

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

PROCEDURES TO ASSURE COMPLIANCE WITH THE UNIFORMED AND OVERSEAS
CITIZENS ABSENTEE VOTING ACT (UOCAVA) AND RELATED PROVISIONS OF THE
PENNSYLVANIA ELECTION CODE
FOR EVERY GENERAL ELECTION
(MILITARY & OVERSEAS VOTERS PROTOCOL)

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This memorandum describes the policies and procedures that the Pennsylvania Department of State (DOS) will follow and direct the county boards of elections to follow for every general election to assure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973ff-1973ff-7, which includes amendments to UOCAVA made by the Military and Overseas Voter Empowerment Act (MOVE Act), Pub. L. No. 111-84, the Pennsylvania Election Code (25 P.S. § 2600 *et seq.*), and Act 3 of 2002 (25 Pa.C.S. § 1101 *et seq.*).

I. Relevant Statutory or Judicial Deadlines Preceding the Absentee Balloting Process

1. The first business day in August is the deadline for the filing of nomination papers for minor political parties and political bodies. *See* the Consent Decree in *Hall v. Davis*, Civ. No. 84-1057 (E.D. Pa. 1984).

2. 7 days after the last day for the filing of nomination papers is the statutory deadline for electors to make objections to nomination papers. 25 P.S. § 2937.

3. 7 days after the last day for the filing of nomination papers is the statutory deadline for candidates of political bodies who have filed nomination papers to withdraw as candidates named on the November ballot. 25 P.S. § 2938(b). However, courts will permit withdrawals after the statutory deadline except under special circumstances, such as after the printing of the official ballots.

4. 85 days prior to the general election is the statutory deadline for candidates who were nominated by a political party to withdraw as candidates named on the November ballot. 25 P.S. § 2938(a). However, courts will permit withdrawals after the statutory deadline except under special circumstances, such as after the printing of the official ballots.

5. 15 days after the last day for the filing of nomination papers is the statutory deadline for Commonwealth Court to decide objections to nomination papers. 25 P.S. § 2937. However, this deadline is directory, not mandatory. In addition, an objector or candidate who loses in Commonwealth Court has a right to appeal to the Supreme Court of Pennsylvania.

6. 75 days before the general election is the deadline for political parties and political bodies to file substituted nomination certificates to fill vacancies caused by the

withdrawal of candidates nominated at the primary election or by nomination papers. 25 P.S. § 2941(a).

7. Under section 984 of the Election Code, 25 P.S. § 2944, the Secretary must certify the nominees to the county boards “as soon as possible” after 75 days before the general election – the date fixed for filing substituted nomination certificates. 25 P.S. § 2941(a).

8. *No later than 70 days prior to the general election the Secretary of the Commonwealth must transmit to the county board of elections “a list, as he knows it to exist at that time, of candidates to be voted on in the county at the election...” 25 P.S. § 3146.5a(b). The Secretary of the Commonwealth will act as promptly as prudence dictates under the circumstances to provide the county boards of elections with a list of the known candidates 70 days prior to the general election and will notify counties of changes to the list as they should occur until the Secretary is able to certify officially the names of the candidates who will appear on the general election ballot.*

II. Statutory Deadlines and Other Information Applicable to Military Electors Who Declare that They Live or Perform Military Service in an Extremely Remote or Isolated Area of the World

1. *No later than 70 days prior to the general election county boards of election must commence to deliver and mail absentee ballots or “special write-in ballots” (as described in ¶ 5 below) to *certain* (as discussed in ¶ 2 below) qualified absentee “military electors” (as defined in ¶ 3 below) and *certain* qualified absentee electors who expect to be or are outside the territorial limits of the United States because their duties, occupation or business require them to be elsewhere during the entire period the polls are open for voting on the day of the election (“absentee electors living or traveling abroad”). 25 P.S. § 3146.5(a).*

2. Absentee ballots or special write-in ballots must be delivered or sent no later than 70 days prior to the general election to qualified absentee “military electors” and qualified absentee electors living or traveling abroad who have included in their application for an absentee ballot a statement that the elector “is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely **remote or isolated** area of the world.” 25 P.S. § 3146.5(a)(emphasis added). This statement should be included in block 6 on the Federal Post Card Application (FPCA) available on the Federal Voting Assistance Program’s website, www.fvap.gov, or in Section A of the state absentee ballot application available on the Department’s website, www.votespa.com.

