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Pennsylvania Guidance for
Mail-in and Absentee
Ballots Received from the
United States Postal
Service after 8:00 p.m. on
Tuesday, November 3,
2020

Date: October 28, 2020

Version: 1.0

In recognition of documented United States Postal Service (“USPS”) delays and citing the Pennsylvania Constitution’s Free and Equal Elections Clause’s guarantee of free exercise of the right to suffrage, on September 17, 2020, the Pennsylvania Supreme Court (i) held that absentee and mail-in ballots mailed by voters via the USPS and postmarked by 8:00 p.m. on Tuesday, November 3, 2020 shall be counted if they are otherwise valid and received by the county boards of election on or before 5:00 p.m. on Friday, November 6, 2020, and (ii) further held that ballots received within this period that lack a postmark or other proof of mailing, or for which the postmark or other proof of mailing is illegible, will be presumed to have been mailed by 8:00 p.m. on November 3 unless a preponderance of the evidence demonstrates that the ballot was mailed after such time.

Certain parties asked the United States Supreme Court to stay the Pennsylvania Supreme Court’s decision. The United States Supreme Court denied that request on October 19, 2020. Therefore, the Pennsylvania Supreme Court’s ruling, summarized above, remains the law.

On Friday, October 23, 2020, certain parties petitioned the U.S. Supreme Court for a writ of certiorari, asking that Court to vacate the Pennsylvania Supreme Court’s September 17 decision and eliminate the three-day extension. Those parties also filed a motion for expedited consideration of their petition. On Monday, October 26, 2020, Secretary Boockvar filed a response to the motion. At this time, both the petition and motion remain pending before the U.S. Supreme Court.

The Secretary continues to defend the extension to ensure that every timely and validly cast mail-in and absentee ballot is counted. Because this issue is still-pending before the U.S. Supreme Court, however, county boards of elections are directed to take the following action to securely segregate mail-in and civilian absentee ballots received by the county board before 8:00 p.m. on November 3 from those received via USPS after 8:00 p.m. on November 3 and before 5:00 p.m. on Friday, November 6:

- 1) All mail-in and civilian absentee ballots delivered by the USPS and received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 shall be kept separate and segregated from all other voted ballots.
- 2) The county boards of elections shall not pre-canvass or canvass any mail-in or civilian absentee ballots received between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020 until further direction is received. These ballots shall be maintained by the county board in a secure, safe and sealed container separate from other voted ballots.
- 3) For every ballot delivered to the county board by the USPS between 8:00 p.m. on Tuesday, November 3, 2020 and 5:00 p.m. on Friday, November 6, 2020, each county board shall maintain an accurate log of the date upon which the ballot was delivered by the USPS to the county board of elections. The log shall include (i) the name and address of the elector, (ii) the date of delivery by the USPS, (iii) whether the ballot return envelope has a legible postmark, and (iv) the postmark date, when present and legible.

The Department of State will promptly update the county boards of elections on how to pre-canvass and canvass the segregated ballots and of further developments related to the Court-ordered extension. County boards should remain alert for further direction regarding the ballots subject to the Supreme Court's decision.

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Version History:

Version	Date	Description
1.0	10.28.2020	Initial document release