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DIRECTIVE 2016-03

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To: All County Boards of Elections
Directors, Deputy Directors and Board Members

Re: Absentee Ballots

BACKGROUND

Ohio is one of only 12 jurisdictions that allow for receipt of a voted absentee ballot after the polls close on Election Day, and not all of these states allow for the ballot to be received as late as the 10th day following the election. Ohio, once again, is a leader in ballot access when it comes to returning absentee ballots by mail.

The postmarking requirement for absentee ballots reaching the board of elections office after Election Day has been in place for nearly a decade and has proven to be successful time and time again. However, following the 2015 General Election, several media reports highlighted the number of absentee ballots that were unable to be counted under state law because the ballot was received after Election Day and did not have either a valid postmark dated by the Monday before Election Day, or in some cases, any postmark at all. The Secretary of State's Office engaged the U.S. Postal Service (USPS) for insight on what, if anything, USPS could do to solve the problem from a USPS-operations perspective. Additionally, my Office has been working to identify other possible actions that local election officials can take from an administrative standpoint.

Two points are clear on the operational side: 1) USPS expected levels of service for point-to-point delivery of First-Class Mail is 2 to 5 days, and 2) under ordinary circumstances, First-Class Mail in machineable letter-size envelopes are postmarked in an automated process versus flat-size envelopes, which generally receive a lower percentage of postmarks.

The conclusion of our conversations is that no single operational or administrative action provides a complete remedy to the situation; however, we *can* implement several administrative practices in order to increase the operational likelihood that ballots received after Election Day, if otherwise valid, can be included in the official canvass of the election.

INSTRUCTIONS

1. For all elections in 2016, the Secretary of State's Office will provide copies of the attached printed notice that each board of elections must include with every absentee ballot (except those issued and cast in person). In lieu of using the pre-printed notice provided by the Secretary of State's Office, a board of elections may print the SOS-prescribed notice in the provided format on other instructional material that the board already inserts into its absentee ballot packets.
2. Beginning with the 2016 Presidential General Election, all boards of elections must redesign their courtesy reply envelopes to contain both the official USPS Election Mail logo and the unique Intelligent Mail barcode (IMb) associated with the delivery point where the board receives its mail. (Note that the delivery point IMb for your board office will be different from your mailing address if you use a post office box or caller box). Use of the IMb is recommended by USPS to increase the electronic visibility of the absentee ballot in the mail stream to assist in the proper processing and timely delivery of voted absentee ballots.

To facilitate the proper placement of these elements on the envelope and to ensure their accuracy, each board of elections must obtain from a USPS business mail design analyst the proper camera-ready art for the board to provide to its envelope vendor. This must be completed no later than July 1, 2016.

3. USPS highly recommends that all county boards of elections use letter-size courtesy reply envelopes.¹ As noted above, use of this envelope size will increase the operational likelihood that the ballot receives a postmark. However, even letter-size envelopes could be treated as flats depending on the weight of the absentee ballot return envelope, which includes the ballot sheets enclosed in an identification envelope. We cannot know how many sheets will be necessary to accommodate ballot length from one election to the next. The use of letter-size envelopes (depending on ballot length) will increase the likelihood of postmarking in most counties for most elections. Boards of elections not already using letter-size courtesy reply envelopes must carefully consider whether continuation of this practice for the presidential general election is in the best interest of its county's voters given the recommendation from USPS.
4. USPS recommends that boards of elections contact and leverage available Postal resources that support election mail coordination, mailpiece design, mailing preparation and entry activities and coordinating mailpiece delivery and pickup.

¹ This recommendation does not contemplate the use of #10 business envelopes. In fact, [USPS regulations](#) allow a letter size envelope to be up to 6 $\frac{1}{8}$ inches in height, 11 $\frac{1}{2}$ inches wide, and $\frac{1}{4}$ inch thick. This maximum size is substantially larger than a #10 business envelope.