3. Under Pennsylvania law (25 Pa.C.S. § 1102), the term “military elector” is defined to include:

- A qualified elector who is or may be in the military service of the United States, *regardless of whether he/she is registered to vote. See also 25 P.S. § 3146.1(a).*
- A qualified and registered elector who is a spouse or dependent residing with or accompanying a person in the military service of the United States if, at the time of voting, the spouse or dependent is absent from the municipality of his/her residence. [As “military electors” under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government, including the Federal Post Card Application prescribed by the Federal Voting Assistance Program.]
- A qualified and registered elector who is or may be in the service of the Merchant Marine of the United States, or a spouse or dependent residing with or accompanying a person who is in the service of the Merchant Marine of the United States, if at the time of voting he/she is absent from the municipality of his/her residence. [As “military electors” under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government, including the Federal Post Card Application prescribed by the Federal Voting Assistance Program.]
- A qualified and registered elector who is or who may be in a religious or welfare group officially attached to and serving with the armed forces, or a spouse or dependent residing with or accompanying a person in a religious or welfare group officially attached to and serving with the armed forces, if at the time of voting he/she is absent from the municipality of his/her residence. [As “military electors” under 25 Pa.C.S. §§ 1102 and

1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government.]

- A qualified and registered elector who is or may be a civilian employee of the United States outside the territorial limits of the United States, or a spouse or dependent residing with or accompanying a person who is a civilian employee of the United States outside the territorial limits of the United States, if at the time of voting the elector is absent from the municipality of his/her residence. [As “military electors” under 25 Pa.C.S. §§ 1102 and 1324(c), these qualified electors may apply *at any time* for registration on an official registration application form or a form prescribed by the federal government.]
- **PLEASE NOTE:** *A qualified absentee elector who expects to be or is outside the territorial limits of the United States because his/her duties, occupation or business require him/her to be elsewhere during the entire period the polls are open for voting on the day of the election (i.e., an “absentee elector living or traveling abroad”), but who is not a civilian employee of the United States serving outside of the territorial United States, is not a “military elector.” (See the definitions of “overseas citizen” and “military elector” at 25 Pa.C.S. § 1102.¹) Therefore, these “overseas citizens” who are not “military electors” must be registered to vote at least 30 days before the election as required for all other electors. 25 Pa.C.S. § 1326(b)(4).*

<u>Type of Voter</u>	<u>Voter Registration Requirement</u>	<u>Citation</u>
Qualified elector in the military service of the U.S.	Not required to register to vote	25 P.S. § 3146.1(a)
Spouse or dependent of a person in military service	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual in the service of the Merchant Marine and their spouse or dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual in a religious or welfare group officially attached to and serving with the armed forces of the U.S. and their spouse/dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
Individual is a civilian employee of the U.S. or their spouse or dependent	May apply at any time to register to vote	25 Pa.C.S. §§ 1102 & 1324(c)
“Overseas citizens” who are not “military electors” ²	Must register at least 30 days before the primary/election	25 Pa.C.S. § 1326(b)(4)

4. For those qualified absentee military electors and qualified absentee electors

living or traveling abroad *who declare that they are unable to vote during the regular absentee*

¹ Examples of “overseas citizens” who are not “military electors” would include U.S. citizens: working for private sector employers abroad, traveling abroad on vacation, serving as Red Cross overseas volunteers not attached to the armed forces and serving as missionaries overseas who are not attached to the armed forces.

