

STATEWIDE RETURN AND RECOUNT DIRECTIVE AND PROCEDURES

The Department of State issued this directive and adopted these procedures to implement the amendments made to the Pennsylvania Election Code by Act 97 of 2004 relating to reporting of unofficial election returns to the Department of State, the requirement that the Secretary of the Commonwealth determine whether a recount of returns for statewide public office or ballot question are required, and to ensure consistency with amendments to the Election Code made by Acts 77 and 94 of 2019, and 12 of 2020. This Directive supersedes the election return and recount provisions contained in the Directive dated June 9, 2011, entitled *Directive Concerning the Use, Implementation and Operation of Electronic Voting Systems by the County Boards of Elections*. The guidance concerning pre-canvassing and canvassing of ballots in this Directive refers only to the pre-canvassing and canvassing of ballots received by 8:00 P.M. on Election Day. Guidance entitled *Canvassing Segregated Mail-in and Civilian Absentee Ballots Received by Mail after 8:00 P.M. on Tuesday, November 3, 2020 and Before 5:00 P.M. on Friday, November 6, 2020*, issued separately by the Department of State on November 1, 2020, provides procedures counties should follow to canvass ballots received after 8:00 P.M. on Election Day, November 3, 2020.

TRANSMITTAL OF RETURNS ON ELECTION NIGHT

By **2:00 A.M. on the day following the election**, Sections 1113-A, 1225 and 1228 of the Election Code require the judge of elections to return to the county board of elections the following materials:

1. Envelopes;
2. Supplies, including all uncast provisional ballots; and
3. Returns, including all provisional ballots cast in the election district.

25 P.S. §§ 3031.13, 3065 and 3068.

By **3:00 A.M. on the day following the election**, each county board of elections must submit to the Department of State pursuant to Section 1402 of the Election Code returns received from the district boards of elections for each office for which a candidate must file a nomination petition with the Secretary of the Commonwealth. 25 P.S. § 3152. These returns must be submitted as prescribed by the Secretary of the Commonwealth utilizing the Department of State's election night reporting system or such other method authorized by the Department.

COMPUTATION AND REPORTING OF UNOFFICIAL GENERAL RETURNS

As provided for by Section 1308 of the Election Code, the county board of elections shall meet no earlier than 7:00 A.M. on Election *Day* to **pre-canvass** all absentee and mail-in ballots received prior to this meeting. 25 P.S. § 3146.8(g)(1.1). The county board of elections shall meet no earlier than the close of polls on the day of the election and no later than the third day following the election to begin the **canvass** of absentee and mail-in ballots not included in the pre-canvass

meeting. 25 P.S. § 3146.8(g)(2). The canvass of mail-in and absentee ballots shall continue until completed.

No later than 9:00 A.M. on the third day following the primary or election, each county board of elections must publicly commence the computation and canvassing of the returns from the various election districts as required by Sections 1403 and 1404 of the Election Code and continue the same until completed. 25 P.S. §§ 3153-3154. Upon the completion of the computation and canvassing (including any recount conducted under Section 1404(e) of the Election Code, 25 P.S. § 3154(e)), the board of elections must tabulate the figures for the entire county and sign, announce and attest the returns as provided by Section 1404(f) of the Election Code (25 P.S. § 3154(f)). The computed and tabulated returns that are announced, signed by the board of elections, and attested to by the clerks who made and computed the entries reflecting the returns under Section 1404(f) of the Election Code (25 P.S. § 3154(f)) must be considered unofficial for five (5) days thereafter. *Id.*

No later than 5:00 P.M. on the Tuesday following the day of the election, the county board of elections must submit to the Secretary of the Commonwealth the unofficial returns of the county for all statewide public offices and ballot questions that appeared on the ballot in every election district in the Commonwealth. The county board of elections shall submit to the Secretary of the Commonwealth the unofficial returns for such offices and ballot questions that the county board of elections announced and signed as required by Section 1404(f) of the Election Code. 25 P.S. § 3154(f).

In the event that the county board of elections has not yet completed, announced and signed the unofficial returns as provided by Section 1404(f) of the Election Code (25 P.S. § 3154(f)), the county board of elections shall submit, no later than 5:00 P.M. on the Tuesday following Election Day, those election returns that have been computed and tabulated by that date and time. With the submission of partial returns, the county board of elections shall inform the Secretary of the Commonwealth that the unofficial returns are not yet complete and shall provide to the Secretary the number of potentially valid ballots that the county board of elections estimates have not been included in the reported partial computation of returns.

These unofficial returns must be submitted to the Secretary of the Commonwealth by e-mail on form DSBE UR-CBE (Unofficial Returns Reporting Form) **by 5:00 P.M. on or before the Tuesday following the election** to resource account RA-elections@pa.gov. In addition to the reporting form, the county board of elections must submit a printed report from the election management system showing the results for each county-wide contest for all the ballots counted.

The report to the Secretary made as required by Section 1404(f) of the Election Code (25 P.S. § 3154(f)) on Form DSBE UR-CBE shall include an accurate accounting of all uncounted provisional ballots, uncounted absentee ballots, uncounted mail-in ballots, uncounted alternative ballots, and any other types of uncounted ballots (including any ballots from military and overseas civilian voters that have not yet been canvassed) for which a final resolution regarding the validity of the ballots has not yet been made.

