AMENDED NOTICE OF PUBLIC HEARING ON
PROPOSED ADMINISTRATIVE RULE
OFFICE OF ELECTIONS
STATE OF HAWAII

Notice is given that the Chief Election Officer, under the authority of section 11-4, Hawaii Revised Statutes ("HRS"), and pursuant to Chapter 91, HRS, and Chapter 3-171, Hawaii Administrative Rules ("HAR"), will hold a public hearing to afford all interested persons an opportunity to submit oral or written testimony on the proposed new administrative rule, HAR § 3-177-62, to clarify how a matter will be resolved "by lot" when those words are used in a statute. Additionally, as these proposed changes would be made to chapter 3-177, HAR, the chapter will likewise be compiled.

SCHEDULE OF PUBLIC HEARING

The public hearing is scheduled at the following time and location:

October 26, 2026
9:00 a.m.

Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Additionally, video conferencing as a courtesy will be made available via Zoom, with the login information noted below:

View Remote Hearing: https://youtube.com/live/h4ZZlnKB8v8

Remote Oral Testimony: https://us02web.zoom.us/j/83972642208

Telephone:	+1 669 444 9171	+1 669 900 9128
	+1 719 359 4580	+1 253 205 0468
	+1 253 215 8782	+1 346 248 7799
	+1 386 347 5053	+1 507 473 4847
	+1 564 217 2000	+1 646 558 8656
	+1 646 931 3860	+1 689 278 1000
	+1 301 715 8592	+1 305 224 1968
	+1 309 205 3325	+1 312 626 6799
	+1 360 209 5623	

Meeting ID: 839 7264 2208

If, for technical reasons, the Zoom conference call cannot be made and/or is disrupted, the hearing will continue. All interested persons are therefore encouraged to submit written testimony in advance of the hearing.

AGENDA OF PUBLIC HEARING

I. Call to Order

II. Purpose of the Public Hearing

III. Outline of Procedures

IV. Testimony

V. Announcement of Decision

VI. Adjournment

TOPIC OF RULE PROPOSED TO BE ADOPTED

The Chief Election Officer proposes a new administrative rule in order to comply with the Hawaii Supreme Court's opinion in *Souza v. v. Nago, et al.*, SCEC-26-0000598, which was issued on September 4, 2026. The Court ordered Chief Election Officer Nago "to expeditiously promulgate rules to implement the tie-breaker statute, HRS § 11-157" and to "initiate the process to implement rules with due regard to giving public notice of the proposed rules, and in compliance with the procedures required by law."

The proposed rule solves the problem of how to resolve a matter "by lot." Specifically, the Chief Election Officer proposes that a new administrative rule, HAR § 3-177-62, be adopted to articulate the manner in which statutory references to making determinations "by lot," such as the breaking of a tie in an election, are to occur.

The proposed rule addresses the problem by establishing a procedure for a drawing to be used when a determination needs to be made "by lot." These determinations include resolving contests between candidates and to determine the order of the political preferences that will appear on the ballot for purpose of the Primary Election (i.e. the designations of nonpartisan and for each of the political parties will appear on the ballot card in the order determined by the drawing). As the proposed changes would be made to chapter 3-177, HAR, the chapter would be compiled.

All interested persons wishing to testify on the proposed rule should submit written testimony to the Chief Election Officer, at least twenty-four hours prior to the hearing. Written testimony may be submitted by facsimile to (808) 453-6006, by email to elections@hawaii.gov, by mail to Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782, or by delivering the written testimony in person to the Office of Elections.

Any person submitting written testimony on the day of the hearing shall furnish

10 copies of such testimony to the Chief Election Officer's staff.

The Chief Election Officer or their designee may impose a time limit for each person presenting testimony at the hearing.

In addition, or in lieu of written testimony, any person may file with the Chief Election Officer within two days following the close of the public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed rule making. Such persons shall notify the Chief Election Officer or their designee at the time of the hearing that they intend to file written materials after the hearing. The period for filing written protests, comments, or recommendations may be extended by the Chief Election Officer for good cause.

A copy of the proposed rule to be adopted will be available to be reviewed in person between the hours of 7:45 a.m. to 4:30 p.m., Mondays through Fridays (excluding holidays or other days that the office is legally closed), at the Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782, through the day the public hearing is held.