² For “overseas voters” under federal law who no longer reside in Pennsylvania, see Part IV, ¶ 4.

balloting period by reason of living or performing military service in an extremely remote or isolated area of the world and who apply for or are approved for an absentee ballot after 70 days prior to the general election, the county boards of elections *must* deliver or mail the absentee ballots or special write-in ballots *within 48 hours after approval of the application.* 25 P.S. § 3146.5(a). Applications from absentee military electors and absentee electors living or traveling abroad should be processed and approved or disapproved *promptly* upon receipt.

5. As described by section 1303(d) of the Election Code, “special write-in ballots” are to be “substantially [in] the form of [the] official absentee ballot *except that [the] special write-in absentee ballots shall contain blank spaces only under the titles of [the] offices in which electors may insert the names of the candidates for whom they desire to vote....*” 25 P.S. § 3146.3(d)(emphasis added). With the special write-in ballot, the county boards of elections are directed by the statute to “furnish to electors lists containing the names of all candidates ... who have been regularly nominated under [the Election Code], for the use of [the qualified absentee military electors] in preparing their ballots.” This list is to include the names of the candidates provided to the county board of elections by the Secretary of the Commonwealth (as described in Part I, ¶ 7, above).

6. In the past, some county election officials asked whether it is legally permissible for a county board of elections to prepare a “special write-in ballot” by inserting under the name of the public offices the names of the candidates provided to the board by the Secretary of the Commonwealth under section 1305.1 of the Election Code, rather than a blank ballot with a separate list of candidates, 25 P.S. § 3146.5a. In the opinion of the Department of State, *so long as the ballot is clearly labeled as a “special absentee ballot,” and not an “official absentee ballot,”* and the ballot includes the necessary lines for electors to use to write in names that are not listed on the special ballot (just as there would be on an official absentee ballot), the purposes of sections 1303(d) and 1305(a) of the Election Code would be served consistently with the

rights of the electors, 25 P.S. §§ 3146.3(d) & 3146.5(a). *However, the instructions that the board of elections provides with this form of special absentee ballot should make clear that the special absentee ballot is unofficial and includes the names of the candidates known to be nominees or candidates for the public offices listed on the special absentee ballot.*

7. County election officials have also asked whether they may email a special write-in absentee ballot as a “PDF file” to each military or overseas civilian voter requesting an absentee ballot who also supplies the county with an email address. Section 1303(d) of the Election Code, 25 P.S. § 3146.3(d), requires counties to send the special write-in absentee ballot to military and overseas civilian voters when the official ballot is not yet available. Furthermore, the Department has interpreted 25 P.S. § 3146.5(b) broadly to include email as an acceptable method of delivering blank absentee ballots, including special write-in absentee ballots, to military and overseas civilian voters. See Part VI, ¶ 3. Emailing the special write-in absentee ballot will help to ensure that the military and overseas civilian voters receive their ballot in a timely manner so that they can return it to the county by the deadline, which is 7 days after the election. See Part VII, ¶ 1.

8. It is absolutely essential that county boards of elections adhere to the deadlines prescribed by the Election Code for those qualified absentee military electors and qualified absentee electors living or traveling abroad who declare that they are living or performing military service in an extremely remote or isolated area of the world and utilize a special write-in absentee ballot or other form of special absentee ballot in the circumstances described above.

III. Statutory Deadlines and Other Information Applicable to Other Military Electors

1. For qualified absentee military electors and qualified absentee electors living or traveling abroad who have *not* included in their application for an absentee ballot a statement

that the elector “is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world,” county boards of elections must, ***no later than 45 days prior to the election***, deliver or mail to those qualified absentee military electors and qualified absentee electors living or traveling abroad official absentee ballots (or, if not yet available, special write-in ballots). 25 P.S. § 3146.5(a) & 42 U.S.C. § 1973ff-1(a)(8)(A) (an amendment of the MOVE Act in 2009). **PLEASE NOTE:** Because state and federal laws require that county boards of elections send absentee ballots **no later than 45 days prior to the election**, and because the deadline always falls on a Saturday, the county board of elections must send out absentee ballots by the close of business Friday if the county is not open on Saturday.

