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Memorandum

To: Members of the State Board of Elections
From: Melissia Dorsey and Nikki Charlson
Date: February 9, 2023
Re: Proposed Regulations for February 23 Meeting

At the February 23 meeting, we will present proposed changes to existing regulations. The accompanying document includes the proposed changes and explanations for each one.

We are proposing changes to the following regulations:

1. 33.01.05.06 – Definitions; General Provisions – Administrative Complaint Procedure
2. 33.03.02.01, .03, and .04 – Records Management – Copies of Registration Lists
3. 33.10.01.18 – EVS Voting Solution – Ballots – Chain of Custody
4. 33.12.02.05 – Recounts – Initiation of Recounts – Personnel
5. 33.16.02.01 and .03 – .06 – Provisional Voting – Provisional Voting Documents and Supplies
6. 33.16.04.02 – Provisional Voting – Pre-Canvass Procedures
7. 33.16.05.04 – Provisional Voting – Canvass of Ballots – Procedures – Record of Disposition
8. 33.17.02.02 and .04 – Early Voting – Early Voting Center
9. 33.19.01.01 – Same Day Registration and Address Changes – Definitions; General Provisions
10. 33.19.02.01 – Same Day Registration and Address Changes – Public Notice
11. 33.21.01.02 – Special Elections by Mail – Definitions; General Provisions
12. 33.21.03.02 and .03 – Special Elections by Mail – Issuance and Return
13. 33.21.04.06 – Special Elections by Mail – Voting Centers

If you have any questions before the meeting, please do not hesitate to ask. Otherwise, we are happy to answer your questions at the meeting.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 01 DEFINITIONS; GENERAL PROVISIONS
Chapter 05 Administrative Complaint Procedure

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-602, and 11-305, Annotated Code of Maryland; 42 U.S.C.§15512(a)

.06 Complaint - Consolidation, Record, Hearing, and Determination.

A. - B. (text unchanged)

C. Hearing.

(1) The State Board shall conduct a hearing on the record if:

(a) The complainant is alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 U.S.C. §§15481 et seq. *and requests a hearing*; or

(b) (text unchanged)

(2) - (20) (text unchanged)

D. (text unchanged)

Explanation: The current [Administrative Complaint Form](#) asks the complainant whether they would like a hearing, but the current regulation does not give them that choice - it's required for all complainants alleging a violation of Title III of the Help America Vote Act. ([Title III of HAVA](#) establishes requirements for voting systems, provisional voting, voting information, and voter registration lists.) The proposed change would make the regulation and the form consistent - that is, a complainant can request or decline a hearing.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 03 RECORDS MANAGEMENT
Chapter 02 Copies of Registration Lists

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 3-506(a)(2)(i), Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) *“Electoral process” means the system established by the Maryland Constitution, Election Law Article of the Annotated Code of Maryland, and regulations of the State Board, by which a person is elected to a public office or by which voters express a preference on a ballot question.*

(a) *“Electoral process” includes, but is not limited to: registering voters, forming political parties, qualifying as a candidate for public office, petitioning candidates or questions to the ballot, drafting and publishing ballot questions, conducting elections, casting ballots, canvassing ballots, recounting an election, and financing a campaign.*

(b) “Electoral process” does not include investigations. The use of a voter registration list to contact an individual voter as part of an investigation into an illegal or suspected illegal infraction or violation involving the voter’s behavior in a specific election is not a “purpose... related to the electoral process” as those terms are used in Election Law Article, §3-506(a)(1)(ii)(2), Annotated Code of Maryland.

(2) "Initial voter list" means a list of all individuals who, as of the date requested, *meet the criteria requested by the individual requesting the list* [are registered to vote in a precinct or group of precincts].

[(2)] (3) "Supplemental voter list" means a list of all individuals who, from the date of an initial voter list through a later requested date, *meet the criteria requested by the individual requesting the list* [have newly registered to vote in the same precinct or group of precincts].

[(3)] (4) (text unchanged)

Explanation: The proposed changes define “electoral process,” a term used in Regulation .04 and in the required affidavit, and update definitions to reflect the current types of lists provided.

.03 Applications - General.

[A. Qualification of Applicant. To obtain a voter registration list under this chapter, an applicant must be a Maryland registered voter.]

[B.] A. Application Form. The application shall be made in writing *or electronically*, in the form required by the State Administrator.

[C.] B. Options. The application form shall provide a listing of:

(1) Medium options available, for example, printout, [labels, tape] *thumb drive*;

(2) Information options available, for example, name, address, party affiliation, [sex] *gender*, date of birth, voting history, *mail-in voting, provisional voting*;

(3) - (4) (text unchanged)

Explanation: The proposed change removes §A to reflect a court decision that allows individuals outside Maryland to buy voter data and renumbers the remaining sections. The proposed change to the new §A allows individuals to submit and pay for a request online, and the changes to the new §B reflect current ways of providing data and types of data requests and mirror terminology used on the voter registration application.

