

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/28/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 11/13/2015

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
33	08	01	02, .05, .08
33	08	02	02
33	08	04	03, .04, .07, .08
33	08	05	04, .05, .06, .07

3. Name of Promulgating Authority

State Board of Elections

4. Name of Regulations Coordinator
Erin Perrone

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410-269-2845

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151 West Street

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5. Name of Person to Call About this Document
Nikki Charlson

Telephone No.
410-269-2843

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6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: 09/01/2015.
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:
:
Md. R
(vol.) (issue) (page nos) (date)
Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Jeffrey Darsie, Assistant Attorney General, (telephone #410-576-6356) on 09/15/2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Linda H. Lamone

Title

Telephone No.

Date

09/24/2015

**Title 33
STATE BOARD OF ELECTIONS**

Subtitle 08 CANVASSING

33.08.01 Definitions; General Provisions

Subtitle 08 CANVASSING

33.08.02 Uniform Definition of a Vote

Subtitle 08 CANVASSING

33.08.04 Central Count Procedures

Subtitle 08 CANVASSING

33.08.05 Post Election Verification and Audit

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland [42 U.S.C. §15481(a)(6)] 52 U.S.C. § 21081

Notice of Proposed Action

□

The State Board of Elections proposes to amend Regulations .02, .05, and .08 under COMAR 33.08.01 Definitions; General Provisions; amend Regulation .02 under COMAR 33.08.02 Uniform Definition of a Voter; amend Regulations .03, .04, .07, and .08 under COMAR 33.08.04 Central Count Procedures; amend Regulations .04, .05, .06, and .07 under COMAR 33.08.05 Post Election Verification and Audit.

This action was considered by the State Board of Elections at its September 24, 2015 meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to clarify and establish specific procedures during canvassing and post election verifications and audits.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Erin Perrone, Administrative Assistant, State Board of Elections, PO Box 6486, Annapolis, MD 21401, or call 410-269-2845, or email to erin.perrone@maryland.gov, or fax to 410-974-2019. Comments will be accepted through 12/13/15. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 16

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No funds are necessary to implement these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

These regulations are technical and administrative in nature.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

These regulations do no impact small business because they are technical and administrative in nature.

G. Small Business Worksheet:

Title 33 STATE BOARD OF ELECTIONS

Subtitle 08 CANVASSING

Chapter 01 Definitions; General Provisions

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 11-201, and [11-201], 11-301 Annotated Code of Maryland

.02-1 Board Counsel.

A. (text unchanged)

B. Presence During Decision Sessions.

(1) During each canvass, the local board's counsel shall be present at any time the local board is deciding questions or otherwise making decisions on the legality or acceptability of a vote on [an absentee or provisional] *any* ballot, an absentee ballot, provisional ballot application, or provisional ballot.

(2) (text unchanged)

C. (text unchanged)

.05 Stages of [Canvass] Vote Count.

A. Election Night—Precinct Count. [If a precinct tabulator is used, the] *The* precinct count shall be conducted as provided in COMAR 33.10.

B. (text unchanged)

.08 Challenges.

A. In General.

(1) [Challenges relating to the canvass may be brought before the board at any point during the canvass.] *An individual who wishes to bring a challenge regarding an action of the local board on an absentee ballot or provisional ballot application shall make the challenge at the time the ballot or application is presented for acceptance or rejection.*

(2) *A challenge is waived if the challenge is not made pursuant to § A(1) of this regulation.*

B. (text unchanged)

Title 33 STATE BOARD OF ELECTIONS

Subtitle 08 CANVASSING

Chapter 02 Uniform Definition of a Vote

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland [42 U.S.C. §15481(a)(6)] 52 U.S.C. § 21081

.02 Definition of a Vote—Optical Scan Voting System.

A. Automatic Tabulation. If ballots are tabulated electronically, a vote cast on an optical scan voting system is the choice made by a voter by:

(1) Filling in the oval next to the candidate's name or the question choice; [or]

(2) *Using a ballot marking device to make selections; or*

[(2)] (3) Writing in the name of a candidate in the designated write-in space and filling in the oval next to the write-in candidate's name.