2. For *all* qualified absentee military electors and qualified absentee electors living or traveling abroad who apply for or are approved for an absentee ballot after 45 days prior to the general election, the county boards of elections *must* deliver or mail an official absentee ballot or special write-in ballot *within 48 hours after approval of the application*. 25 P.S. § 3146.5(a) & 42 U.S.C. § 1973ff-1(a)(8)(B). Applications from *all* absentee military electors and absentee electors living or traveling abroad should be processed and approved or disapproved *promptly* upon receipt.

3. In the past, some county election officials asked whether county boards of elections may, *before* 45 days prior to the general election, deliver or mail special absentee ballots to qualified absentee military electors and qualified absentee electors living or traveling abroad who have *not* declared that they are unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world. It is the opinion of the Department of State that, as a service to qualified absentee electors – particularly those who are serving, living or traveling outside the United States – the Election Code allows a county board of elections to send a special write-in absentee ballot or

special, unofficial absentee ballot to the qualified absentee elector before the applicable statutory deadline of 45 days prior to the general election. However, county boards of elections should treat all similarly situated absentee military electors and qualified absentee electors living or traveling abroad equally. For example, if the board of elections decides to send an early absentee ballot to an elector in Iraq who has not declared his remoteness or isolation as a reason for receiving an early absentee ballot, then all such qualified absentee electors in Iraq should receive the same treatment.

IV. Rules for Applying for Absentee Ballots by Military Electors and Qualified Absentee Electors Living or Traveling Abroad

1. Military electors and qualified absentee electors living or traveling abroad may apply *at any time* before the election for an official absentee ballot. 25 P.S. § 3146.2(a).
2. In applying for an absentee ballot, military electors and qualified absentee electors living or traveling abroad may use any form supplied by the federal government, including the Federal Post Card Application (FPCA) form, an official form of the county board of elections, or any other form that includes:
 - Home residence at the time of entrance into actual military service or federal employment.
 - Length of time a citizen.
 - Length of residence in Pennsylvania.
 - Date of birth.
 - Length of time a resident of voting district.
 - Voting district, if known.
 - Name.

- For a military elector, the elector's stateside military address, FPO or APO number and serial number.
- For an elector other than a military elector, the nature of the elector's employment, the address to which ballot is to be sent, and relationship where necessary.

25 P.S. § 3146.2(b).

3. **RESIDENCE OF MILITARY PERSONNEL:** In 2003, Congress amended the Servicemembers Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) to add a new section 705, guaranteeing residency for military personnel. The new section provides:

§ 705. Guarantee of residency for military personnel

For the purposes of voting for any Federal office ... or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

- (1) be deemed to have lost a residence or domicile in that State, *without regard to whether or not the person intends to return to that State*;
- (2) be deemed to have acquired a residence or domicile in any other State; or
- (3) be deemed to have become a resident in or a resident of any other State.

50 U.S.C. § 595 (emphasis added). This provision of federal law is consistent with 25 Pa.C.S. § 1324(c)(2).

4. **RESIDENCE OF CIVILIAN OVERSEAS VOTERS:** Under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), all "overseas voters" as defined by UOCAVA are entitled to vote by absentee ballot in Pennsylvania in elections *for federal office* if they so qualify under UOCAVA, *irrespective of their continuing residence status under Pennsylvania law*. A civilian "overseas voter" under UOCAVA is defined to include:

- A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; and

- A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

42 U.S.C. §§ 1973ff-6(5)(B) & (C). **These overseas voters who reside outside the United States and no longer maintain a Pennsylvania residence under Pennsylvania law are *not* qualified to vote for state office under Pennsylvania law**, unless the overseas voter is a civilian employee of the United States outside the territorial limits of the United States or the spouse or dependent of such an employee. This exception for civilian employees of the United States and their spouses and dependents is found at 25 P.S. § 3146.1(g) & (h). Civilian “overseas voters” qualified to vote for federal office under UOCAVA but not qualified under Pennsylvania law to vote for state and local offices or on ballot questions are sometimes described as “*federal electors*.” **PLEASE NOTE:** An example of a “federal elector” would include a U.S. citizen who will be 18 by the day of the general election, who was born in Pennsylvania, who spent at least the first day of his or her life in Pennsylvania and never returned to Pennsylvania to establish residency here. This “federal elector” may be sent an absentee ballot for only federal candidates for the general election. By contrast, if a U.S. citizen who will be 18 by the day of the general election, whose parents moved out of Pennsylvania the day before the individual was born, who lived his or her life abroad and did not establish residency in Pennsylvania is not considered a “federal elector,” and cannot vote in either federal or state elections in Pennsylvania.

