

Commonwealth of Pennsylvania
Department of State
August 16, 2004

SUBJECT: Procedures to Assure Compliance with
the Uniformed and Overseas Absentee Voting Act

TO: All County Election Contact Persons

FROM: Monna J. Accurti, Commissioner *Monna J. Accurti*
Bureau of Commissions, Elections and Legislation

Attached are the procedures to assure compliance with the Uniformed and Overseas Absentee Voting Act and the related provisions of the Pennsylvania Election Code. Also attached are copies of the three reports referred to in the procedures.

Attachments



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE**

**PROCEDURES TO ASSURE COMPLIANCE WITH THE UNIFORMED AND
OVERSEAS CITIZENS ABSENTEE VOTING ACT AND RELATED
PROVISIONS OF THE PENNSYLVANIA ELECTION CODE FOR THE 2004
GENERAL ELECTION**

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 the 2004 General Election to assure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973ff-1973ff-6, and section 1305 of the Pennsylvania Election Code (25 P.S. § 3146.5).

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

1. **August 2, 2004** was the deadline to file nomination papers nominating minor political party and political body candidates.
2. **August 9, 2004** was the statutory deadline for electors to make objections to nomination papers. However, the deadline for making objections to candidates who were permitted by court order to file their nomination papers after August 2, 2004, is seven days after the deadline set by the court for filing the nomination papers, unless the court should order otherwise.
3. **August 9, 2004** was the statutory deadline for candidates to withdraw as candidates named on the November 2004 ballot. However, courts will permit withdrawals after the statutory deadline except under special circumstances, such as printing of the official ballots.

4. **August 17, 2004** is the statutory deadline for Commonwealth Court to decide objections to nomination papers. 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.

5. **August 19, 2004** 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. Objections to substituted nomination certificates must be filed *within three days after the substituted nomination certificate has been filed.*

6. The candidates for President and Vice-President of the United States are nominated by the Democratic Party and Republican Party through their respective national conventions. The National committees of the political parties certify to the Secretary of the Commonwealth the official names of their candidates for President and Vice-President. The Presidential candidates have 30 days after receiving their nominations from their respective national conventions to nominate for that candidate's political party 21 candidates for Presidential Elector for the Commonwealth of Pennsylvania and to certify the names of and other information for those candidates to the Secretary of the Commonwealth. **[The last scheduled day of the Republican National Convention – and the day that the candidate for President chosen by the Republican National Convention is expected to accept the Republican Party's nomination as its candidate for President of the United States – is *September 2, 2004.* Thus, the Republican Party will not be able officially to notify the Secretary of the**

Commonwealth of the party's candidates for President and Vice-President until at least September 2, 2004.

7. *No later than August 24, 2004, 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. 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 before August 24, 2004, 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 2004 General Election ballot.*

8. Under section 984 of the Election Code, the Secretary must certify the nominees to the county boards "as soon as possible" after August 19, 2004 – the date fixed for filing substituted nomination certificates. 25 P.S. § 2944. However, because the Republican National Convention is not scheduled to nominate its candidate for President of the United States until the close of its national convention on September 2, 2004, the Secretary of the Commonwealth will not be able to certify the official list of candidates who have been nominated for the public offices to be elected in the General Election until at least September 2, 2004.

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 August 24, 2004, county boards of election must commence to deliver and mail "special write-in ballots" (as described in ¶ 5 below) to certain*

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").

2. Special write-in ballots must be delivered or sent no later than **August 24, 2004**, to qualified absentee "military electors" and qualified absentee electors living or traveling abroad who have included in their application for 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).

3. Under Pennsylvania law (25 Pa.C.S. § 1102), the term "military electors" 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.*
- 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." Therefore, those voters must be registered to vote at least 30 days before the election as required for all other electors.*