B. Manual Tabulation. If ballots are tabulated manually, the following marks constitute a vote for a candidate or question choice on an optical scan voting system:

(1) – (3) (text unchanged)

(4) *The name or question choice is printed on a ballot marked by a ballot marking device;*

[(4)] (5) – [(7)] (8) (text unchanged)

C. – D. (text unchanged)

Title 33 STATE BOARD OF ELECTIONS

Subtitle 08 CANVASSING

Chapter 04 Central Count Procedures

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 11-201, Annotated Code of Maryland

[.03 Ballot Box Inspection.

A. Reception Team to Receive. The sealed ballot boxes from the polling places shall be received by a reception team.

B. Inspection and Certification.

(1) The reception team shall:

- (a) Inspect each ballot box and its seal or lock; and
- (b) Prepare and sign a certification of the box's condition.

(2) The certification for each box shall include:

- (a) The precinct number;
- (b) The seal number, if a numbered seal is used;
- (c) The condition of seal or lock; and
- (d) Any defects observed.

C. Marking. Each ballot box shall be marked as having been inspected before it is delivered to a ballot inspection team.]

[.04 Ballot Inspection.

For the ballots of each precinct, a ballot inspection team shall:

- A. Unlock or unseal each ballot box;
- B. Remove all ballots found there;
- C. If there is more than one ballot box for a precinct, assemble them with other ballots from the same precinct; and
- D. Visually review all of the ballots for tabulating acceptability.]

.07 Write-In Votes.

A. In General.

(1) The report of votes cast[, as produced by the system's automatic tabulating equipment,] *from the certified voting system* shall indicate the number of marks in write-in positions for each contest.

(2) (text unchanged)

B. – C. (text unchanged)

.08 Over-Votes.

An over-vote in a contest does not invalidate the rest of the ballot, but only the votes cast in that contest. All other votes correctly cast on the ballot [are] *shall be* counted.

Title 33 STATE BOARD OF ELECTIONS

Subtitle 08 CANVASSING

Chapter 05 Post Election Verification and Audit

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-403, and 11-201, Annotated Code of Maryland

.04 Selection of Precincts.

A. After 8 p.m. on election day, each local board shall randomly select for post-election verification and auditing, the greater of:

- (1) Three precincts with at least 300 registered voters; or
- (2) (text unchanged)

B. – D. (text unchanged)

.05 Post-Election Verification.

A. Touchscreen Voting Unit. For each precinct selected under Regulation [.03] .04 using a touchscreen voting unit, the election director shall:

- (1) – (3) (text unchanged)

B. Optical Scan Voting Unit. For each precinct selected under Regulation .04, [The] the election director shall:

- (1) Obtain the totals tapes from each optical scan voting unit [used for the first absentee ballot canvass] deployed to that precinct;
- (2) (text unchanged)
- (3) Compare those aggregated precinct results against the results for [the first absentee ballot canvass] that precinct as reported by the Election Management System.

C. (text unchanged)

.06 Post-Election Audit — Precincts.

A. (text unchanged)

B. Manual.

- (1) The election director shall conduct the audit procedures under this section for each precinct:

- (a) Selected under Regulation [.03] .04 of this chapter; and
- (b) (text unchanged)

- (2) For each precinct being audited, the election director shall:

(a) Hand count the signed voter authority cards associated with each [touchscreen] voting unit in the precinct; and

- (b) (text unchanged)

- (3) (text unchanged)

C. – D. (text unchanged)

.07 Post-Election Audit – Absentee and Provisional Voting.

A. (text unchanged)

B. The election director shall randomly select and review:

- (1) – (2) (text unchanged)

- (3) Accepted provisional ballots to determine whether each ballot was properly accepted by confirming that:

(a) [At the time of the election] On or before election day, the voter was registered to vote and voted the ballot for the precinct in which the voter resides; and

- (b) (text unchanged)

(4) Partially accepted provisional ballots to determine whether each ballot was properly partially accepted by confirming that;

(a) [At the time of the election] On or before election day, the voter was registered to vote but did not vote the ballot for the precinct in which the voter resides; and

- (b)(text unchanged)

- (5) Rejected provisional ballots to determine whether each ballot was properly rejected by confirming that:

(a) [At the time of the election] On or before election day, the voter was not registered to vote; or

- (b)(text unchanged)

C. – D. (text unchanged)

LINDA H. LAMONE
STATE ADMINISTRATOR