5. The application for an official absentee ballot for a military elector or qualified absentee elector living or traveling abroad must be made over the signature of the qualified elector or *an adult member of the elector’s immediate family*. 25 P.S. § 3146.2(c).

6. Military electors and qualified absentee electors living or traveling abroad may submit original absentee ballot applications in person or through other means of delivery. All qualified absentee military electors as defined by 25 Pa.C.S. § 1102 *and* overseas electors as

defined by UOCAVA (*i.e.*, persons who *reside* outside the United States and are qualified to vote in Pennsylvania in the last place that they were domiciled before leaving the United States) may submit their *application* for an official absentee ballot by facsimile method. 25 P.S. § 3146.2(c). The Department has interpreted the submission of an absentee ballot by facsimile to allow counties to accept applications for absentee ballots by military and overseas civilian voters by email because email is an electronic form of delivery similar to a facsimile. *Although the board may approve an application for absentee ballot that is submitted to the board by electronic (email or facsimile) means, the county election office must receive the original application before Election Day.* The absentee ballot of the UOCAVA absentee elector *may not be counted* “unless the elector’s *original* application is received prior to the election by the county election office.” 25 P.S. § 3146.2(c) (emphasis added).

7. As amended by Act 150 of 2002, section 1302(c) of the Election Code explicitly provides that “[t]he facsimile method shall *not* be acceptable for the official absentee ballot.” 25 P.S. § 3146.2(c) (emphasis added).

8. Upon receipt of an application from a qualified but unregistered elector in active duty military service, the county board of elections must ascertain from the information on the application, the district register or any other source that the applicant possesses the qualifications of a qualified elector other than being registered to vote. *No application of a qualified elector in military service may be rejected for failure to include the prescribed information if the required information can be ascertained within a reasonable time by the county board of elections.* 25 P.S. § 3146.2b(a).

9. Upon receipt of an application from a qualified but unregistered military elector as defined by 25 Pa.C.S. § 1102, who is not personally in **active duty military service**, the county board of elections must ascertain from the information on the application or any other source that the applicant possesses the qualifications of a qualified elector. 25 P.S. § 3146.2b(b).

Such qualified UOCAVA electors may receive an absentee ballot but must register to vote no later than the date and time required to vote the absentee ballot – prior to Election Day. See ¶ 10 below regarding the procedures counties should use to register these UOCAVA voters. See 25 Pa.C.S. § 1324(c) and the table in Part II, ¶ 3.

10. To register a qualified UOCAVA elector, **who is not personally in active duty military service**, the county board of elections must take one of two steps depending on the absentee ballot application form that the UOCAVA elector submitted to the county. If a county receives a Federal Post Card Application (FPCA), which acts both as an application to register to vote and an application for an absentee ballot, the county shall use that FPCA form to process the UOCAVA elector’s voter registration. However, if a county receives a state Application for Absentee Ballot form, then the county shall either send the UOCAVA elector a Voter Registration Mail Application (VRMA) form, or if the county has an email address for the elector, then the county can recommend that the elector download the VRMA from the Department’s website, www.dos.state.pa.us or from www.votespa.com, complete it, sign it and return it to the county.

V. UOCAVA

1. Because the general election is an election that includes federal offices, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) applies. Under UOCAVA, state and county elections officials must “accept and process ... any otherwise valid registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the [county voter registration commission or county board of elections] not less than 30 days before the election.” 42 U.S.C. § 1973ff-1(a)(2).