.04 Applications - Required Affidavit.

A. The application shall contain an affidavit, signed by the applicant, in substantially the following form:

Under the penalties of perjury, I declare that no part of any list requested by this application is intended to be used for commercial solicitation or for any other purpose that is not related to the electoral process.

I am aware that if I or any other person who has a registration list under his or her control knowingly allows any part of that list to be used for commercial solicitation or for any other purpose that is not related to the electoral process, that individual is guilty of a misdemeanor and, on conviction, subject to

imprisonment for not less than 30 days or more than 6 months, to a fine of up to \$250, or to both imprisonment and fine.

B. If the applicant submits the application online, the applicant shall use one of the following as the applicant's electronic signature:

(1) Applicant's driver's license number; or

(2) Applicant's last four digits of the applicant's social security number.

Explanation: The new §B establishes what constitutes an electronic signature for an online application for voter data.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 10 VOTING SYSTEMS - SYSTEM REQUIREMENTS AND PROCEDURES
Chapter 01 EVS Voting Solution

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-102, 9-105, and 11-201, and Title 9, Subtitle 2, Annotated Code of Maryland

.18 Ballots - [Accounting] Chain of Custody.

A. System of Accountability Required. Subject to approval of the State Administrator, each local board shall establish and maintain a system to account for, and maintain control over, the ballots from the beginning of production through post-election storage and disposition.

[A.] B. [Accounting] Record of Chain of Custody Required. The election judges shall prepare **[an accounting]** a record sufficient to document control of all ballots issued to a polling place, in accordance with written procedures and on forms provided by the local board and approved by the State Administrator.

[B. Scope of Accounting. The accounting shall include the number of ballots:

- (1) Furnished to the polling place;
- (2) Issued to voters;
- (3) Voted;
- (4) Spoiled; and
- (5) Not used.]

Explanation: Prior to the use of precinct-level ballots, election judges were required to count the number of ballots provided to each polling place and count the number of ballots returned to each local board. With precinct-level ballots, the number of different ballot styles has increased such that it is not possible for election judges to count every ballot of every ballot style and record them. In 2020 and 2022, we asked that the local boards of elections (LBEs) to develop a system to ensure chain of custody and control of all ballots and provide documentation sufficient to prove control of the ballots from the time they were deployed by the LBE to the polling place to the time they were returned to the LBE by election judges. This regulation reflects that change.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 12 RECOUNTS
Chapter 02 Initiation of Recounts

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

.05 Personnel - In General.

A. In General. The recount shall be conducted by the local board, with the assistance of:

(1) (text unchanged)

(2) If needed:

(i) Substitute board members, [and]

(ii) Additional temporary staff, *including individuals who served as election judges in the same election; and*

(iii) *State Board staff.*

B. (text unchanged)

Explanation: The proposed change clarifies that individuals who served as election judges can support a recount and adds State Board staff as another resource to support a local board conducting a recount.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 16 PROVISIONAL VOTING
Chapter 02 Provisional Voting Documents and Supplies

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-305(e), 3-306, 9-402, 9-403, 9-404, 9-406, and 11-303(c) and (e), Annotated Code of Maryland

.01 Provisional Ballot Application.

A. Provisional Ballot Application. Except as required in Regulations .02 and .03 of this chapter, the provisional ballot application shall include:

(1) - (2) (text unchanged)

(2) Instructions on:

(a) - (c) (text unchanged)

(b) How the voter may access the free access system to determine whether the provisional ballot application was accepted and, if not, the reason why it was not accepted; [and]

(c) An envelope that can be sealed[.]; *and*

(d) *A place to affix the applicant's registration and oath document.*

B - C. (text unchanged)

Explanation: There are currently two provisional application forms - one for traditional provisional voting and one for same day registration provisional voting. The forms will be combined into one form and referred to as the "Provisional Ballot Application." This change reflects the need to add a strip of adhesive to the form to affix an oath document used for same day registration provisional voters.

[.03 Same Day Registration and Address Change Documents.

- A. Special Provisional Ballot Application. The special provisional ballot application for same day registration and address changes during early voting and same day registration on election day shall include a place to affix the voter's registration and oath document.
- B. Use by Local Board. Each local board shall use the special provisional ballot application prescribed by the State Administrator.
- C. Instructions. The State Administrator shall provide a local board with instructions for election judges on the procedures for same day registration and address changes during early voting and same day registration on election day.
- D. Number of Special Provisional Ballot Applications. Each local board shall provide special provisional ballot applications in an amount at least equal to the quantities specified by the State Administrator.]

