

STATE BOARD OF ELECTIONS

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Memorandum

To: State Board Members
From: Nikki Trella
Date: October 5, 2009
Re: Proposed Regulations

Attached are proposed changes to various subtitles in Title 33 of the Code of Maryland Regulations. These chapters were reviewed as part of the agency's regulation review process and are the fourth (of five) set of chapters to be reviewed. For each chapter with a proposed substantive change, I have summarized the proposed changes and, where appropriate, the reason for the proposed change.

Subtitle 06 Petitions

Chapter 02 Information Page – The proposed changes: (1) remove the requirement that a petition's information page contain certain individuals' residence addresses and instead require only the individuals' cities and states of residence; and (2) remove the requirement that a summary approved by the Attorney General be included on the information page for a referendum petition because the summary is optional, not required, under the law.

Chapter 03 Signature Pages – The proposed changes clarify the information that can be printed on the reverse side of the signature page and incorporate the Court of Appeals' decision in *Doe v. Montgomery County Board of Elections* on what constitutes a valid signature on a petition.

Chapter 04 Filing Procedures – The proposed changes bring the regulation into compliance with current practice (all filings must be made in person).

Subtitle 07 Election Day Activities

Chapter 02 Election Equipment and Materials – The proposed changes require the State Administrator to work with the local boards to develop a written plan for the deliver to and return of supplies from the polling places. Current regulations require the local boards to have a plan for the delivery of supplies to the polling place, but there is currently no requirement for a written plan for the return of supplies from the polling places. Representatives of the Maryland Association of Election Officials suggested that the State Administrator and the local boards jointly develop this plan, rather than have the local boards develop plans individually. Additionally, the proposed changes authorize individuals other than election judges to assist with the set-up of the polling places. Some local boards use civic organizations or county employees to help with setting up

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polling places, and this proposed change would clarify that individuals are able to provide this assistance.

Chapter 03 Officials' Duties Generally – The proposed changes permit the State Administrator to request a local board's election day communication log, clarify that board counsel shall be present or available for **all** canvasses, require the local boards to use the State's polling place evaluation form, and require the local boards to designate an area for the public to observe the return of election supplies from the polling places. We have previously advised the local boards that they need to provide an area for the public to observe this activity, and this proposed change codifies this advice.

Chapter 04 – Order and Decorum – The proposed changes clarify to whom media organizations should provide a list of polling places they intend to visit (current regulations request that media organizations provide a list but do not specify to whom the list should be provided) and expand the list of electronic communication devices that are prohibited in the polling places. To accommodate technological advances, the proposed changes generally ban all electronic communication devices and list a few examples of prohibited devices.

Chapter 05 – Special Assistance – The current regulation only permits the use of an "X" as a signature or an election judge executing an endorsement for a voter on a voter authority card and only authorizes the check-in election judge to execute this endorsement. The proposed changes expand the list of documents to *any* form used at a polling place and authorize *any* election judge assisting the voter to execute this endorsement. Additionally, the proposed changes update language to reflect the use of both paper ballots and touchscreen voting units at the polling place, expand the list of individuals who are prohibited from providing assistance to include individuals who have been appointed as a challenger or watcher for the specific election¹, and update terms and procedures that are defined in the election judges' manual.

Chapter 07 – Challenging Voters – The proposed changes: (1) specify that a challenger must have a "reasonable basis" for asserting that the individual seeking to vote is not the registered voter that the individual claims to be; and (2) bring the regulation into compliance with § 10-312 of the Election Law Article.

Chapter 08 – Electioneering; Exit Polling – The proposed changes amend the name of a regulation to reflect the content of the regulation and clarify to whom exit polling organizations should provide a list of polling places they intend to cover (current regulations request that exit polling organizations provide a list but do not specify to whom the list should be provided).