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 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 August 24, 2004, 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. During training sessions, some county elections 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. 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. *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. During training sessions, some county elections officials asked whether the law requires a county board of elections to send an official absentee ballot to a qualified absentee military elector or a qualified absentee elector living or traveling abroad to whom a special absentee ballot has already been sent. In the opinion of the Department of State, a county board of elections is *not* required by Pennsylvania law to send to a qualified absentee military elector or a qualified absentee elector living or traveling abroad an official absentee ballot after the board already has sent that elector a special absentee ballot. However, the Department believes that it is *both legally permissible and advisable* to send an official absentee ballot to a qualified absentee elector after it has sent that elector a special absentee ballot if there have been material changes made to the list of candidates or offices or ballot questions have been added since the special absentee ballot was delivered or mailed to the elector. *But, if a county board should send a second ballot to a qualified absentee elector, the board must have effective procedures in place to assure that only one ballot for each elector is canvassed and counted and include clear instructions to the elector as to the reason for the second ballot and the deadline by which the ballot must be returned to replace the special absentee ballot if the elector has already cast his vote on the special absentee ballot and sent it to the county board of elections. In addition, instructions should be clear that the elector is not obliged to return the official absentee ballot and that his special absentee ballot remains valid if he does not timely return the official absentee ballot.*

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 as 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 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 September 20, 2004*, deliver or mail to those qualified absentee military electors official absentee ballots (or, if not yet available, special write-in ballots).

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 September 20, 2004, 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). 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 training sessions, some county elections officials asked whether county boards of elections may, *before* September 20, 2004, 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 September 20, 2004. 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 should receive the same treatment.

IV. Rules Applicable to 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 that contains:

- 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 703, guaranteeing residency for military personnel. The new section provides:

§ 703. 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 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. These 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.*"

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. 25 P.S. § 3146.2(c). County officials may use the FVAP's toll-free electronic transmission service at 1-800-368-8638 for these limited purposes. Although the board may approve an application for absentee ballot that is submitted to the board by facsimile, 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). [Act 150 of 2002 added this provision to section 1302(c) of the Election Code.]

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 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, and 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 electors may receive an absentee ballot but must register to vote no later than the date and time required to vote the absentee ballot – 5:00 P.M. on the Friday before Election Day. *See* 25 Pa.C.S. § 1324(c).

V. UOCAVA

1. Because the General Election is an election that includes Federal offices, the Uniformed and Overseas Citizens Absentee Voting Act 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. 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, county boards of elections will comply with UOCAVA for all electors, *except civilian Federal electors (see following paragraph)*.

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 *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. These civilian "overseas voters" qualified to vote for Federal office under UOCAVA, but who are not qualified under Pennsylvania law to vote for State and local offices or on ballot questions, are sometimes described as "*Federal electors*."**

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-1(a)(3); 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).

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) who, by reason of active duty or service, is absent from the United States and its territories on the date of the election; or (ii) a qualified absentee elector who resides outside the United States and its territories – *who has applied for an absentee ballot at least 30 days before the election (or by October 1, 2004), and who has not received his/her absentee ballot by that date.* 42 U.S.C. § 1973ff-2.

6. The Federal write-in absentee ballot is prescribed by the Federal Voting Assistance Program (FVAP) and includes a secrecy envelope and mailing envelope for the ballot. 42 U.S.C. § 1973ff-2(a).

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

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

- If the ballot was submitted from any location in the United States or its territories.
- If the application of the overseas voter for a State absentee ballot was received by the county board of election less than 30 days before the General Election.
- If a State absentee ballot of the overseas voter is received by the county board of elections by 5:00 P.M. on the Friday before the date of the General Election.

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.

12. Under UOCAVA, an absent uniformed services voter or overseas voter may request that his/her FPCA be considered an application for an absentee ballot for each subsequent election for Federal office held in the Commonwealth of Pennsylvania through the next two regularly scheduled general elections for Federal office. *If so*

requested, the county board of elections must provide an absentee ballot to the voter for the next two regularly scheduled general elections for Federal office, 42 U.S.C. § 1973ff-3(a), unless the voter notifies the county board of elections that he no longer wishes to be registered to vote in Pennsylvania, or the Commonwealth or the county board of elections determines that the voter has registered in another State. 42 U.S.C. § 1973ff-3(b).

VI. Delivery of 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. 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.

VII. Return of Absentee Ballots

1. Like all qualified absentee electors (except those who are disabled), qualified absentee military electors and qualified absentee electors living or traveling abroad must deliver their absentee ballots to the county board of elections by 5:00 P.M. on the Friday before Election Day, either in person or through the U.S. Mail service, including Air Mail service. 25 P.S. § 3146.6(a); *In Re: Canvass of Absentee Ballots of November 4, 2003 General Election*, 843 A.2d 1223 (Pa. 2004).

