



Directive and Procedures for Statewide Returns and Recounts Under Section 1404(E)

Date: September 25, 2023

Directive 5 of 2023

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The following Directive is issued September 25, 2023, by the Secretary of the Commonwealth (“Secretary”) pursuant to authority contained at Sections 201 and 1404 of the Pennsylvania Election Code, 25 P.S. §§ 2621, 3154.

Background

The Secretary issues this directive to implement certain provisions of the Pennsylvania Election Code (“Election Code”) related to reporting unofficial election returns to the Department and the requirement that the Secretary determine whether a recount of returns for statewide public office or ballot question is required.¹

This Directive supersedes the Directive dated November 1, 2020, entitled *Statewide Return and Recount Directive and Procedures*.

Transmitting Returns on Election Night

By **3:00 A.M. on the day following the election**, each county board of elections must submit returns of certain elections to the Department; this includes all elections for which a candidate must file a nomination petition with the Secretary.² These returns must be submitted as prescribed by the Secretary utilizing the Department of State’s election night reporting system or such other method authorized by the Department.³

Computing and Reporting Unofficial General Returns

The county board of elections is permitted to 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.⁴ The county board of elections shall meet no earlier than the close of polls on Election Day 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.⁵ The canvass of mail-in and absentee ballots shall continue until completed. Those counties that accept funds pursuant to the Election Integrity Grant Program⁶ must begin pre-canvassing at 7 a.m. on

¹ This Directive does not address recounts under Article XVII of the Election Code, *codified at 25 P.S. § 3261, et seq.*

² Section 1402 of the Election Code, *codified at 25 P.S. § 3152.*

³ Section 1404(f) of the Election Code, *codified at 25 P.S. § 3154(f).*

⁴ Section 1308 of the Election Code, *codified at 25 P.S. § 3146.8(g)(1.1).*

⁵ *Id.*, § 3146.8(g)(2).

⁶ See 25 Pa. Stat. § 3260.1-A, *et seq.*

election day and must continue without interruption until each mail-in ballot and absentee ballot received by 7 a.m. on election day is pre-canvassed.⁷

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 and continue the same until completed.⁸

Upon the completion of the computation and canvassing (including any recount conducted under 25 P.S. § 3154(e)), the board of elections must tabulate the figures for the entire county and sign, announce and attest to the returns.⁹ 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 must be considered unofficial for five (5) days thereafter.¹⁰

No later than 5:00 P.M. on the first Tuesday following the day of the election, the county board of elections must submit to the Secretary 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 the unofficial returns for such offices and ballot questions that the county board of elections announced and signed.¹¹

The Secretary directs that these unofficial returns must be submitted by e-mail on form DSBE UR-CBE (Unofficial Returns Reporting Form) **no later than 5:00 P.M. on or before the first 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 submission must be signed by the members of the county board of elections.

The report must 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.

⁷ 25 Pa. Stat. § 3260.2-A(j).

⁸ Sections 1403 and 1404 of the Election Code, *codified at* 25 P.S. §§ 3153-3154.

⁹ Section 1404(f) of the Election Code *codified at* 25 P.S. § 3154(f).

¹⁰ *Id.*

¹¹ *Id.*

Based on assessment of the unofficial returns submitted to the Secretary 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.

Contingencies for Reporting Unofficial Returns

If a county board of elections has not completed, announced and signed its unofficial returns by 5:00 P.M. on the Tuesday following Election Day, that county board of elections still must submit those election returns that have been computed and tabulated by that date and time (“partial returns”). If submitting partial returns, a county board of elections shall inform the Secretary that the unofficial returns are not yet complete and must provide the number of potentially valid ballots that the county board of elections estimates have not been included in the reported partial returns. This must be done on the form DSBE UR-CBE prescribed by the Secretary.

If 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, 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.

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, 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. That might require that the board of elections calculate the number of outstanding ballots sent to all military electors and overseas citizens, to determine what could arrive before expiration of the new court-imposed deadline.

Recount Order by the Secretary

The Secretary will 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 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.¹²

The Secretary will not order a recount if the defeated candidate requests in writing that a recount not be made by 12:00 P.M. on the second Wednesday following the election.¹³

The Secretary will issue an order for a recount by **5:00 P.M. of the second Thursday following the day of the election, and will 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.

The recount order will be transmitted to each county via e-mail and other means deemed appropriate by the Secretary. The recount order also will be posted on the Department of State's website at www.dos.pa.gov. The Secretary will schedule the recount to start **no later than the third Wednesday following the election.**¹⁴

Any 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.¹⁵

The recount must be **completed by 12:00 Noon on the Tuesday following the third Wednesday after the election.**¹⁶

Conducting the Recount

In conducting the recount, 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.¹⁷

- All ballots containing overvotes must be counted manually.¹⁸

¹² *Id.*, § 3154(g).

¹³ *Id.*, § 3154(h).

¹⁴ *Id.*, § 3154(g)(5)(ii).

¹⁵ *Id.*, § 3154(g)(4).

¹⁶ *Id.*, § 3154(g)(5)(iii).

¹⁷ Sections 1118-A and 1404(e)(3) of the Election Code, *codified at* 25 P.S. §§ 3031.18, 3154(e)(3).

¹⁸ 25 P.S. §§ 3031.18, 3154(e)(3)(ii).

- Though not required by statute, the department strongly recommends also counting ballots with undervotes and marginal marks 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, which will require the county board to describe its recount plan. This form will be prescribed by the Secretary and distributed as necessary.

Appeals of determinations made by a county board of elections following an order for a recount by the Secretary under the provisions cited in this document must be taken to the Commonwealth Court – even after the recount ordered by the Secretary has been completed.¹⁹

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 must include the computation and tabulation of all returns that have been made by the county board of elections.

If 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.

Example

If the deadline to receive absentee ballots from military electors and overseas citizens were extended to a date after the completion of the recount, 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.

Transmitting the Recorded Results of the Recount to the Secretary

The county boards of elections must submit the results of the recount to the Secretary 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.²⁰

¹⁹ Section 1407(a) of the Election Code, *codified at* 25 P.S. § 3157(a).

²⁰ Section 1404(g)(6) of the Election Code, *codified at* 25 P.S. § 3154(g)(6).

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1.0	09/25/23	Initial Release