

410-RICR-20-00-16

TITLE 410 – BOARD OF ELECTIONS

CHAPTER 20 – ELECTIONS

SUBCHAPTER 00 – N/A

PART 16 – Tabulation of Mail Ballots

16.1 Authority

- A. The Rhode Island Board of Elections hereby amends the Rules and Regulations relating to the tabulation of mail ballots pursuant to, and in accordance with the provisions of R.I. Gen. Laws §§ 17-7-1 *et seq.*, 17-19-31, 17-20-6, 17-20-10.2, 17-20-24, 17-20-26 and 17-22-1.
- B. This Regulation is adopted pursuant to and in accordance with the provisions of R.I. Gen. Laws § 17-20-1, *et seq.*

16.2 Purpose

The State of Rhode Island's optical scan precinct count election system provides a fast and accurate way of processing and tabulating mail ballots. In accordance with the requirements and capabilities of the optical scan system, the Board of Elections has developed procedures for the handling, processing and tabulation of mail ballots in order to ensure the integrity of the electoral process.

16.3 Definitions

“Designated Election Official” means a member of the Board staff, or other person expressly authorized by the Board or its Executive Director to conduct functions that relate to the processing of mail ballot certification envelopes and tabulation of mail ballots. All authority to qualify or disqualify a mail ballot shall be subject to Board review and determination when required. Provided, further, that before any mail ballot is determined to be an undervote, the mail ballot shall be reviewed by at least one member of the Board, who can then bring the matter to the entire Board when needed. Designated Election Officials shall be sworn in by a member of the Board, or its Executive Director, and shall promise to apply all laws and regulations pertaining to elections, including but not limited to those laws and regulations pertaining to the certification and tabulation of mail ballots.

16.4 Procedures

- A. The procedures for mail ballot tabulation and the steps to be followed for processing those ballots which are unable to be "read" by the automated ballot tabulator are as follows:
1. After processing and certification of the mail ballots as required under Board rules on Certification of Mail Ballots, they shall be separated in packages in accordance with their respective cities and towns, in publicly noticed sessions. In each instance the Board or the Designated Election Official(s) shall open the enclosing envelope, and without looking at the votes cast on the enclosed ballot, shall remove the ballot from the envelope. The ballots then shall be stored in secured containers until processing through the automated ballot tabulator. Not more than twenty (20) days prior to Election Day, the mail ballots will be processed by the Designated Election Official using the automated ballot tabulator.
 2. Pursuant to § 16.5 of this Part, ballots that are torn or otherwise damaged upon opening of the envelopes in addition to ballots that are unable to be processed by the automated ballot tabulator (i.e. improperly marked ballots, damaged ballots, blank ballots) that have been out-stacked by the automated ballot tabulator will be given to the Board or the Designated Election Official(s) to determine voter intent, and duplication of the original ballot. Duplicated ballots will be kept together in a secured container until the duplication process is completed, upon which time the duplicate ballots shall be processed by the automated ballot tabulator.
 3. Ballots containing write-in votes will be digitally imaged by the automated ballot tabulator pursuant to § 16.6 of this Part.
 4. Upon completion of the processing of the mail ballots, said mail ballots shall be placed in the proper storage container. The storage containers will be sealed and stored at the Board of Elections for a period of twenty-two (22) months.
 5. Mail ballots shall be totaled no earlier than 8:00 p.m. on Election Day.

16.5 Duplicating Ballots

- A. It is possible that some ballots may not be processed due to damage, improper marking, Federal Write-In Absentee/Military or Overseas Ballots, Official State Blank Ballots or other circumstances. In those instances, the following procedures have been established to process and tabulate those ballots.
- B. Ballots that are torn or otherwise damaged upon opening of the envelopes in addition to ballots that are unable to be processed by the automated ballot tabulator (i.e. improperly marked ballots, damaged ballots, electronically

transmitted ballots) that have been segregated by the automated ballot tabulator will be given to the Board or the Designated Election Official(s) to determine voter intent consistent with this this Section and the requirements set forth below, and duplication of the original ballot. Ballots that have been duplicated by the Board or the Designated Election Official(s) will be kept together in a secured container until the duplication process is completed.