2. As with *all* qualified absentee electors, any absentee ballot received after 5:00 P.M. on the Friday before Election Day but before 8:00 P.M. on Election Day must be counted for the office of Presidential Elector *only*. 42 U.S.C. § 1973aa-1(d). *An absentee ballot received by the county board of elections after 5:00 P.M. on the Friday before the election may not be counted for any other office (including U.S. Senate and U.S., Representative) or ballot questions.*

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

To assure Pennsylvania's compliance with UOCAVA and Pennsylvania laws relating to the early and timely delivery of absentee ballots to those electors who are specially protected by UOCAVA and related Pennsylvania law, the Department of State – acting under section 201(e) of the Pennsylvania Election Code (25 P.S. § 2621(e)) – will require each county board of elections to make the following reports to the Department's Bureau of Commissions, Elections and Legislation (BCEL):

- No later than **Tuesday, August 31, 2004**, each county shall file with BCEL – by means that assure its receipt by BCEL on August 31 – a report (a) describing the

number of absentee ballot applications received from “military electors” and qualified absentee electors living or traveling abroad (including Federal electors residing abroad) by the county board of elections on or before August 24, 2004; (b) describing the number of such absentee ballot applications that have been approved by the county board of elections; (c) the certification of the county board of elections or its representative that, no later than August 24, 2004, it had delivered or mailed special write-in absentee ballots or other appropriate special absentee ballots to *all* qualified absentee military electors and qualified absentee electors living or traveling abroad whose applications had been approved by that date and who had included in their application for 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; and (d) the certification and assurance of the county board of elections or its representative that it has and will continue to process promptly such applications for absentee ballots that it should receive or approve after August 24, 2004, and deliver or mail official absentee ballots, special write-in absentee ballots or other appropriate special absentee ballots within 48 hours after the application for absentee ballot has been approved. *The county board of elections shall immediately report to the Department of State any deviation from the deadlines prescribed by Pennsylvania law and work with the Department of State to remedy any deviation promptly.*

- **No later than Monday, September 27, 2004, each county shall file with BCEL – by means that assure its receipt by BCEL on September 27 – a report (a) describing the number of absentee ballot application received from or approved for “military electors” and absentee electors living or traveling abroad (including Federal electors residing abroad) by the county board of elections after August 24, 2004, and on or before September 20, 2004; (b) describing the number of such absentee ballot applications that have been approved by the county board of elections by September 20; (c) the certification of the county board of elections or its representative that, no later than September 20, 2004, it had delivered or mailed official absentee ballots, special write-in absentee ballots or other appropriate special absentee ballots to *all* qualified absentee military electors and qualified absentee electors living or traveling abroad whose applications had been approved by that date; and (d) the certification and assurance of the county board of elections or its representative that it has and will continue to process promptly such applications for absentee ballots that it should receive after September 20, 2004, and deliver or mail official absentee ballots, special write-in absentee ballots or other appropriate special absentee ballots within 48 hours after the application for absentee ballot has been approved. *The county board of elections shall immediately report to the Department of State any deviation from the deadlines prescribed by Pennsylvania law and work with the Department of State to remedy any deviation promptly.***
- **No later than Monday, October 11, 2004, each county shall file with BCEL – by means that assure its receipt by BCEL on October 11 – a report (a) describing**

the number of absentee ballot application *received* from “military electors” and qualified absentee electors living or traveling abroad (including Federal electors residing abroad) by the county board of elections on or before October 1, 2004; (b) describing the number of such absentee ballot applications that have been approved by the county board of elections; (c) the certification of the county board of elections or its representative that it had, within 48 hours of their approval, delivered or mailed official absentee ballots, special write-in absentee ballots or other appropriate special absentee ballots to *all* qualified absentee military electors and qualified absentee electors living or traveling abroad whose applications were received on or before October 1, 2004; and (d) the certification and assurance of the county board of elections or its representative that it has and will continue to process promptly such applications for absentee ballots that it had received by October 1, 2004, and those that it should receive after October 1, 2004, and deliver or mail official absentee ballots, special write-in absentee ballots or other appropriate special absentee ballots **within 48 hours after the application for absentee ballot has been approved.** *The county board of elections shall immediately report to the Department of State any deviation from the deadlines prescribed by Pennsylvania law and work with the Department of State to remedy any deviation promptly.*

IX. 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 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. The new 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 Election Day, 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.**