Subtitle 08 Canvassing

Chapter 01 – Definitions; General Provisions – The following changes are being proposed:

1. Remove references to election night central count canvasses because the State no longer uses voting systems that require an election night central count canvass;
2. Clarify that the local boards announce the time for opening and closing each working session and the time and duration of any breaks;
3. Replace a specific regulation reference to selecting precincts for verification with a more generic reference to accommodate expected regulations for the new voting system;

¹ Challengers and watchers are prohibited under § 10-311(d)(iii) from assisting an voter in voting. As a result, it is appropriate to include in the list of individuals who cannot provide assistance challengers and watchers.

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4. Remove reference to documents no longer used and update terms to reflect the use of electronic pollbooks; and
5. To bring the regulation into compliance with long-term practice that the State Administrator gives notice that the voting system may be released.

Chapter 02 – Uniform Definition of a Vote – Current regulations do not address whether a write-in vote of only a candidate's first name or only the candidate's initials is a valid write-in vote. The proposed change addresses this situation and specifies that a first name or initials is a valid write-in vote if there is only one filed write-in candidate for that office with the same first name or initials. If there is more than one filed write-in candidate for that office with the same first name or initials, the write-in vote is not valid.

Chapter 03 – Canvass Control and Safeguards – The proposed changes remove outdated terms and expands the specific list of documents that can be inspected but not touched.

Chapter 04 – Central Count Procedures – The proposed changes remove a reference to a voting system no longer used in Maryland, clarify when this chapter applies and when ballots should be assembled with other ballots from the same precinct, and update the standard for counting a write-in vote to comply with Chapter 02 – Uniform Definition of a Vote, a requirement of the federal Help America Vote Act.

I intend to present these proposed changes at this month's board meeting. If you have any questions about these proposed changes before the board meeting, please do not hesitate to contact me. I will, of course, be available at the board meeting to answer any questions.

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Memorandum

To: State Board Members
From: Nikki Trella
Date: October 19, 2009
Re: Proposed Regulations – Early Voting

As you may recall, the Board previously created a new subtitle (Subtitle 17) in Title 33 for early voting, and over the next couple of months, we will be proposing new regulations for adoption in this subtitle. Attached are proposed regulations for Subtitle 17 that I intend to present at the next board meeting. For each chapter, I have summarized the proposed regulation and, where appropriate, an explanation.

Chapter 03 Public Notice of Early Voting – This chapter incorporates the public education components in § 10-301.1(f) and is similar structurally to the public education plan required by COMAR 33.09.06.04 for a new voting system. Generally, the State Administrator develops a plan that includes language to include on websites, in specimen ballots, brochures or information materials, and public service announcements, and the local boards of elections are required to implement the plan. Each election director is required to submit, on request, a written report to the State Administrator on the implementation of the plan and, starting three months before each voting period, provide at each local board meeting a report on the plan's status.

Chapter 04 Early Voting Center Equipment and Set-Up – This chapter defines the requirements to prepare for early voting and the types and quantities of equipment needed at each early voting center. Specifically, each early voting center must have a broadband network connection that is used only for early voting and meets the requirements set by the State Administrator, and each network connection must be tested according to the protocol issued by the State Administrator. The number of touchscreen voting units, optical scan voting units, electronic pollbooks, ballot printers, and other equipment (*i.e.*, booths, transfer cases) are specified in Regulation .03. Regulations .04 and .05 track existing regulations in COMAR 33.07.02, with changes only to reflect early voting.

Chapter 05 Election Judges – This chapter defines the role of local board employees or board members during early voting and specifies the number of election judges in each early voting center and training requirements. Regulation .01 limits the ability of a local board employee who is serving as an election judge to perform any other duties during the time s/he is serving as an election judge and requires the presence of a local board employee or board members for the opening and closing of each day of early voting. Regulation .02 defines the number of election judges for each early voting center, and Regulation .03 generally tracks the material and training requirements of COMAR 33.02.03. The local boards will be required under this regulation to conduct separate training classes for election judges serving during early voting.

If you have any questions about these proposed changes before the board meeting, please do not hesitate to contact me. I will, of course, be available at the board meeting to answer any questions.