A copy of the proposed rule to be adopted will be mailed to any interested person who requests a copy and pays the required fees for the copy and the postage. A requestor may, in lieu of paying postage, pick up the copy in person at the Office of Elections by paying the applicable copying cost of 10 cents per page.

Requests may be made by calling the Office of Elections at (808) 453-VOTE (8683) or 1-800-442-VOTE (8683) (neighbor islands), or by asking in person at the Office of Elections. In addition, requests may be made in writing by submitting the request by facsimile to (808) 453-6006, by email to elections@hawaii.gov, or by mail to Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782.

The request should include the name, address, and telephone number of the requestor. Contact information will be used by the Office of Elections to inform requestors of applicable fees for copy and postage. Upon receipt of payment the rules will be mailed to the requestor.

The proposed rule is also available at the Office of Elections' website at https://elections.hawaii.gov.

If you require special assistance or auxiliary aids and/or services to participate in the public hearing process, please contact the Office of Elections at (808) 453-8683 or toll free at 1-800-442-8683 or email elections@hawaii.gov as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request.

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-177
Hawaii Administrative Rules

September 14, 2026

1. A new §3-177-62 is added.

2. Chapter 3-177 is compiled.

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 177

RULES OF THE OFFICE OF ELECTIONS

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§3-177-3 Adoption, amendment, or repeal of rules
§3-177-4 Conduct of hearing
§3-177-5 Decision; taking effect of rules
§3-177-6 Emergency rule making
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§3-177-250 Access to election documents; general procedures
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§3-177-550 Voter service center; verification of the identity of currently registered voters
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Subchapter 13 Ballot Package Procedures

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§3-177-602 Ballot packages; timing of transmittal, military and overseas voter requests
§3-177-603 Ballot packages; timing of transmittal, absentee requests
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SUBCHAPTER 1

ADOPTION, AMENDMENT, OR REPEAL OF RULES
BY CHIEF ELECTION OFFICER

§3-177-1 Chief election officer initiates. When upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule for state, combined state and county, or county elections, a notice of proposed rule making shall be published as required by law. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-3, 92-41)

§3-177-2 Petitions for the adoption, amendment, or repeal of rules. (a) Any interested person or agency may petition the chief election officer for the adoption, amendment, or repeal of any election rule. The petition need not be in any prescribed form, but it shall contain all of the following:

(1) The name, address, zip code, and telephone number of the petitioner;
(2) The signature of the petitioner;
(3) A statement of the nature of petitioner's interest;
(4) A draft or substance of the proposed rule or amendment or a designation of the provisions sought to be repealed;
(5) A statement of the reasons in support of the proposed rule, amendment, or repeal; and
(6) Any other information pertinent to the petition.

(b) An original copy of the petition shall be filed with the chief election officer. Each petition shall be date-stamped upon receipt and shall become a public record upon filing. The chief election officer may require the petitioner to furnish copies of the petition to other persons or governmental agencies known to be interested in the proposed rule making, amendment, or repeal.

(c) The chief election officer, within thirty days after the receipt of the petition, shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with the provisions of §3-177-1 for the adoption, amendment, or repeal of rules. Any petition which does not conform to the requirements specified in this section may be rejected.

(d) No public hearing, oral argument, or other form of proceeding shall be held directly on the granting or denial of the petition. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-2, 91-6)

§3-177-3 Adoption, amendment, or repeal of rules. When, pursuant to a petition therefore, or upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule, the rule shall be adopted, amended, or repealed in accordance with the procedures set forth in chapter 91 and section 92-41, HRS. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§91-3, 91-6, 92-41)

§3-177-4 Conduct of hearing. (a) The chief election officer shall afford all interested persons the opportunity to submit data, views, or arguments, orally or in writing.

(1) Written testimony shall be submitted to the chief election officer at least twenty-four hours prior to the hearing.

(2) Any person submitting written testimony on the day of the hearing shall furnish ten copies of such testimony to the chief election officer's staff prior to the hearing.