In the event that the statutory deadline to receive and count absentee and mail-in ballots from certain electors has been extended by order of court or by legislation enacted by the General Assembly to a date that occurs after the date on which the county board of elections is required to submit unofficial returns to the Secretary of the Commonwealth, the county board of elections

must also attach to form DSBE UR-CBE a statement describing the total number of absentee and mail-in ballots that were delivered to absentee electors affected by the court order and that have not yet been received by the county board of elections. *(For example, if the deadline to receive absentee ballots from military electors and overseas citizens were extended to a date after the date that the board of elections is required to make its submission of unofficial returns to the Secretary of the Commonwealth, the county board of elections must calculate the total number of absentee ballots that might be received from those absentee electors affected by the court-ordered extension.)*

The submission of unofficial returns made to the Secretary of the Commonwealth as required by Section 1404(f) of the Election Code (25 P.S. § 3154(f)), and recorded on form DSBE UR-CBE, must be signed by the members of the county board of elections.

Based on assessment of the unofficial returns submitted to the Secretary of the Commonwealth by the county boards of elections, the Secretary may request a supplemental report regarding additional returns that have been computed and tabulated by the county boards of elections after the Tuesday following Election Day and before 5:00 P.M. on the second Thursday following Election Day when the Secretary is required to determine whether the standards for a Statewide recount have been met under Section 1404(g) of the Election Code. 25 P.S. § 3154(g).

RECOUNT ORDER BY THE SECRETARY

Unless waived by all affected candidates, Section 1404(g) of the Election Code (25 P.S. § 3154(g)) requires the Secretary of the Commonwealth to order all county boards of election to conduct a recount if, based on the unofficial returns submitted to the Secretary by the county boards of election on form DSBE UR-CBE and any required supplements thereto, the Secretary of the Commonwealth determines:

- (1) A candidate for a public office that appears on the ballot in every election district in the Commonwealth was defeated by **one-half of one percent** or less of the votes cast for the office; or
- (2) A ballot question appearing on the ballot in every election district in the Commonwealth was approved or rejected by one-half of one percent or less.

The Secretary of the Commonwealth must issue an order for a recount by **5:00 P.M. of the second Thursday following the day of the election**. *The Secretary of the Commonwealth must provide 24 hours notice of the order to each candidate and to each county chairman of each party or political body affected by the recount.* Notice will be provided to each candidate and to each county chairman affected via e-mail and press release, and other method(s) as the Secretary might deem necessary and appropriate.

As provided by Section 1404(h) of the Election Code (25 P.S. § 3154(h)), the Secretary will not order a recount if the defeated candidate by 12:00 P.M. on the second Wednesday following the election requests in writing that a recount not be made.

The recount order will be transmitted to each county via e-mail and other means deemed appropriate by the Secretary of the Commonwealth. The recount order also will be posted on the Department of State's World Wide Web Site at www.dos.state.pa.us.

Under Section 1404(g)(5)(ii) of the Election Code (25 P.S. § 3154(g)(5)(ii)), the Secretary of the Commonwealth must schedule the recount, so it is **begun no later than the third Wednesday following the election.**

Under Section 1404(g)(4) of the Election Code (25 P.S. § 3154(g)(4)), a candidate affected by the recount may be present, in person or by attorney, at the recount conducted in each county. A political party or political body affected by the recount may send two representatives to the recount.

Section 1404(g)(5)(iii) (25 P.S. § 3154(g)(5)(iii)) mandates that the recount be **completed by 12:00 Noon on the Tuesday following the third Wednesday after the election.**

CONDUCTING THE RECOUNT

Under Sections 1118-A and 1404(e)(3) of the Election Code (25 P.S. §§ 3031.18 and 3154(e)(3)), the county board of elections must recount all ballots using manual, mechanical or electronic devices of a different type than that used for the specific election.

- **All ballots containing overvotes, undervotes or marginal marks must be counted manually.**
- Counties shall conduct the recount using tabulators of a different type than that used in the election, or by a hand count of the paper ballots.

By 5:00 P.M on the Friday following the election the county board of elections must submit a completed Recount Procedures Form. This form will be proscribed by the Secretary, provide an overview of the county's recount plan, and will be distributed as necessary.

Under Section 1407(a) of the Election Code (25 P.S. § 3157(a)), appeals of determinations made by a county board of elections following an order for a recount by the Secretary of the Commonwealth related to the offices or ballot questions that are the subject of the statewide recount must be taken to the Commonwealth Court – even after the recount ordered by the Secretary has been completed.

RECORDING THE RESULTS OF THE RECOUNT

A county board of elections must record the results of its recount on form DSBE RE-CBE (Recount Tabulation Reporting Form). The recount report shall include the computation and tabulation of all returns that have been made by the county board of elections.

In the event that the statutory deadline to receive and count absentee and mail-in ballots from certain electors has been extended by order of court to a date occurring after the completion of the recount, a county board of elections must attach to form DSBE RE-CBE a statement that describes the total number of absentee and mail-in ballots that were delivered to such electors and that have

not yet been received by the county board of elections. *(For example, if the deadline to receive absentee ballots from military electors and overseas citizens were extended to a date occurring after the completion of the recount, the county board of elections would need to calculate the total number of absentee ballots that may yet be received by those affected military and overseas electors.)*

TRANSMITTING THE RECORDED RESULTS OF THE RECOUNT TO THE SECRETARY

As required by Section 1404(g)(6) of the Election Code (25 P.S. § 3154(g)(6)), the county boards of elections must submit the results of the recount to the Secretary of the Commonwealth on form DSBE RE-CBE **no later than 12:00 Noon on the day following completion of the recount via e-mail to resource account RA-elections@pa.gov**, and via additional means, as may be required by the Secretary.

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