[.04] .03 - [.06] .05 (text unchanged)

Explanation: Update the regulation to remove the requirement for a second form.

**Title 33 STATE BOARD OF ELECTIONS
Subtitle 16 PROVISIONAL VOTING
Chapter 04 Pre-Canvass Procedures**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-305, 3-306, 9-402, 9-403, 9-404, 9-406, and 11-303(c) and (e), Annotated Code of Maryland

.02 Pre-Canvass Review.

- A. Before the Canvass.
 - (1) Complete Application.
 - (a) - (c) (text unchanged)
 - (d) A [special] provisional ballot application *used for the purpose of* [for] same day registration or address change during early voting or same day registration on election day is complete if:
 - (i)-(ii) (text unchanged)
 - (2) - (4) (text unchanged)
- B - E. (text unchanged)

Explanation: The proposed change eliminates reference to a special same day registration application but maintains the process.

**Title 33 STATE BOARD OF ELECTIONS
Subtitle 16 PROVISIONAL VOTING
Chapter 05 Canvass of Ballots - Procedures**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-305(e), 3-306, 9-402, 9-403, 9-404, 9-406, and 11-303(c) and (e), Annotated Code of Maryland

.04 Record of Disposition.

- A. The local board or the election director shall record on [the back of] the provisional ballot application whether the provisional ballot application was accepted, either in full or in part, or rejected and, if rejected, the reason why the application was rejected.
- B. (text unchanged)

Explanation: The portion of the provisional ballot application used by the local board is currently the last page of the packet. Once updated, the form will be in the middle of the provisional ballot application. This proposed change makes the regulation consistent with the new form.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 17 EARLY VOTING
Chapter 02 Early Voting Center

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 10-301.1, Annotated Code of Maryland

.02 Selecting Early Voting Centers.

- A. Considerations for Early Voting Centers. A local board shall consider the following factors when determining the location of an early voting center:
 - (1) (text unchanged)
 - (2) Proximity of the early voting center to dense concentrations of voters such that:
 - (a) If a county [has] *is required by Regulation .01 of this chapter to have one or two early voting centers, 50 percent of the registered voters in the county live within 10 miles of one of the proposed early voting center; or*
 - (b) If a county [has] *is required by Regulation .01 of this chapter to have three or more early voting centers, 80 percent of the registered voters live within 5 miles of one of the early voting centers;*
 - (3) - (7) (text unchanged)
- B. - D. (text unchanged)
- E. Additional Information. For each proposed early voting center, a local board shall submit with the form required in §[A] C of this [regulation] Regulation:
 - (1) (text unchanged)
 - (2) The State of Maryland's Accessibility Survey form[; and]
 - (3) Digital photographs of the outside of and entrance to the proposed early voting center[.]; and
 - (4) *The security plan required by Regulation .04 of this chapter.*
- F. Inability to Identify Proposed Early Voting Center. If the proposed early voting center does not meet all of the criteria listed on the form required in §[A] C of this [regulation] Regulation, a local board shall provide on the form:
 - (1) (text unchanged)
 - (2) A description of the factors that mitigate the fact that the proposed early voting center does not meet all of the criteria listed on the form required in §[A] C of this [regulation] Regulation.
- G. (text unchanged)
- H. Approval of Early Voting Centers.
 - (1) (text unchanged)
 - (2) The State Board shall:
 - (a) Vote on a local board's proposed early voting center within 30 days of receipt of the form required in §[A] C of this [regulation] Regulation;

(b) Give deference to a proposed early voting center for which a local board [can make the acknowledgments] *considered the factors required in §A of this Regulation and the requirements [required in] of §B of this [regulation] Regulation*; and

(c) (text unchanged)

(3) (text unchanged)

I. Alternate Early Voting Centers.

(1) - (2) (text unchanged)

(3) A local board shall identify:

(a) One alternate early voting center if the local board is required to establish one, *two*, or three early voting centers; or

(b) Two alternate early voting centers if the local board is required to establish [~~five~~] *four or more* early voting centers.

(4) A local board shall:

(a) At least 3 months before a primary election, complete and submit to the State Administrator the form required by §[A] C of this [regulation] *Regulation* for each proposed alternate early voting center; and

(b) (text unchanged)

Explanation: The proposed changes clarifies the population density consideration for early voting centers where the jurisdiction chooses to have an optional voting center. It will also add to the regulations the number of alternate early voting centers for jurisdictions that are required to have two or four centers and clarify the number of alternate early voting centers required when an optional early voting center is used. Finally, the proposed changes include correcting references to the early voting center form (now §C but previously §A) and stylistic changes to conform with drafting requirements for regulations.

