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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

ELECT 3-2022

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

01/14/2022 11:00 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adopts administrative rule related to postal indicators and ballots received by mail.

EFFECTIVE DATE: 01/15/2022

AGENCY APPROVED DATE: 01/13/2022

CONTACT: Bob Roberts
503-986-1518
elections.sos@sos.oregon.gov

255 Capitol Street NE
Suite 501
Salem, OR 97310

Filed By:
Bob Roberts
Rules Coordinator

ADOPT: 165-007-0045

RULE TITLE: Counting Ballots Received by Mail

NOTICE FILED DATE: 11/15/2021

RULE SUMMARY: The purpose of this rule is to implement the legislative mandates found in HB 3291 (2021). The rule outlines the process county elections officials must follow when evaluating postal indicators and counting ballots received by mail.

RULE TEXT:

- (1) The purpose of this rule is to establish the procedures elections officials must comply with when counting ballots sent by mail.
- (2) For purposes of this rule, these terms are defined as follows:
 - (a) "USPS" is the United States Postal Service.
 - (b) "Postmark" or "postal indicator" is any official mark, imprint, or stamp that verifies when a ballot was accepted by the United States Postal Service. A postmark or postal indicator on a ballot return envelope is the official date of mailing when determining whether to count the ballot. A "postmark" or "postal indicator" includes a hand cancellation by an agent of the USPS.
 - (c) "Valid ballot" is a ballot that is eligible to be counted under the laws of this state, pending verification of its timely receipt by elections officials.
 - (d) "Election Day Deadline" is 8 p.m. on the day of a statewide general, primary, or special election, including all special district elections. Electors who have begun the act of voting at 8 p.m. at an official ballot drop site on election day have met the Election Day Deadline and shall be allowed to complete their vote. ORS 254.470 (10), together with all related rules, defines whether an elector has begun the act of voting.
- (3) Elections officials shall count a valid ballot received by the Election Day Deadline without evaluating any postmark.
- (4) Elections officials shall count valid ballots received after the Election Day Deadline if:
 - (a) Elections officials receive the ballot from the United States Postal Service;
 - (b) Elections officials receive the ballot no later than seven calendar days after the Election Day Deadline; and
 - (c) The ballot was postmarked no later than election day.
- (5) If a ballot return envelope contains more than one postmark, the earlier postmark is the official date of mailing for

purposes of counting ballots sent by mail.

(6) If a postmark does not appear to be present or legible:

(a) Elections officials may use available USPS tools to clarify whether any postmark is present or legible.

(b) If elections officials are able to verify the date of mailing through available USPS tools, then the postmark shall be considered to be present and/or legible, and the verified date is the date of the postmark.

(c) If elections officials are not able to verify the date of mailing through available USPS tools, then elections officials shall accept a signed declaration on the ballot return envelope as evidence of the date of mailing. Based on that evidence, the elections official shall accept and count the valid ballots.

(d) Elections officials shall handle ballots challenged due to failure to sign the ballot return envelope or due to a nonmatching signature as required by ORS 254.431. Elections officials shall complete the process described in ORS 254.431 before determining whether to accept the ballot.

(e) Ballot return envelopes received after the Election Day Deadline that do not contain a signature are not valid ballots and shall not be counted.

STATUTORY/OTHER AUTHORITY: ORS 247.005, ORS 246.110, ORS 254.470

STATUTES/OTHER IMPLEMENTED: ORS 254.470, HB 3291 (2021)