

MARYLAND REGISTER

# Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	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	12	01	02
33	12	03	04
33	12	04	06
33	12	05	02, .03
33	12	07	02, .04

**3. Name of Promulgating Authority**

State Board of Elections

**4. Name of Regulations Coordinator**  
Erin Perrone

**Telephone Number**  
410-269-2845

**Mailing Address**

151 West Street

**City**            **State**        **Zip Code**  
Annapolis        MD            21401

**Email**

erin.perrone@maryland.gov

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

**Telephone No.**  
410-269-2853

**Email Address**  
nikki.charlson@maryland.gov

**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 12 RECOUNTS**

**33.12.01 Definitions; Scope**

**Subtitle 12 RECOUNTS**

**33.12.03 General Conduct of Recount**

**Subtitle 12 RECOUNTS**

**33.12.04 Recount Procedures—In General**

**Subtitle 12 RECOUNTS**

**33.12.05 Recount Procedures—Optical Scan Voting System**

**Subtitle 12 RECOUNTS**

**33.12.07 Challenges**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

**Notice of Proposed Action**

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The State Board of Elections proposes to amend Regulation .02 under COMAR 33.12.01 Definitions; Scopes; amend Regulation .04 under COMAR 33.12.03 General Conduct of Recount; amend Regulation .06 under COMAR 33.12.04 Recount Procedures - In General; amend Regulations .02 and .03 under COMAR 33.12.05 Recount Procedures - Optical Scan Voting System; amend Regulations .02 and .04 under COMAR 33.12.07 Challenges.

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 requirements and processes for voting recounts.

### **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](mailto: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 not impact small business because they are technical and administrative in nature.

G. Small Business Worksheet:

Attached Document:

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# Title 33 STATE BOARD OF ELECTIONS

## Subtitle 12 RECOUNTS

### Chapter 01 Definitions; Scope

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

#### .02 Definitions.

- A. (text unchanged)
  - B. Terms Defined.
    - (1) (text unchanged)
    - (2) *“Precinct” includes an early voting center, the first absentee canvass, the second absentee canvass, or the provisional canvass.*
- [ (2) ] (3) – [ (3) ] (4) (text unchanged)

# Title 33 STATE BOARD OF ELECTIONS

## Subtitle 12 RECOUNTS

### Chapter 03 General Conduct of Recount

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

#### .04 Security.

- A. In General. Whenever a break is taken during the recount, for example, meal breaks, overnight, etc., the recount room shall be unoccupied and [locked] *secured*.
- B. Duties of Election Director. The election director shall:
  - (1) [Lock] *Secure* the room in the presence of at least one board member; and
  - (2) [Maintain] *Control* all [keys] *access* to the room.

# Title 33 STATE BOARD OF ELECTIONS

## Subtitle 12 RECOUNTS

### Chapter 04 Recount Procedures—In General

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

#### .06 Securing Materials After Recount.

- A. Voting Machines. Voting machines and direct recording equipment reviewed in the recount shall:
  - (1) Be closed, [locked] *secured*, and, if necessary, resealed; and
  - (2) Remain [locked] *secured* and sealed until the State Administrator releases them.
- B. (text unchanged)

C. Documents, Paraphernalia. All tally sheets, canvass sheets, memory [cards] *devices*, programs, printouts, and any other documents and paraphernalia associated with counting, documenting, or validating the election shall be:

(1) – (2) (text unchanged)

## **Title 33 STATE BOARD OF ELECTIONS**

### **Subtitle 12 RECOUNTS**

#### **Chapter 05 Recount Procedures—Optical Scan Voting System**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

##### **.02 Optional Recount Methods.**

For votes to be recounted under this chapter, the petitioner shall specify whether the recount shall be conducted by:

A. Manually retabulating the *printed* election totals reports [printed during the absentee and provisional ballot canvasses];

B. Rescanning all [absentee and provisional] ballots using:

(1) The same vote tabulating equipment that was used in the election; or

(2) Alternative vote tabulating equipment, if alternative equipment is available and its use is feasible; [or]

C. Manually retabulating all [absentee and provisional] ballots[.]; *or*

D. *Any other recount option approved by the State Administrator.*

##### **.03 Using Tabulating Equipment.**

A. (text unchanged)

B. Preparation. The election director shall:

(1) Where applicable, prepare the tabulating unit certified for use in the State;

(2) Assemble all materials needed to conduct the recount; and

[(2)] (3) (text unchanged)

C. – G. (text unchanged)

## **Title 33 STATE BOARD OF ELECTIONS**

### **Subtitle 12 RECOUNTS**

#### **Chapter 07 Challenges**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 12-106(a), Annotated Code of Maryland

##### **.02 Basis for Challenge.**

A challenge may be based on[:

A. The allowance or disallowance of a ballot;

B. The allowance or disallowance of a vote;

C. The recording of votes from voting machines;

D. The reliability of voting machines;

E. The tallying of votes;

F. The aggregation of the vote count; or

G. Any other part of the recount that could affect the accuracy of the result] *an action or decision of the local board during the recount.*

##### **.04 Resolution.**

A. – B. (text unchanged)

C. Standards.

[1] In making a decision on whether to allow or disallow a vote, the board shall attempt to determine the intent of the voter in accordance with the standards set by the State Board for the recount proceedings.

(2] A vote may not be disallowed except by unanimous vote of all board members.

D. (text unchanged)

LINDA H. LAMONE  
STATE ADMINISTRATOR