

**DEPARTMENT OF ELECTIONS FOR NEW CASTLE COUNTY**  
**Statutory Authority: 15 Delaware Code, Section 5522(b) (15 Del.C. §5522(b))**

**FINAL**

**ORDER**

**Security and Integrity of the Absentee Voting Process**

The proposed regulation regarding *Security and Integrity of the Absentee Voting Process* was published in the *Register of Regulations* in conformity with Delaware law. One written comment was received, it was not pertinent to the proposed regulation.

**Summary of the Evidence and Information Submitted**

The proposed regulation was promulgated to describe the process for insuring the security and integrity of the absentee voting process in New Castle County. The written comment suggested that the Department provide absentee ballots in alternative formats to meet the needs of disabled persons. The comment does not pertain to the proposed regulation and the Department will forward it to the Commissioner of Elections and the Departments of Elections for Kent and Sussex Counties for discussion.

**Findings of Fact**

15 **Del.C.** §522 (b) requires that the Department of Elections for New Castle County promulgate a regulation regarding the security and integrity of the absentee voting process. The proposed regulation meets or exceeds that requirement.

**Decision and Order**

Based on the provisions of 15 **Del.C.** §5522 (b) and the record, we hereby adopt Regulation 2006-001 to be effective ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**Text and Citation**

The text of this regulation appeared in the *Register of Regulations* Vol. 9, Issue 6, pages 855-859, December 1, 2005.

**IT IS SO ORDERED** by unanimous vote this 10<sup>th</sup> day of January, 2006.

**BOARD OF ELECTIONS FOR NEW CASTLE COUNTY**

Orval L. Foraker, Jr. President

Noel H. Kuhrt, Acting Secretary

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## **1.0 Purpose:**

Pursuant to **Delaware Code**, Title 15, §5522 (b) this regulation shall ensure the security and integrity of the absentee procedures set forth in Chapter 55 of Delaware Code, Title 15 and that the counting process for Absentee Ballots is not subject to improper influences.

## **2.0 General**

2.1 This regulation applies to members of the Board of Elections for New Castle County, employees of the Department of Elections for New Castle County whether merit, casual/seasonal, or temporary (hired through a third party), Election Officers, absentee judges, and all persons observing the tabulating of Absentee Ballots.

2.2 This regulation applies to general, special and primary elections.

2.3 The Department shall designate a room that locks, or an area where the Department can secure voted and un-voted Absentee Ballots and control access as the Absentee Ballot Room.

2.4 In the absence of the Administrative Director and/or Deputy Administrative Director, the Department's most senior employees of the same political party as the absent Administrative Director and/or Deputy Administrative shall perform the duties of that person or persons as specified in this regulation.

2.5 The Department shall create the various logs required by this regulation.

2.6 The Department shall create an *Absentee Ballot Reconciliation Sheet* for use in accounting for the disposition of voted Absentee Ballots for an Election District and for security of the Carrier Envelope.

2.7 The Department shall establish teams for handling the return of Absentee Ballots, the mailing of Absentee Ballots, and in-person absentee voting. Individuals may serve on more than one team.

2.8 The Department shall train all persons involved in the Absentee Voting process on all relevant tasks. The Department shall document that the training took place, the date of the training, persons who attended the training and the name of the Instructor.

2.9 For the purposes of this regulation, the term tabulation means equipment that counts the votes on a ballot (a tabulator or scanner) or hand counting of ballots.

2.10 The tabulation of Absentee Ballots for an election shall begin at 7 a.m. on the day of the election and shall continue until the polls have closed or tabulation is complete whichever is later.

2.11 No one shall release absentee results to any challenger or observer until after the polls have closed.

2.12 The term "Chapter 55" as used in this regulation refers to **Delaware Code**, Title 15, Chapter 55.

## **3.0 Ballot Security**

3.1 The Department shall store all voted and un-voted ballots in locked containers in the Absentee Ballot Room. The keys to these containers shall be in the custody of the Department's Administrative Director, Deputy Administrative Director and such other person or persons designated in writing by the Administrative Director and Deputy Administrative Director except when locking or unlocking the containers.

