arbitrator. On or before the fifth business day after a final determination by the Secretary of State was due, the Secretary of State shall designate in writing to the Complainant a list of names of arbitrators who may resolve the complaint. Within three (3) business days after the Complainant receives this designation, the Complainant and the Secretary of State shall arrange to choose an arbitrator from this

list by striking names from the list until an arbitrator acceptable to both parties is chosen. Within three (3) business days after the parties strike names, the Secretary of State shall contact the arbitrator chosen and arrange for the hearing by the arbitrator. (3-20-04)

02. Information the Arbitrator May Review. The arbitrator may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the arbitrator may request that the parties present additional briefs or memoranda. (3-20-04)

03. Resolution of Complaint. The arbitrator shall determine the appropriate resolution of the complaint as set out in these rules. (3-20-04)

04. Issuance of Written Resolution. The arbitrator must issue a written resolution within sixty (60) days after the final determination of the Secretary of State was due under Section 016. This sixty (60) day period may not be extended. The final resolution of the arbitrator shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall be published on the Election Division website and made available on request to any interested person. (3-20-04)

018. -- 999. (RESERVED)

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