2. UOCAVA defines absent uniformed services voter or overseas voter similarly to the manner in which Pennsylvania law defines “military electors” and those qualified absentee

electors living or traveling abroad. *See* 42 U.S.C. § 1973ff-6, 25 Pa.C.S. § 1102 and 25 P.S. § 3146.1. UOCAVA defines an “absent uniformed services voter” to include a “member of a uniformed service on active duty who, by reason of such active duty, is absent from the **place of residence** where the member is otherwise qualified to vote.” 42 U.S.C. § 1973ff-6(1) (emphasis added). Likewise, Pennsylvania law at 25 Pa.C.S. § 1102 defines a “military elector” as an “individual in military service and the individual’s spouse and dependants” without qualification as to where the individual in military service is serving his or her country. **Therefore, county boards of elections must treat all military voters alike, whether they are stationed overseas or are stationed outside their place of residence.** In following the definition of “military elector” under Pennsylvania law, *see* 25 Pa.C.S. § 1102, as it applies to those voters for voter registration, and in following the absentee balloting procedures of the Pennsylvania Election Code as they apply to military electors and qualified absentee electors living or traveling abroad, *see* 25 P.S. §§ 3146.1 – 3146.9, county boards of elections will comply with UOCAVA for all electors, *except civilian federal electors (see following paragraph)*. Thus, county boards of elections must **send absentee ballots to all military electors**, both those overseas and stationed outside their place of residence.

3. Under UOCAVA:

- A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; and
- A person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

42 U.S.C. §§ 1973ff-6(5)(B) & (C). **These overseas voters who reside outside the United States and no longer maintain a Pennsylvania residence under Pennsylvania law are known as “federal electors” and are *not* qualified to vote for state office under Pennsylvania law,**

unless the overseas voter is a civilian employee of the United States outside the territorial limits of the United States or the spouse or dependent of such an employee. (See Part IV, ¶ 4 above.)

4. In addition, UOCAVA requires county boards of elections (a) to permit overseas voters to use Federal write-in absentee ballots for the general election, 42 U.S.C. § 1973ff- 2(a); and (b) to use the official post card form for simultaneous voter registration application and absentee ballot application. 42 U.S.C. § 1973ff-1(a)(4). The Department has interpreted federal and state law to allow UOCAVA voters to use the Federal write-in absentee ballot to vote for both federal and state candidates.

5. Under UOCAVA, the Federal write-in absentee ballot may be used by any *overseas voter* – either (i) a qualified absentee uniformed services voter (as well as his/her absentee spouse or dependent); or (ii) a qualified absentee elector who resides outside the United States and its territories – *who makes timely application for a state absentee ballot, and who has not received his/her state absentee ballot.* 42 U.S.C. §§ 1973ff-2(a).

6. The Federal write-in absentee ballot is prescribed by the Federal Voting Assistance Program (FVAP), is posted on its website, www.fvap.gov, and includes a secrecy envelope and mailing envelope for the ballot, which can be printed and then folded and sealed prior to mailing. 42 U.S.C. § 1973ff-2(a). The Department has interpreted the use of the FVAP's envelopes for the FWAB to comply with the envelope requirements in section 1304 of the Election Code, 25 P.S. § 3146.4. Although a county board of elections is not required to accept an FWAB during a municipal election year, it may do so.

7. A Federal write-in absentee ballot must be submitted and processed in the manner provided by Pennsylvania law for absentee ballots.

8. A Federal write-in absentee ballot may *not* be counted –

- If the ballot was submitted by a civilian overseas elector from any location in the United States or its territories. However, any military elector in the United States

or overseas may use the Federal write-in absentee ballot. 42 U.S.C. § 1973ff-2(b)(1).

- If a state absentee ballot of the overseas voter is received in timely fashion by the county board of elections. 42 U.S.C. § 1973ff-2(b)(3). In order to be received in timely fashion, the county board of elections must receive the voted ballot by 5:00 P.M. on the seventh day following the date of the election, as long as the envelope was postmarked by the day before the election. 25 P.S. § 3146.8(g)(1).