(3) In addition, or in lieu of written testimony, any person may file with the chief election officer within two days following the close of the public hearing a written protest or other comments or

recommendations in support of or in opposition to the proposed rule making. Such persons shall notify the chief election officer at the time of the hearing that they intend to file written materials after the hearing. The period for filing written protests, comments, or recommendations may be extended by the chief election officer for good cause.

(b) The chief election officer or the designated representative shall conduct the public hearing.

(c) The presiding officer shall do all of the following:

(1) Read the notice of hearing and outline briefly the procedures to be followed;

(2) Receive testimony from any person with respect to the matters specified in the notice of hearing according to the announced procedures. Each person giving testimony shall state the person's name, address, and whom the person represents at the hearing before testifying;

(3) Have a concise record of the proceedings kept. Unless otherwise specifically ordered by the presiding officer, testimony given at the hearings shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are considered by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impractical, two copies of exhibits shall be submitted; and

(4) Make any decision concerning the continuance of the hearing. As determined by the presiding officer, the hearing held at the time and place set in the notice of hearing may be continued from day to day or adjourned to a later date or to a different

place without notice other than the announcement thereof at the hearing. [Eff 07/26/20; comp] (Auth: HRS §11-4)(Imp: HRS §§11-4, 91-3)

§3-177-5 Decision; taking effect of rules. (a) At the close of the final public hearing, the presiding officer shall announce the decision or announce the date when the decision shall be published.

(b) The adoption, amendment, or repeal of any rule shall be subject to the approval of the governor as required by law.

(c) Each rule change announced by the governor shall become effective ten days after a certified copy is filed with the lieutenant governor as provided by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4) (Imp: HRS §§11-4, 91-3, 91-4)

§3-177-6 Emergency rule making. The chief election officer may adopt emergency rules as provided in §91-4, HRS. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§§3-177-7 to 3-177-49 (Reserved)

SUBCHAPTER 2

GENERAL PROVISIONS

§3-177-50 Purpose; general applicability. The purpose of these administrative rules is to provide for consistency in the administration of elections. The rules in this chapter are generally applicable to all election matters, unless the context indicates otherwise. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-51 Construction of laws. Chapter 1, Hawaii Revised Statutes, consisting of HRS §§1-1 through 1-32, may be consulted in the construction of all statutes and administrative rules. If the chief election officer or a court of competent jurisdiction determines there is a conflict between these rules and the provisions of federal law, such as the Voter Rights Act of 1965, National Voter Registration Act of 1993, Help America Vote Act of 2002, the provisions of the federal law shall control, and the chief election officer or the clerk, as may be applicable under state law, shall perform the duties and discharge the obligations contained in the federal act. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§1-1 through 1-32)

§3-177-52 Election officials. Unless the context indicates otherwise, "election official" refers to the chief election officer, county clerk, or any of their designees. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-53 Office of the clerk. (a) Office of the clerk or similar words such as "county clerk" or "county elections division" means where the affairs of the clerk, such as processing voter registration and mailing and receipt of ballots, are transacted. This

includes, but is not limited to, voter service centers, satellite offices, and anywhere the clerks exercise control through their staff, or others they delegated authority, over ballots or other election matters associated with the duties and powers of their office conferred by law.

(b) Any requirement relating to ballots being received at the office of the clerk will be deemed satisfied by the taking of custody of ballots at the United States Postal Service post office or from anyone at any location, by the clerk, their staff, or others delegated authority by the clerk, so long as the applicable statutory deadline has been met (e.g., ballots received in such a manner by the close of polls will be deemed to have met the statutory deadline).

(c) Any requirement for a voter service center at the office of the clerk will be deemed satisfied by the use of a physical location temporarily managed by the clerk to perform the services associated with a voter service center.

(d) Any requirement for the receipt of voter registration applications, absentee applications, or other election documents will be deemed satisfied by the taking of custody of it at the United States Postal Service post office or from anyone at any location, by the clerk, their staff, or others delegated authority by the clerk, so long as the applicable statutory deadline has been met. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 489E-15) (Imp: HRS 11-4, 11-15, 11-16, 11-104, 11-106, 11-107, 11-109, 12-6, 15, 15-9, 489E-15)

§3-177-54 Office of the chief election officer. (a) "Office of the chief election officer," "office of elections," or similar words, unless the context indicates otherwise, means where the affairs of the chief election officer are transacted. For example, the facilities or locations designated by the chief election officer where nomination papers, ballots or other election materials are received, processed,

counted, or tabulated. This includes anywhere the chief election officer exercises control through themselves, their staff, or others they delegated authority, over ballots or other election matters associated with the duties and powers of their office conferred by law.

