

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Board of Elections**

(DLS Control No. 20-038) Revised

Overview and Legal and Fiscal Impact

The regulations reduce the number of individuals who must be physically present in the same room during the canvass of absentee votes for an election. The regulations also specify that all laws, regulations, and procedures that apply to voting during early voting and on election day apply to voting at a voting center on election day, with a certain exception.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Board of Elections:

Canvassing: Definitions; General Provisions: COMAR 33.08.01.02

Absentee Ballots: Canvass of Ballots – Procedures: COMAR 33.11.04.05 and .07

Special Elections By Mail: Election Judges: COMAR 33.21.05.01

Legal Analysis

Background

Each local board of elections, in its role as a board of canvassers, is required to conduct the canvass of votes for each election. During the canvass of absentee votes, ballots are referred to teams to make certain determinations about the ballots and process the ballots. The teams determine whether the ballots are timely, whether the absentee ballot oaths are signed, remove the ballots from their envelopes, and determine whether the ballots are acceptable for machine tabulation, among other things.

These regulations are part of a package of regulations, with DLS Control Number 20-037E, making changes to election processes and procedures in response to the coronavirus pandemic. In the proclamations of March 17, 2020 and April 10, 2020, the Governor exercised his power under § 8-103 of the Election Law Article to make changes to election processes and procedures during a declared state of emergency, primarily by postponing the April 28, 2020 presidential primary election to June 2, 2020 and requiring that most voters cast ballots by mail in the April 28, 2020

special general election in the 7th Congressional District and the June 2, 2020 presidential primary election.

Summary of Regulations

The regulations repeal provisions requiring that each working session of the canvass of votes be conducted in the presence of the local board of canvassers. Instead, the board members are required to be present only when the canvass starts and concludes and for each decision session. The regulations also generally repeal requirements that a team make certain determinations about absentee ballots and take certain actions to process absentee ballots and instead require that those actions be completed by a single individual. The actions that will be completed by an individual instead of a team include determining whether ballots are timely, whether the absentee ballot oaths are signed, removing the ballots from their envelopes, and determining whether the ballots are acceptable for machine tabulation, among other things.

The regulations also specify that all laws, regulations, and procedures that apply to voting during early voting and on election day apply to voting at a voting center on election day, except that an employee or member of a local board of elections is not required to be present at a vote center to set up or close down the vote center but shall provide support remotely as needed.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The State Board of Elections cites §§ 2-102(b)(4), 2-202(b), 9-303, 9-501, 9-503, 9-506, 11-201, 11-301, 11-302, and 11-304 of the Election Law Article as statutory authority for the regulations. Under § 2-102(b)(4), the State board is broadly authorized to adopt regulations to implement its powers and duties. More specifically, § 9-303 requires the State board to “establish guidelines for the administration of absentee voting by the local boards” including “the canvass process” and “review of voted ballots and envelopes for compliance with the law and for machine tabulation acceptability”. The State board is required to adopt regulations “governing the canvass” under § 11-201. The remaining cited authority is not relevant to the regulations.

In addition, the State board indicates that the purpose of the regulations is to limit the number of people who must be in the same room at a voting center on election day and during the canvass of absentee votes to reduce the potential for transmission of the coronavirus in accordance with the Governor’s proclamations of March 17, 2020 and April 10, 2020. The Governor’s proclamation of April 10, 2020 also required the establishment of voting centers on election day, which is not generally authorized by law. Therefore, § 8-103, which authorizes the Governor to issue such proclamations during a state of emergency, also provides authority for the regulations.

With the addition of § 8-103, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Emergency Status

The State board requests emergency status beginning April 14, 2020 and expiring July 31, 2020. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The State board indicates the emergency status is necessary so that the regulations will be in effect for the April 28, 2020 special general election and the June 2, 2020 presidential primary election.

Technical Corrections and Special Notes

After submitting the regulations to the committee, staff for the State board submitted revisions to clarify that all of the text originally shown as Regulation .01C in COMAR 33.17.05 is new text and to move that new text to be Regulation .01C in COMAR 33.21.05. This analysis reflects those changes. In addition, in response to a suggestion from the Department of Legislative Services, the State board agrees to add § 8-103 of the Election Law Article as statutory authority for the regulations.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The State board advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The State board advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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