3.2 The Department may leave the ballot containers unlocked during business hours. The Department shall keep at least two persons present in the Absentee Ballot Room at all times that the ballot containers are unlocked.

3.3 The Department shall restrict access to the Absentee Ballot Room from the day that Absentee Ballots are first available to the day prior to an election to those persons designated in writing by the Administrative Director and Deputy Administrative Director, persons voting, and persons waiting to vote. Except that, the Administrative Director and/or Deputy Administrative Director may use the Absentee Ballot Room for meetings.

3.4 Department staff or visitors shall not use the Absentee Ballot room to move from one part of the office to another part of office after Absentee Ballots are in the Absentee Ballot Room.

3.5 Persons unlocking and locking the Absentee Ballot Room shall record such actions on the log established for that purpose by the Department.

3.6 Persons unlocking and locking ballot containers shall record such actions on the log established for that purpose by the Department.

3.7 The Absentee Supervisors shall account for each voted Absentee Ballot at least once each week. The Absentee Supervisors shall report the results of this accounting in writing to the Administrative Director and Deputy Administrative Director. The supervisors shall note each discrepancy and corrective action in their report.

3.8 The Board of Elections for New Castle County may appoint an equal number of members from different political parties to inspect the Department's ballot security procedures and practices.

3.9 No one shall write on a returned Ballot Envelope except as provided in this regulation.

#### **4.0 Processing Absentee Ballots Returned to the Department**

4.1 In accordance with Chapter 55, voters may return Absentee Ballots mailed to them by mail, in person or by a person designated by the absentee voter.

4.2 The team handling returned ballots shall:

4.2.1 Remove Ballot Envelopes from the Mailing Envelopes and attach by paper clip to the Ballot Envelope any material other than the Ballot Envelope that is in the Mailing Envelope;

4.2.2 Time stamp the back of each returned Ballot Envelope;

4.2.3 Attach a *Post-it Note* (or equivalent product) noting any Ballot Envelope discrepancy to the front of the Ballot Envelope;

4.2.4 Attempt to notify the voter by phone or email of the problem(s) and of the action that the voter can take to correct the problem;

4.2.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

4.2.6 File each returned ballot alphabetically by Election District in the appropriate container.

#### **5.0 Processing Absentee Ballots Voted at the Department**

The team handling in-office voting shall:

5.1 Verify the absentee voter's identity and mark the form of identity shown by the voter on the voter's affidavit;

5.2 Instruct the absentee voter in the proper procedure for marking the ballot, putting the ballot into the Ballot Envelope, sealing the Ballot Envelope, and signing the front of the Ballot Envelope;

5.3 Make sure that the absentee voter has put the ballot in the Ballot Envelope, sealed the Ballot Envelope and signed the front of the Ballot Envelope;

5.4 Time stamp the back of each Ballot Envelope;

5.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

5.6 File each returned ballot alphabetically by Election District in the appropriate container.

## **6.0 Absentee Ballot Room Security on Election Day**

6.1 No challenger or observer shall bring into the Absentee Ballot Room a cell phone that is on, a camera, a briefcase, any paper except for a list of voters he/she may challenge, a list of absentee voters or a pad or notebook for taking notes.

6.2 No Department member, Board member, Absentee Judge or another person present in an official capacity shall bring a cell phone that is on into the Absentee Ballot Room.

6.3 No challenger, observer, Department member, Board member or Absentee Judge shall use any writing instrument in the Absentee Voting Room except as provided by the Department.

6.4 Challengers:

6.4.1 For a Primary Election, each candidate on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.2 For a General Election, each party on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.3 Challengers have the same authority and responsibilities as provided in Delaware Code, Title 15.

6.5 Citizens may observe the tabulation process. If more citizens than the room can accommodate appear to observe the tabulation process, the Department shall restrict the number of observers in order to maintain a safe and orderly environment.

6.6 The Department shall remove all un-voted ballots from the Absentee Room and store them in sealed containers in the Deputy Director's Office.