(b) Any requirement relating to nomination papers or any other election document being filed at the office of the chief election officer will be deemed satisfied by the filing of those nomination papers or election documents at their main office, satellite office, or the offices of the clerks who are authorized to file nomination papers and other election documents on behalf of the office of elections.

(c) Any requirement for the receipt of nomination papers or other election documents will be deemed satisfied by the taking of custody of it at the United States Postal Service post office or from anyone at any location, by the chief election officer, their staff, or others delegated authority by the chief election officer, so long as the applicable statutory deadline has been met. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 489E-15) (Imp: HRS §11-4, 11-113, 12-6, 489E-15)

§3-177-55 Format of election documents. (a) Election documents may be initially created by election officials in or converted to an electronic format. Election documents may be broadly interpreted to include all records and documents related to elections. A document in electronic format may be considered the equivalent of the original.

(b) In addition to paper forms, election officials may use electronic forms, electronic transmission, computer programs, websites, or similar technology to solicit applications from the public or to generate an electronic document containing the relevant information required by law. For example, election officials may use an online voter registration system, online candidate filing system,

online ballot delivery, marking, and return system, online ballot signature rehabilitation system, electronic mail, or fax.

(c) The election official, to the extent not otherwise required by law or by the chief election officer, may choose not to use technology in the manner noted above. Instead, they may choose to rely on a paper based process for some or all of their operations.

(d) Unauthorized paper forms, electronic forms, or computer programs or services to generate electronic documents are not permitted.

(e) Election officials may authorize third parties to use or otherwise duplicate election documents for distribution. However, the mere distribution of any election document by a third party, will not, in and of itself, create an agency with any election official.

(f) Third parties are cautioned that unless authorized under HRS §11-97, it is unlawful for any person to use, print, publish, or distribute information acquired directly or indirectly from any list prepared therefrom. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-5, 489E-7, 489E-12, 489E-15, 489E-17, 489E-18) (Imp: HRS §§11-2, 11-4, 11-14, 11-97, 11-106, 11-107, 15-1, 15-4, 489E-5, 489E-7, 489E-12, 489E-15, 489E-17, 489E-18)

§3-177-56 Receipt, filing, or accessibility of election documents. (a) Assuming a document is returned in the manner authorized by election officials, the nature of the document and the totality of the circumstances will determine when it is considered received, filed, or accessible for election purposes.

(b) The receipt of a document is merely a ministerial notation of when a document was received and is not the equivalent of a determination that the document is in proper order and can be counted in the context of a ballot, filed in the context of a nomination paper or similar document, or the applicant

treated as registered in the context of a voter registration application. To the extent a document is initially received and subsequently found not to meet filing requirements, it may be returned to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a candidate submits a nomination paper and it is subsequently determined that it does not have the required amount of verified signatures, the candidate may be provided the document back so they can obtain sufficient signatures and resubmit the document by the filing deadline.

(c) The filing of a document occurs to the extent the underlying statute refers to filing and the election official determines that the document submitted for filing meets the statutory or administrative rule requirement for filing. If a document submitted for filing does not satisfy the requirements for filing it will not be considered filed. Similarly, if it is considered to have met the requirements of filing it will be considered filed at the time of receipt. An initial indication that a document has been filed does not preclude it from being determined not to have met the requirements for filing. In such a case, any such document may be considered void ab initio and not considered filed (i.e., void from the beginning).

(d) Generally, documents may be received during the hours established by the chief election officer or county clerks, with the understanding election officials can adjust hours. Additionally, the county clerk or chief election officer may receive documents at any location. As it relates to the online voter registration system or any other electronic system operated by the chief election officer or the county clerks, which may operate otherwise outside of normal work hours, the document will be deemed filed upon receipt unless determined otherwise. Documents delivered after normal work hours may be treated as received as of the next business day.