For assistance with mailpiece design, contact a Mailpiece Design Analyst (MDA) by calling the MDA Support Center at (855) 593-6093 (hours of operation are Monday – Friday, 7 am-5 pm CT) or by sending your request by e-mail to mda@usps.gov. Please contact and develop a relationship with [your local Election Mail Coordinator](#).

5. USPS recommends that all trays and sacks with mailings of ballot materials affix [Tag 191, Domestic and International Ballots](#). This bright green tag provides a high degree of visibility on ballot mail as it enters Postal processing centers. These tags are available by contacting an USPS Election Mail Coordinator (see above).
6. Boards of elections must use First-Class Mail postage rather than standard or non-profit postage rates when paying for the delivery of outbound absentee ballots. Use of USPS-approved practices to maximize postage discounts for First-Class Mail (e.g., presort First-Class Mail) are encouraged.

Remember, USPS requires that the balloting materials for all types of absentee ballots, whether disseminated in hardcopy or electronically, must indicate in a prominent location the proper amount of First-Class Mail postage that must be paid. This information must be included in the balloting materials (i.e., on the ballot instructions, mailing instructions, or the envelope) with the marking “First-Class Mail postage must be applied.”

Alternatively, the marking “Apply First-Class Mail postage here” may be printed in the upper-right corner of the address side of the envelope used by the voter to return the ballot to election officials. USPS will also accept approved variations of the above markings. Additionally, balloting materials must indicate, in a prominent location, the specific amount of First-Class Mail postage required for the return of the ballot to election officials. The marking requirements will not apply to balloting materials that are qualified under the special exemptions specified by USPS.²

7. Postage Evidencing – The term “postage evidencing system,” as used in [R.C. 3509.05\(B\)\(2\)](#), refers to postage meters or private companies that dispense postage through the internet (e.g., Stamps.com), known as the PC Postage program.³ As such, absentee ballots bearing postage affixed by a postage meter or through a PC Postage company cannot be accepted after Election Day, even if postmarked by the day before Election Day.

All other forms of postage are acceptable for post-election receipt by the board of elections, including postage labels obtained at a USPS customer service window or from a USPS Self-Service Kiosk.

² [USPS Domestic Mail Manual 703.8.1.2](#). See also, <https://www.usps.com/election-mail/dmm-sheet-election-mail-kit.rtf>.

³ See, [39 CFR 501.01](#).

Furthermore, please note that postage labels (i.e., Postage Validation Imprint, or “PVI”) obtained at a USPS customer service window or through a Self-Service Kiosk meet the USPS definition of a “postmark,” meaning no other forms of postmarking are necessary. Receiving a postmark through the retail window PVI or the Self-Service Kiosk postage label are the USPS-preferred methods for ensuring that postmarking occurs on ballots being mailed within a week of Election Day.

8. Often when USPS processes mail, an ID Tag, in the form of a fluorescent bar code, is printed by USPS on the back of the envelope or flat. While the data contained in the ID Tag bar code is largely informational for USPS operations, it contains a date/timestamp. The ID Tag is not considered a postmark by USPS.⁴ However, it is common sense to use whatever date/time information is provided by USPS on the physical envelope to qualify for counting any otherwise valid absentee ballot.

Therefore, for purposes of R.C. 3509.05(B) only, whenever an official USPS postmark is not present or is not legible, but a readable ID Tag is printed on the envelope, the board of elections must obtain a bar code reader to decode the ID Tag on the envelope. In these instances, if the date/timestamp contained in the ID Tag is no later than the day before Election Day (and the exceptions of R.C. 3509.05(B)(2) regarding postage evidencing systems are not present), the board shall proceed with determining whether or not the absentee ballot is otherwise eligible using the ID Tag as a proxy for a postmark.

Boards of elections should contact the Cuyahoga County Board of Elections for information on purchasing a scanner similar to the one it has examined. In addition, the Secretary of State’s Office will purchase up to 10 scanners that will be assigned to regional liaisons to support boards of elections on a scheduled basis.

If you have any questions regarding this Directive, please contact the Secretary of State’s elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted

⁴ https://about.usps.com/handbooks/po408/ch1_003.htm.