.04 Security Plans for Early Voting Center.

A. Security Plan Required. [At least 8 weeks before early voting begins] *With the form required by Regulation .02C of this chapter*, an election director shall submit an early voting security plan for approval to the State Administrator.

B. (text unchanged)

C. Review and Acceptance of Plan.

(1) (text unchanged)

(2) Within 30 days of receipt of [a] *an* early voting security plan, the State Administrator shall review and provide feedback to a local board.

(3) A local board shall update its plan according to the feedback provided *by* the State Administrator.

Explanation: The proposed changes will require security plans to be submitted with the early voting center approval form, rather than after the proposed early voting center has been approved. A proposed facility's security plan should be part of the review process, and this change provides for that. The other proposed changes fix grammatical errors.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 19 SAME DAY REGISTRATION AND ADDRESS CHANGES
Chapter 01 Definitions; General Provisions

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-305(e), and 3-306(a), (d), and (e), Annotated Code of Maryland

.01 Applicability to Elections.

A. – B. (text unchanged)

C. For special primary and general elections[,]:

(1) Same day registration is available *during early voting and* on election day; *and*

(2) *Same day address change is available during early voting.*

Explanation: If early voting is ordered for a special election, these proposed changes require that same day registration and same day address changes be offered during early voting.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 21 SPECIAL ELECTIONS BY MAIL
Chapter 01 Definitions; General Provisions

Authority: Election Law Article, §§2-102, 9-501, and 9-506, Annotated Code of Maryland; 42 U.S.C. §1973ff-6

.02 Scope.

A. (text unchanged)

B. Conduct of Election.

(1) (text unchanged)

(2) *Except as provided in COMAR 33.19.01.01C, [A] a local board may not offer voter registration or address changes after the deadline established in the proclamation or resolution.*

Explanation: COMAR 33.19.01.01C requires that same day registration be available on election day for a special election. As adopted, there is a conflict between these two provisions; this proposed change resolves the conflict.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 21 SPECIAL ELECTIONS BY MAIL
Chapter 03 Issuance and Return

Authority: Election Law Article, §§2-102, 9-501, 9-502, and 9-504 - 9-506, Annotated Code of Maryland; 42 U.S.C. §1973ff-1

.02 Envelopes.

A. - C. (text unchanged)

D. Postage Paid [- Montgomery County Only. If the special election is conducted in Montgomery County, the] *The* return envelope shall include prepaid postage.

E. (text unchanged)

Explanation: Election Law Article, §9-310(3)(iv) requires that all return envelopes include prepaid postage. This proposed change aligns this regulation with this statutory requirement.

.03 Issuance of Ballots.

A. Issued to Voter.

(1) A local board shall issue a vote-by-mail ballot to a voter or a voter's agent.

(2) *If an absent uniformed services voter or an overseas voter is not required to submit an application for a vote-by-mail ballot under COMAR 33.21.02.01C, a local board shall issue a vote-by-mail ballot via the delivery method on file for that voter.*

B. (text unchanged)

Explanation: This proposed change enables the local board to use the same delivery method they used to get a mail-in ballot to a military or overseas voter in a regularly scheduled election to get the ballot to the military or overseas voter in the special election.

Title 33 STATE BOARD OF ELECTIONS
Subtitle 21 SPECIAL ELECTIONS BY MAIL
Chapter 04 Voting Centers

Authority: Election Law Article, §§2-102, 9-501, 9-503, and 9-506, Annotated Code of Maryland

.06 Allocation of Equipment, Personnel, and Supplies.

A. Submission of Allocation Plan. The local board shall *work with* [submit to] the State Administrator to *develop* a plan for the allocation of equipment, personnel, and supplies.

B. [Plan Development. The State Administrator shall assist the local board with the allocation plan.

C.] Plan Requirements. The plan shall include the proposed number of:

- (1) Voting units, including accessible voting devices;
- (2) Electronic pollbooks;
- (3) Election judges; and
- (4) Provisional ballot applications.

[D. Plan Submission and Approval.

(1) At least 45 days before a special election, the local board shall submit to the State Administrator the proposed allocation plan.

(2) Upon receipt of the proposed allocation plan, the State Administrator shall:

(a) Review the plan and determine whether the proposed allocation plan is sufficient;
and

(b) Within 3 business days of receiving the form, notify the local board of the State Administrator's decision.

(3) If the State Administrator determines that the plan is insufficient, the local board shall submit a revised plan within 3 business days of receiving the State Administrator's decision.]

Explanation: For a special election, there is typically insufficient time to submit a formal allocation plan. Under the proposed changes, SBE and the local board work together to develop a plan for equipment, personnel and supplies for the voting locations.