(e) A voter standing in line at a place of deposit or voter service center at the closing time

provided in HRS §11-131 with the intent to return a ballot and casting a vote shall be allowed to vote. This does not preclude a voter from otherwise standing in line at any other location established by an election official by the closing time provided in HRS §11-131 with the intent of returning a ballot and casting a vote from being allowed to vote (e.g., the county clerk may establish a receiving area for ballots in the parking lot of a county building, as opposed to requiring voters to go into a county building to get to the voter service center).

(f) As it relates to matters covered by federal law, receipt shall be determined by the applicable federal law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-4, 11-6, 11-15, 11-15.3, 11-16, 11-62, 11-63, 11-64, 11-77, 11-104, 11-105, 11-106, 11-107, 11-113, 11-117, 11-131, 12-6, 12-8, 15-4, 15-9, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18)

§3-177-57 Districts, precincts, polling places, and ballot types. (a) "District" means, unless otherwise specified, the district of political representation with the fewest eligible voters in a particular election. The use of the general term "district," without reference to a specific office, such as councilmember district, state representative district, state senatorial district, or U.S. Representative District, shall be comparable to the prior utilization of the term "precinct" or "district-precinct" before the enactment of elections by mail. Specifically, election administrators may account for the intersecting boundaries associated with different offices or jurisdictions to establish the "districts" that will be used for administrative and reporting purposes. Similarly, election administrators may take into account historical reporting of results by specific regions or communities in establishing the "districts" that will be used for administrative and reporting purposes.

(b) To the extent a statute continues to refer to a "precinct," unless the context indicates

otherwise, it will be understood to have the same definition as a district in subsection (a).

(c) In terms of identifying a district used for administrative or reporting purposes a two-part naming convention may be used. For example, a district may be represented with a hyphen, dash, or forward slash between a state representative district number and the administrative district within it, to facilitate identifying the boundaries of the district in relation to the larger boundaries of intersecting offices or jurisdictions (e.g., DP 07-01 or DP 07/01). Otherwise, a different naming convention may be used, so long as there is on file a description of the boundaries of the district. No changes to any such district boundaries shall be made later than 4:30 p.m. on the tenth day before the close of filing for an election.

(d) "Polling place," "polls," or "pollbooks" unless the context indicates otherwise, refers to a voter service center or something in connection with a voter service center.

(e) "Ballot type," unless the context indicates otherwise, means the unique ballot containing the contests, question, or issues of the voters of a specific district. The ballot type associated with one district may contain the same contests, question, or issues associated with a different ballot type to be used by the voters of a different district, with the only difference being the administrative identification of a ballot type.

(f) Election officials may accommodate other ballot types, as may be necessary, including the distinction between ballots cast at voter service centers, ones associated with ballot packages, those associated with electronic transmission, categories of voters required by state or federal law to have a particular type of ballot, and any other category that facilitates the reporting of results or the inventory control of ballots.

(g) A particular ballot type associated with a district or category of voter may be used for different district or category of voter, if the

contests, questions, and issues are the same. To the extent there are differences, they will be addressed by the counting center officials, pursuant to HAR §3-177-759. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-1, 11-4, 11-5, 11-11, 11-12, 11-13, 11-15.2, 11-17, 11-18, 11-20, 11-21, 11-22, 11-25, 11-26, 11-92.1, 11-92.3, 11-96, 11-97, 11-102 through 11-109, 11-112, 11-117, 11-138, 11-153, 11-155, 11-172, 11-174.5, 13D-3, 15-2.5, 15-4, 15-11, 15-14, 15D-10, 16-1, 16-22, 16-23, 16-26, 16-27, 16-28, 16-42)

§3-177-58 Saturday, deadlines. To the extent a statutory deadline occurs on a Saturday, the chief election officer or clerk may make themselves available to receive the applicable filing by electronic mail on that day. The circumstances of a deadline occurring on a Saturday will not serve as a basis to extend any statutory deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-15) (Imp: HRS §1-29, 11-64, 11-77, 15-4, 489E-15)

§3-177-59 Postponement of elections; natural disaster. (a) The conducting of an election may be postponed in any district or county by the chief election officer or the clerk of a county in the case of county elections if:

(1) Flooding, high winds, earthquake, tsunami, volcanic eruption, or other natural disaster has occurred in, or in the proximity of, the district, or county; and
(2) Access to voter service centers are restricted due to:
    (A) Damage to, or closing of, roads;
    (B) The absence or suspension of public transportation;
    (C) The absence of electricity, telephone, or other public telecommunications or utilities;
    (D) Extensive property damage or personal injury throughout the affected area;

(E) Damage to a voter service center or voter service centers which endangers the health or safety of voters or election officials; or

(F) Damage to a voter service center or voter service centers which makes it impracticable for such locations to function as election sites.