6.7 The Department shall remove all loose materials from the Absentee Ballot Room.

6.8 The Department shall provide green pens for use by Department staff and Absentee Judges, and red pens for use by challengers and observers.

6.9 The Department shall establish an area where challengers and other persons may observe the tabulation process.

6.10 Challengers and other persons observing the tabulation process shall enter or depart the Absentee Voting Room by the front door unless escorted by the Administrative Director, Deputy Administrative Director or a member of the Board of Elections for New Castle County.

6.11 No person except for an Absentee Judge, an employee of the Department of Elections for New Castle County, a member of the Board of Elections for New Castle County or another State employee acting in an official capacity shall touch an Absentee Ballot during the tabulation process. The Department shall expel any other person who touches or attempts to touch an Absentee Ballot from the Absentee Ballot Room and not permit him/her to return.

6.12 No one shall remove any voted Absentee Ballots from the Absentee Ballot Room except as authorized by this regulation and/or by Delaware Code, Title 15.

6.13 The Administrative Director or Deputy Administrative Director may escort members of the media in and around the Absentee Ballot Room.

## **7.0 Tabulation Process**

7.1 A person or persons designated by the Department shall announce the ED that the Absentee Judges will process and ask if there are any challenges. If a challenger challenges a voter, the Absentee Judges processing the ED shall hear the challenge and then by majority vote determine whether to count the ballot.

7.2 Challengers shall make challenges before the Absentee Judges open the Ballot Envelope for the person that they are challenging.

7.3 A Challenger may make challenges for reasons stated in Chapter 55, §5513.

7.4 A Department member shall give the Absentee Ballots and a check sheet for an ED to a team of Absentee Judges starting with ED 01-01 and continuing in order and shall record the team to which he/she issued an ED's Absentee Ballots.

7.5 The Department shall assign each team of Absentee Judges a specific tabulator to use for tabulating ballots.

7.6 Each Absentee Judge team shall check the ballots received against the check sheet and report any discrepancies to the Administrative Director, the Deputy Administrative Director or a person or persons designated in writing by the Administrative Director and Deputy Administrative Director.

7.7 The Absentee Judge team shall examine each Ballot Envelope and determine whether to count the ballot in accordance with Chapter 55, §5514.

7.7.1 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) before opening the Ballot Envelope, they shall write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.2 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) after opening the Ballot Envelope, they shall put the ballot back into the envelope then write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.3 If the Absentee Judges know that a person who has voted by Absentee Ballot is dead, they shall write the words REJECTED DEAD and their initials on the Ballot Envelope.

7.8 The Absentee Judges shall then open the remaining Ballot Envelopes, remove the absentee ballots therein and place them face down on the table.

7.8.1 If there are two or more ballots in the Ballot Envelope, the Absentee Judges shall put the ballots back into the Ballot Envelope and write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.8.2 If there is no ballot in the Ballot Envelope, the Absentee Judges shall write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.9 Absentee Judges shall put Ballot Envelopes that have been marked as "REJECTED" into the Carrier Envelope for the ED that they are processing and enter the information about the rejection of the Ballot Envelope on to the appropriate log and/or documentation for the ED.

7.10 The Absentee Judges shall tabulate the remaining ballots.

7.11 If the tabulator or scanner cannot tabulate a ballot or ballots, the Absentee Judges shall tally those ballot or ballots on two *Absentee Vote Tally Sheets*.

7.12 Absentee Judges shall record Write-in votes on the Write-in portion of the Absentee Vote Tally Sheets or on a separate Write-in Vote Tally Sheets as determined by the Department as most suitable for the election.

7.13 After the Absentee Judges have tabulated all of the Absentee Ballots for an ED, they shall put the ballots, the Ballot Envelopes and one copy of the Absentee Vote Tally Sheet and Write-in Vote Tally Sheet (if used) into the Carrier Envelope for the ED. They shall then write security seal number for the seal with which they shall secure the Carrier Envelope on the Absentee Ballot Reconciliation Sheet and put the Absentee Ballot Reconciliation Sheet into the Carrier Envelope. The Absentee Judges shall then seal the Carrier Envelope with the appropriate security seal and put the Carrier Envelope in the appropriate transport device.