9. In completing a Federal write-in absentee ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of the political party). 42 U.S.C. § 1973ff-2(c)(1). The same principle applies to the political parties' candidates for Presidential Elector. 42 U.S.C. § 1973ff-2(c)(2). Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or political party must be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained. 42 U.S.C. § 1973ff-2(c)(3).

10. An overseas voter who submits a Federal write-in absentee ballot and later receives a state absentee ballot may submit the state absentee ballot. In that case, the overseas voter should make every reasonable effort to inform the county board of elections that the voter has submitted more than one ballot. 42 U.S.C. § 1973ff-2(d).

11. Under Pennsylvania law, the Federal Post Card Application (FPCA) form for voter registration and absentee ballot application is a form that is acceptable both for voter registration and the issuance of an absentee ballot by any Pennsylvania citizen who is a "military elector" as defined by Pennsylvania law. *See* 25 Pa.C.S. §§ 1102 & 1324(c). Under UOCAVA, the FPCA also must be accepted from any Pennsylvania citizen who lives outside the United States and is qualified to vote in Pennsylvania. The FPCA is available on the Federal Voting Assistance Program's (FVAP's) website, www.fvap.gov.

12. Under the Military and Overseas Voter Empowerment (MOVE) Act Amendments to UOCAVA in 2009, an FPCA submitted by an absent uniformed services voter or overseas

voter shall be considered an application for an absentee ballot for each subsequent election for federal office held in the Commonwealth of Pennsylvania during that calendar year. 42 U.S.C. § 1973ff-3.

13. Also with the passage of the MOVE Act amendments to UOCAVA in 2009, UOCAVA now requires: “Each State [to] . . . designate not less than 1 means of electronic communication – for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications.” 42 U.S.C. §§ 1973ff-1(a)(6)(A) & (e)(1)(A).

VI. Delivery of Blank Absentee Ballots

1. The Election Code directs county boards of elections to send absentee ballot materials to qualified absentee military electors and qualified absentee electors living or traveling abroad in transmittal envelopes that have printed across the face of the envelope two parallel horizontal red bars, between which are the words: “Official Election Balloting Material Via Air Mail.” 25 P.S. § 3146.4.

2. The absentee ballot materials must include detailed instructions on the procedures to be observed in casting an absentee ballot, together with a return envelope upon which is printed the name and address of the voter registration commission of the county and the same red bars and words, along with an indication that the envelope may be mailed “Free of U.S. Postage, Including Air Mail.” 25 P.S. § 3146.4.

3. The Department has interpreted section 1305(b) of the Election Code, 25 P.S. § 3146.5(b), broadly to include email as an acceptable method of delivering blank absentee ballots to military and overseas civilian voters. In addition, the Department has stated that county boards of elections may deliver absentee ballot materials to qualified absentee military electors and

qualified absentee electors living or traveling abroad in any manner that is at least as expeditious as Air Mail, including express or overnight mail.

4. With the passage of the MOVE Act amendments to UOCAVA in 2009, UOCAVA now requires: “Each State [to] . . . designate not less than 1 means of electronic communication – for use by States to send voter registration applications and absentee ballot applications” to absent uniformed services voters and overseas voters. 42 U.S.C. §§ 1973ff-1(a)(6)(B), (e)(1)(A) & (f)(1)(A).

Furthermore, the MOVE Act amended UOCAVA to provide that a “State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.” 42 U.S.C. §§ 1973ff-1(e)(2). The Department designated the following three means of electronic communication for counties to send blank absentee ballots to absent uniformed services voters and overseas voters:

- Use the SURE system that the Department has developed;
- Use a system that the county has developed, provided that the county informs the Department in advance; and
- Use the electronic transmission (fax) system that the FVAP has developed for election officials, which is available on the FVAP website at <http://www.fvap.gov/leo/fax-email-guidelines.html>. The FVAP’s Electronic Transmission Service (ETS) enables local election officials to transmit and receive election materials via toll-free fax to/from Uniformed Services members and overseas citizens. A county can use the FVAP’s toll-free electronic transmission service at 1-800-368-8583 to fax a blank ballot to a UOCAVA voter through the FVAP.