(b) An election may be postponed no more than twenty-one days from its scheduled date. The chief election officer, or clerk in the case of county elections, may, subject to applicable law, alter the method or manner of voting or counting to accommodate the conditions which necessitated the postponement. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-92.3, 11-109)

§3-177-60 Compensation for election day officials. (a) All election day officials shall be compensated in accordance with a stipend schedule approved by the chief election officer containing substantially the following information:

(1) County designation;

(2) Position title; and

(3) Stipend amount per election.

(b) The stipend schedule is as follows:

ELECTION DAY OFFICIAL
Base Pay

COUNTY	POSITION		STIPEND PER ELECTION SERVED
COUNTING CENTER			
O	Chairperson:	Base Pay	105.00
H, M	Chairperson:	Base Pay	95.00
K	Chairperson:	Base Pay	90.00
O	Assistant:	Base Pay	100.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
H, M	Assistant:	Base Pay	90.00
K	Assistant:	Base Pay	85.00
O	Member:	Base Pay	95.00
H, M	Member:	Base Pay	85.00
K	Member:	Base Pay	80.00
CONTROL CENTER			
O, H, K, M	Board of Registration Member		85.00
O, H, K, M	Board of Registration Secretary		100.00
O, H, K, M	Computer Terminal Operator		85.00
O	Control Center Assistant Manager		140.00
O, H, K, M	EIS Multilingual		85.00
O	Electioneering Chairperson		70.00
O	Electioneering Member		60.00
O, K	Messenger		60.00
O, H, K, M	Phone Operator		85.00
O, H, K, M	Troubleshooter		145.00
DELIVERY/COLLECTION (D/C)			
O, H, K, M	D/C Chairperson	00-10 miles	70.00
O, H, K, M	D/C Chairperson	11-20 miles	75.00
O, H, K, M	D/C Chairperson	21-30 miles	80.00
O, H, K, M	D/C Chairperson	31-40 miles	85.00
O, H, K, M	D/C Chairperson	41-50 miles	90.00
O, H, K, M	D/C Chairperson	51-60 miles	95.00
O, H, K, M	D/C Chairperson	61-70 miles	100.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
O, H, K, M	D/C Chairperson	71 + miles	105.00
O	D/C Controller		90.00
K	D/C Driver	00-10 miles	75.00
K	D/C Driver	11-20 miles	80.00
K	D/C Driver	21-30 miles	85.00
K	D/C Driver	31-40 miles	90.00
K	D/C Driver	41-50 miles	95.00
K	D/C Driver	51-60 miles	100.00
K	D/C Driver	61-70 miles	105.00
K	D/C Driver	71-80 miles	110.00
O, H, K, M	D/C Member	00-10 miles	65.00
O, H, K, M	D/C Member	11-20 miles	70.00
O, H, K, M	D/C Member	21-30 miles	75.00
O, H, K, M	D/C Member	31-40 miles	80.00
O, H, K, M	D/C Member	41-50 miles	85.00
O, H, K, M	D/C Member	51-60 miles	90.00
O, H, K, M	D/C Member	61-70 miles	95.00
O, H, K, M	D/C Member	71 + miles	100.00
O	D/C Standby		50.00
O, H, K, M	Election Support		100.00
SUPPLY COLLECTION (SC)			
O	Supply Collection Chair		60.00
O	Supply Collection Coordinator		65.00
O	Supply Collection Custodian		10.00

COUNTY	POSITION	STIPEND PER ELECTION SERVED
O	Supply Collection Member	50.00

O = City & County of Honolulu H = County of Hawaii
K = County of Kauai M = County of Maui

(c) The stipend amount per election may vary based on workloads and time differentials or at the discretion of the chief election officer; provided that the stipend amount be established prior to election day. This includes the ability to authorize split shifts if necessary.