7.14 Absentee Judges who processed an ED shall process any other Absentee Ballots that the Department receives for that ED prior to the close of the polls in accordance with the above procedures.

## **8.0 After the Polls are Closed and the Ballots Tabulated**

8.1 The Department shall secure the second copies of the Absentee Ballot Reconciliation Sheets, Absentee Vote Tally Sheets and Write-in Vote Tally Sheets (if used) in sealed and/or locked containers. The Department may use these documents as necessary during the canvass process. If the Department opens any containers holding these documents during the canvass process, the Department shall reseal or lock it/them at the conclusion of the canvass process. The Department shall keep the containers sealed or locked until the February 1 following the election unless a court of competent jurisdiction orders the Department to open one or more of the containers.

8.2 After the close of the polls and the Department has tabulated all of the Absentee Ballots, the Department shall seal the transport devices containing the Carrier Envelopes (ballot boxes) and record the seal numbers on a transfer log.

8.3 Upon turning the transport devices over to representatives of Superior Court, the Department shall obtain a signature acknowledging receipt of the transport devices.

8.4 No one shall open a Carrier Envelope that the Department has sealed except in the presence of the Administrative Director, Deputy Administrative Director, and a Deputy Attorney General to correct an error. The officials opening the Carrier Envelope shall fully explain the circumstance on the Absentee Ballot Reconciliation Sheet and shall then reseal Carrier Envelope with another security seal.

## **9.0 Coordination with Polling Places**

9.1 The Department shall publish after 12 Noon the day before an election a list of absentee voters that contains the names of everyone to whom it issued an Absentee Ballot. The Department shall also establish a process by which it distributes the portion of the list of absentee voters for an Election District to that Election District before the opening of the Polls on the day of the election.

9.2 The Department shall make available a copy of the list of absentee voters to each major political party and if requested at least five days before the day of the election to any minor political party on the ballot. The Department shall place a copy of the list in the Absentee Ballot Room for use by those observing the Absentee Ballot tabulation.

9.3 Election Officers shall update Poll Lists in the polling place with the information on the list of absentee voters.

9.3.1 Election Officers shall not permit persons on the list of absentee voters shown as having returned their Absentee Ballot to vote at the Polling Place.

9.3.2 Election Officers shall not permit persons who have not returned their Absentee Ballots and who appear to vote at their Polling Place to vote at the Polling Place until he/she has received permission for that person to vote from the Absentee Ballot Room.

9.4 The Department shall have at least two well-trained persons answering inquiries about absentee voting from the Polling Place and processing all Absentee Ballots returned on the day of the election.

9.4.1 The Department shall authorize a person whose Absentee Ballot the Department has not received to the Department to vote at their Polling Place.

9.4.2 The Department shall not authorize a person who returned his/her Absentee Ballot to the Department to vote at his/her Polling Place.

9.4.3 The Department shall maintain a log of the name and other pertinent information of every person who the Department authorized to vote in accordance with paragraph “a” above.

9.4.4 The Department shall compare the names of persons who return their ballots on the day of the election against the names on the log noted above. If the Department receives a ballot for a person that it authorized to vote at his/her Polling Place, Absentee Judges shall write the word “REJECTED”, the reason it rejected the ballot and the initials of the persons rejecting the ballot on the Ballot Envelope.

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## **10.0 After the Canvass**

10.1 Following the canvass of a Primary Election, the Department shall keep the Carrier Envelopes and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the Carrier Envelopes, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.2 Following the canvass of a General or Special Election, the Department shall keep the Carrier Envelopes in sealed transport devices until February 1 next. The Department shall then keep the Carrier Envelopes and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the Carrier Envelopes, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.3 The Department shall audit the General Election Absentee Results for at least 3% of the Election Districts after February 1 in the year following a General Election and report the results to the Board of Elections for New Castle County.

10.4 The Department shall audit the Primary Election Absentee Results for at least 3% of the Election Districts after November 15 in the year of a General Election and report the results to the Board of Elections for New Castle County.