

## STATE BOARD OF ELECTIONS

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## Memorandum

**To:** State Board Members  
**From:** Nikki Trella  
**Date:** May 18, 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 third (of five) set of chapters to be reviewed. For each chapter with a proposed change, I have summarized the proposed change and, where appropriate, the reason for the proposed change.

### Subtitle 13 Campaign Finance

*Chapter 01 Definitions* – The proposed changes add the definition of outstanding obligations and electronic signature. These terms are used in proposed text in Chapters 02 and 05, respectively.

*Chapter 02 Campaign Finance Report* – As the Affidavit of Non-Participation is no longer used, the proposed changes rename this chapter and specify the contents of the campaign finance report and how contributions from different contributors can be aggregated and reported as a lump sum. Specifically, the report must include information on contributions received, expenditures made, and outstanding obligations.

*Chapter 03 Electronic Filing of Reports* – The proposed changes correct an incorrect statutory reference and create an exemption from the electronic filing requirements for certain political committees.

*Chapter 04 Affidavit of Limited Contributions and Expenditures* – The proposed changes create a new chapter in Subtitle 13 to define the contents of and filing requirements for the Affidavit of Limited Contributions and Expenditures. This affidavit may be filed by certain campaign finance entities in lieu of a scheduled campaign finance report.

*Chapter 05 Electronic Signature Requirements* – The proposed changes create a new chapter in Subtitle 13 to define when a filer must include an electronic signature when filing certain forms electronically and what constitutes an electronic signature.

### Subtitle 15 Precincts, Polling Places, and Facilities

*Chapter 01 Maps, Descriptions, and Directories* – The proposed changes clarify that a local board can arrange for another entity to prepare maps, update terms to reflect the statewide voter registration system, and alter the requirement for a local board to provide SBE with certain maps and directories.

*Chapter 02 – New or Changed Precincts* – The proposed changes alter how the local board must notify SBE after a new precinct has been created or existing precinct boundaries have been changed, permit a local board to combine precincts for a special election, and require a local board to mail a specimen ballot if a local board combines polling places for a special election.

*Chapter 03 – Polling Places* – The proposed changes clarify that a local board shall mail a notice of a changed polling place before the next election, use “people first” language when referring to voters with disabilities, and clarify that a reassignment to another polling place can only be made if the voter’s original polling place and newly assigned polling place have the same ballot style.

*Chapter 04 – Storage Facilities* – The proposed changes remove warehousing requirements for a voting system vendor who stores voting equipment on behalf of a local board (vendors do not store voting equipment on behalf of the local boards) and adds new requirements for warehousing space used by local boards to store voting equipment.

### Subtitle 16 Provisional Voting

SBE’s former Assistant Attorney General previously advised that the *Guidelines for the Administration of Provisional Voting* should be adopted as regulations (i.e., be subject to public comment and publication in the *Maryland Register*). As a result, the current *Guidelines* have been incorporated into the proposed changes to Subtitle 16, and the subtitle has been reorganized to accommodate this new information. Accompanying this memo is a table showing where the current provisions of the *Guidelines* and current regulations are now located in the proposed regulations.

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

1. Terms currently defined in the *Guidelines* that continue to be relevant have been added;
2. The reference to the *Guidelines* (called “procedures”) has been removed as the guidelines have been incorporated into this subtitle and will no longer exist as a separate document;
3. Added definition of “regular ballot”; and
4. While amending the previously adopted guidelines was a relatively quick process (present to board members for adoption), the regulation process takes more time. As a result, the process of reviewing the regulations needs to be moved back so that any changes to this subtitle occur well before an election and before election judges’ training begins.

#### *Chapter 02 – Provisional Voting Documents*

This chapter defines the various documents needed for provisional voting. These documents include the provisional ballot application, the special provisional ballot application for extended hours voting, and provisional ballots. The proposed regulations incorporate current regulations in this chapter and Chapter 03 and relevant provisions from the *Guidelines*. The only provisions that are not currently in regulations or the *Guidelines* are the requirements that: (1) the State Administrator provide the local boards with instructions for election judges during extended voting hours (33.16.02.02C); and (2) the local board is required to provide special provisional ballot applications

in an amount at least equal to the quantities specified by the State Administrator (33.16.02.02D). Both of these requirements currently exist in other documents but are now incorporated here.