- C. The Board or the Designated Election Official(s) will review the rejected ballot to determine voter intent, consistent with § 16.7. of this Part. If voter intent can be determined the ballot shall be duplicated. If the Board or the Designated Election Official is unable to determine voter intent for every contest or question on the ballot, the ballot shall be processed as a blank ballot.
- D. If it is determined that a ballot has been damaged and/or cannot be electronically read, then the ballot shall be duplicated in the following manner:
 - 1. Designated Election officials shall be assigned to work in pairs, not of the same party whenever feasible, and each pair shall be assigned a unique identifying number or letter.
 - 2. A blank ballot will be retrieved from the blank ballot inventory for the appropriate precinct and marked "REMAKE" or "R" on the back of the ballot and assigned a number. All duplicated ballots will be numbered sequentially. The Designated Election Officials shall also include the unique identifier assigned to them.
 - 3. The original ballot will be marked on the back "ORIGINAL" or "O" and given the same identifying number as the duplicate ballot. The Designated Election Officials shall also include the unique identifier assigned to them.
 - 4. Two (2) designated election officials shall duplicate the ballot identical to the original ballot. Duplicated ballots will remain in a secured container until the duplication process is completed. If an error in the duplication process occurs, the duplicate ballot shall be voided. Another blank ballot shall be retrieved for the appropriate precinct and marked on the back "REMAKE" or "R" and given the same identifying number as the voided duplicate ballot.
 - 5. All duplicated ballots will be delivered to the operator of the automated ballot tabulator for processing.

16.6 Write-In Votes

- A. The procedures for processing and recording of ballots containing write-in votes are as follows:

1. The automated ballot tabulator will digitally image ballots containing write-in votes after the automated ballot tabulator records votes on contests where write-ins do not appear.
 2. The Designated Election Official will retrieve the digital images from the secure storage drive on which the images are stored and record on write-in tally sheets the write-in votes.
 3. After recording the write-in votes, the ballots will be placed into the appropriate storage container.
- B. Note: Write-in votes are not permitted in primaries; provided, that write-in votes may be cast for presidential candidates at any presidential primary. Write-in votes are not permitted for delegate candidates at a presidential primary.

16.7 Voter Intent for Rejected Mail Ballots

- A. Whenever a mail ballot is rejected by the digital scanner or other electronic computer reader, the Board or the Designated Election Official(s) shall, whenever possible, determine voter intent with respect to any and all mail ballots rejected by the reader.
- B. No mail ballot shall be rejected for any immaterial addition, omission, or irregularity in the preparation or execution of the computer ballot, nor for failure of the voter to affix sufficient postage. No mail ballot shall be invalid by reason of mistake or omission in writing in the name of any candidate or ballot question where the candidate or ballot question intended by the voter is plainly identifiable. Where, because of any defect in marking, a mail ballot is held invalid as to any particular candidate for office or ballot question, it shall remain valid as to the candidates for other offices or other ballot question. No mail ballot shall be invalid by reason of the voter writing upon the inner envelope the name of a community within a town in place of the name of the town. No defect in the marking of the appropriate space associated with casting a vote shall invalidate any mail ballot or a vote for any candidate or ballot question, where the intention of the voter is clearly indicated.
- C. No mail ballot shall be rejected if the intention of the voter is clear unless it contains clear evidence of the identity of the voter.
- D. A mail ballot shall not be rejected solely due to the voter's failure to comply with the instructions for marking a ballot when the marking technique used by the voter clearly and consistently indicates his or her choices on the mail ballot.
- E. Inconsistent or extraneous markings on the mail ballot will not disqualify a ballot so long as the voter's intent is evident from the voter's markings.
- F. Intent shall be ascertained only from the face of the mail ballot.

- G. If a voter places a mark beside the names of more candidates for an office than are to be elected or nominated, the mail ballot is defective with respect only to that office. No vote shall be counted for any candidate for that office, but the rest of the mail ballot shall be counted if possible.
- H. If a voter votes both for and against a question, no vote may be counted for that question, but the rest of the mail ballot must be counted, if possible.
- I. If a voter has written the name of an individual in the proper place on a general or special election ballot a vote shall be counted for that individual whether or not the voter makes a proper mark opposite the blank where the name has been written.
- J. When the names of more candidates for an office than are to be elected or nominated, and an attempt has been made to erase or obliterate one or more of the marks, a vote or votes shall be counted for the remaining marked candidate or candidates. If a voter votes both for and against a question, and an attempt has been made to erase or obliterate one of the marks, a vote shall be counted for the remaining marked option. If an attempt has been made to obliterate a write-in name a vote shall be counted for the remaining write-in name or marked candidate.
- K. The Board staff shall publish a printed Guide containing instructions for Designated Election Officials on the determination of voter intent in accordance with these regulations. The Guide shall be updated periodically and made available to candidates and the public.

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