(d) The stipend amounts shall be considered minimum stipends, subject to possible increase, in the event of available legislative appropriations. Any such increased stipend amount will be established prior to election day.

(e) Notwithstanding anything to the contrary, the chief election officer or the clerk may employ regular employees or temporary employees of their office to perform any duties that may be performed by an election day official, in addition to procuring any services necessary for the execution of their responsibilities, to the extent permitted by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-76)

§3-177-61 Security of ballots and election supplies. (a) The procedure for ensuring the security of a container used to store or transport ballots, voter verifiable paper audit trails, vote data storage media, and other sensitive election materials shall be as follows:

(1) Made of suitable materials to prevent breakage or tampering;

(2) Securable using a nonreusable seal;

(b) A record shall be maintained to list the seals used to secure such containers and to provide an

accurate chronological posting of seals used during the opening and closing of each container. A section for witnesses' signatures shall also be provided.

(c) Election officials shall make periodic checks of the seals on such containers to ensure that no tampering has occurred. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-152)

§3-177-62 By lot. (a) "By lot" means, unless otherwise specified, the making of a selection or decision purely by random chance, such as drawing names from a container, flipping a coin, or rolling dice.

(b) Unless the context indicates otherwise, any statute referring to a selection or decision being made "by lot," by drawing, or similar words reflecting by random chance shall be done by drawing names from a container. Hereinafter, this will be referred to as the "drawing."

(c) The names of the candidates or political parties may be handwritten or printed by a machine on individual pieces of paper.

(d) The paper shall be folded in such a manner that the name cannot be read from the outside. The paper for each individual name will be placed in the container.

(e) Unless determined otherwise, individual capsules will be used to contain each individual piece of paper. The capsules containing each piece of paper shall be placed within the container. To the extent individual capsules are not readily available, capsules may not be used and only the pieces of paper will be placed in the container.

(f) The container, depending on the type of container, will be shaken or rotated by someone other than the person who will be drawing the capsule or piece of paper. The person drawing will avert their eyes, so they do not see the capsule or piece of paper when they draw it from the container. The drawer will announce the name that was drawn.

(g) To the extent the drawer is to draw multiple

capsules or pieces of paper, such as in the case of determining the political party order for the primary election, the drawer will announce the name drawn after each selection.

(h) The office of elections or the clerk in the case of county elections shall attempt to notify candidates or political parties, in the event of a drawing to determine political party order on the ballot, that will be affected by the drawing of its time and place. Contact may be attempted through using the telephone number or electronic mail address provided to election officials by the candidate or political party that is on file with election officials.

(i) Election officials are not responsible for the non-receipt of such notice by the candidate or political party or their non-attendance.

(j) The drawer for purposes of any state or federal contest shall be the chief election officer. Similarly, the drawer for purposes of any county contest shall be the county clerk.

(k) Unless stated otherwise, as it relates to any state or federal contest, the drawing will be conducted on Oahu. The location of the drawing for a county contest will be in the county.

(l) The equipment used for the drawing will be available for viewing immediately prior to it being conducted.

(m) Election officials will attempt to record the drawing. However, election officials are not responsible for any technical issues with making a recording or playing it back. Having said that, the attendees of the drawing will have the ability to make their own recording, to the extent it is not disruptive or otherwise interferes with the drawing. [Eff and comp] (Auth: HRS §11-4) (Imp: HRS §§11-100, 11-157, 12-21, 14-27, 17-3)

§§3-177-63 to 3-177-99 (Reserved)

SUBCHAPTER 3

VOTER EDUCATION

§3-177-100 Purpose. The chief election officer may establish voter education programs, including publishing voter information pamphlets, conducting voter awareness media campaigns, and employing other voter information methods deemed appropriate by the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-2)

§3-177-101 Voter pamphlet. (a) The chief election officer or the clerk may produce a voter information pamphlet in printed form or published on an online website.

(b) The chief election officer or clerk may select the district or districts to be covered by the voter information pamphlet. The pamphlet may be made available, by mail, or other methods, to households within the selected district with one or more registered voters. In the alternative, the pamphlet may be made on the office of elections' website or that of the office of the clerk.