#### *Chapter 03 – Issuance of Provisional Ballot*

This chapter defines when a provisional ballot must be issued and the duties of election judges with respect to provisional voting. The proposed regulations incorporate the relevant provisions from the *Guidelines*. The only provisions that are not currently in the *Guidelines* are permitting an election director to issue provisional ballots if there is an administrative or technical issue causing delays at the polling place (e.g., as part of the local board's line alleviation strategy) (33.16.03.01) and some of the responsibilities of the election judges (33.16.03.03), which are currently included in the election judges' manual and training materials.

#### *Chapter 04 – Pre-Canvass Procedures*

This chapter establishes the process of reviewing each provisional ballot application before the provisional ballot canvass and how the verification and identification requirements and a challenge to a voter's identity are resolved. The proposed regulations incorporate current regulations from Chapter 03 and relevant provisions from the *Guidelines*. The only provision that is not currently in regulation or the *Guidelines* is the proposed regulation establishing the process for resolving a challenge to a voter's identity (33.06.04.02D). There are no procedures that currently outline the process for resolving a challenge to a voter's identity, and it seemed appropriate to include this process here.

#### *Chapter 05 – Canvass of Ballots – Procedures*

This chapter defines the general process for conducting the provisional canvass, including when a provisional ballot application shall be accepted. The proposed regulations incorporate current regulations from this chapter and relevant provisions from the *Guidelines*. Current 33.16.04.02 (Board Responsibilities) has been deleted from this chapter, because it is currently included in the chapter that deals with all canvasses (Chapter 08 Canvassing). Regulation .04 (Board Counsel) was moved to Chapter 08 Canvassing, since it also is a requirement for all canvasses, not just the provisional canvass.

The only substantive change in the proposed regulations is the date change for the provisional canvass. Current regulations require that the provisional canvass begin at 10:00 a.m. on the first Monday after the election; the proposed regulations require that the provisional canvass begin at 10:00 a.m. on the second Wednesday after the election. The change in the date was suggested by a local board, and after surveying the local boards about moving the start date, the vast majority of local boards that responded to the survey (21) favored moving the date to the second Wednesday. (One local board opposed changing the date, and another suggested moving the date to the first Tuesday.)

#### *Chapter 06 Canvass of Ballots – Rejecting Ballots*

This chapter establishes when a provisional ballot shall be rejected and how to determine voter intent when either a ballot is not voted in accordance with the instructions or a vote on a specific contest is not clear. The proposed regulations incorporate current regulations from this chapter and delete regulations that do not relate to rejecting provisional ballots (33.16.06.07 (Free Access System) and 33.16.06.08 (Administrative Complaint Procedure)). The only substantive change is the change in 33.16.06.02B. Under federal law, each state is required to adopt a uniform definition of a vote. We have complied with this requirement, and Maryland's uniform definition of a vote is established in 33.08.02. The proposed change in 33.16.06.02B references the COMAR provision that establishes

the uniform definition. This provision should have been amended when the uniform definition was adopted.

*Chapter 07 Post-Election Procedures*

This chapter establishes procedures that take place after the election, including storing ballots, correspondence to certain voters, the free access system for voters to verify whether their provisional ballot application was accepted or rejected, and the availability of the administrative complaint process. The proposed regulations incorporate current regulations from Chapter 06 and relevant provisions from the *Guidelines*.

Other Subtitles

Because of the reorganization of Subtitle 16, certain provisions of the *Guidelines* are being proposed in 33.07 Election Day Activities and 33.08 Canvassing. These provisions include how an order extending voting hours is communicated to the local boards and the election judges (33.07.03.05), how notice of canvasses must be given (33.08.01.07), and how ballots must be stored (33.08.01.10).

I intend to present these proposed changes at this month's board meeting. If you have any questions before the meeting, please contact me. I will, of course, be available at the board meeting to answer any questions.