VII. Return of Voted Absentee Ballots

1. Qualified absentee military electors and qualified absentee electors living or traveling abroad, as defined at sections 1301(a) – (h) of the Election Code, 25 P.S. sections 3146.1(a) – (h), must have their absentee ballots received by the county board of elections no later than 5:00 PM on the seventh day following the election, as long as the ballot is postmarked no later than the day preceding the election. 25 P.S. § 3146.8(g)(1). The Department has determined that a voted ballot may be returned in person, through the U.S. Mail service, including Air Mail service, or by express or overnight mail. *See* 25 P.S. § 3146.6(a). As stated in Part IV, ¶ 7 above, “[a]s amended by Act 150 of 2002, section 1302(c) of the Election Code explicitly provides that “[t]he facsimile method shall *not* be acceptable for the official absentee ballot.” 25 P.S. § 3146.2(c) (emphasis added). Furthermore, secrecy of the ballot must be maintained. *See* Article VII, § 4 of the Pennsylvania Constitution and 25 P.S. § 3031.7(1).

VIII. Reports by the County Boards of Elections to the Department of State – Post-Election

1. Section 703(a) of the Help America Vote Act of 2002 (HAVA) amended section 102 of UOCAVA to “require each State and unit of local government which administered [a general] election” to “submit a report to the Election Assistance Commission [EAC] on the *combined number* of absentee ballots *transmitted* to absent uniformed services voters and overseas voters (including federal electors residing abroad) for the election *and the combined number* of such ballots which were returned by such voters and cast in the election....” 42 U.S.C. § 1973ff-1(c)(emphasis added).

2. Section 102(c) of UOCAVA also requires that (a) the States and local government units that administer elections (*i.e.*, the county boards of elections) make their reports to the EAC “[n]ot later than *90 days after the date of each regularly scheduled general election for Federal office*”; (b) the local government units (*i.e.*, the county boards of elections) make their reports

through the State; and (c) the States make their reports “available to the general public.” 42

U.S.C. § 1973ff-1(c)(emphasis added).

3. Therefore, under new section 102(c) of UOCAVA, the Department of State and the county boards of election are required, within 90 days after the election, to report to the EAC the combined number of absentee ballots transmitted to *all* absent uniformed services voters and overseas voters (including federal electors residing abroad) – irrespective of when those voters applied for an absentee ballot – *and* the combined number of absentee ballots returned to the county boards of elections from and cast by all absent uniformed services voters and overseas voters (including federal electors residing abroad).

4. As defined by section 107 of UOCAVA (42 U.S.C. § 1973ff-6), the voters whose absentee ballots must be counted and reported to the EAC under section 102(c) include:

- Members of the uniformed services on active duty who, by reason of such active duty, are absent from the place of residence where the member is otherwise qualified to vote.
- Members of the merchant marine who, by reason of service in the merchant reason, are absent from the place of residence where the member is otherwise qualified to vote.
- Spouses or dependents of the members described above who, by reason of the active duty or service of the member, are absent from the place of residence where the spouse or dependent is otherwise qualified to vote.
- Persons who reside outside the United States and its territories and are qualified to vote in the last place in which they were domiciled before leaving the United States.
- Persons who reside outside the United States and its territories and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States and its territories.

5. Because this EAC report is due 90 days *after* the election and will include the absentee ballots transmitted and received by county boards of elections through the deadline one week after the election for receipt of absentee ballots from military and overseas electors, the

Department of State will instruct the county boards of elections to report their numbers sometime after Election Day. **However, the Department of State wants to alert the county boards of elections to track the total number of absentee ballots transmitted and received from these voters (as defined by UOCAVA) so that they might be able and ready to make their reports to the Department for inclusion in the report to the EAC.**

NOTE: Act 18 (Voter ID) does not apply to UOCAVA voters voting by absentee ballot.

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