(c) The chief election officer or clerk may authorize the pamphlet to contain contact information for the candidates (e.g. telephone number, electronic mail address, fax, or website); provided that the candidate submits the information before the deadline established by the chief election officer or clerk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-2)

§3-177-102 Election equipment loans. (a) The chief election officer or clerk may establish a program to authorize the use of any available election equipment by schools or community organizations at no cost. The chief election officer or clerk may charge a school or community organization for applicable

shipping and delivery charges and for the repair or replacement of equipment damaged by the school or community organization.

(b) The following election equipment may be made available: voting booths, steel ballot box, and other election equipment.

(c) The equipment may be available from the chief election officer, clerk, or designated representative.

(d) Organizations under this program shall assign a coordinator who will be the point of contact and who will assume the responsibility for the election equipment. [Eff 07/26/20; comp] (Auth: HRS §§11-2, 11-4, 16-3) (Imp: HRS §11-2, 16-3)

§§3-177-103 to 3-177-149 (Reserved)

SUBCHAPTER 4

VOTER REGISTRATION

§3-177-150 Voter registration and related forms. (a) The affidavit on the application for voter registration form shall be in a form prescribed and approved by the chief election officer containing substantially the following information:

(1) Name;

(2) Applicant's Hawaii driver license number or Hawaii state identification card number; provided that:

(A) If no driver license or identification card has been issued to the applicant, the last four digits of the applicant's social security number; and

(B) If no social security number has been issued to the applicant, an election official or county clerk shall assign the applicant a unique identification number for voter registration purposes and enroll the applicant in the State's computerized voter registration list, if any;

(3) Date of birth;

(4) A statement that the applicant is at least sixteen years of age at the time of completing the registration form;

(5) Residence, including mailing address;

(6) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein;

(7) That the person is a citizen;

(8) That the person swears to the truth of the allegations by self-subscribing affirmation in the affidavit on application for voter

registration or other form prescribed by the chief election officer;

(9) A space for a signature of a witness, along with their address and telephone number, when the applicant is unable to sign and instead makes a mark; and

(10) A statement which says that the office, site, or location at which an applicant registers to vote, or the declination on the part of the applicant to register to vote will remain confidential and will be used for voter registration purposes only.

(b) The voter registration form may also include other information deemed appropriate by the chief election officer including but not limited to the following information:

(1) Applicant's telephone number;

(2) Applicant's electronic mail address;

(3) If the applicant was previously registered in a state other than Hawaii, an authorization by the applicant to cancel the applicant's previous voter registration; and

(4) A statement notifying applicants of the penalty for falsifying information on the voter registration form or for falsifying the self-subscribing oath.

(c) The following forms shall also be accepted for voter registration:

(1) Federal Postcard Application (FPCA);

(2) National Mail Voter Registration Form;

(3) Any simultaneous application for voter registration and either a driver license or state identification card;

(4) Any online voter registration application; and

(5) Any other form or manner of registration required by state or federal law.

(d) The chief election officer may prescribe and approve other forms for the purpose of updating an existing voter registration record, verifying the identity of a voter in relation to a request by a voter, or as part of an inquiry by an election

official to a voter (e.g. a request by a voter to update their voter registration record; an application for an absentee ballot, replacement ballot, or to vote in person at voter service center; or an inquiry to a voter in relation to a voter registration challenge or transfer).

(1) These forms may require substantially any information required by subsections (a) and (b), to verify the identity of the voter, ensure information is current, or otherwise update the voter registration record. However, if an election official has transmitted a form to a voter or is otherwise satisfied that the individual returning the form is who they claim to be, then the election official may, depending on the circumstances, not require information that would otherwise be required by subsections (a) and (b) for a new voter in conjunction with a transaction with a current voter. For example, if an election mailing is addressed to a specific voter with an enclosed card or form to be returned, elections officials may choose to require a signature, which would be used to verify the identity of the voter. Similarly, if a form is utilized at an election official's office and the voter has presented satisfactory identification to an election official, the provision of information associated in subsections (a) and (b) for a new voter may not be required for a current voter; and

(2) Depending on the type of application request, other information relevant to the request may be requested (e.g. temporary mailing address, name of designee picking up a ballot for the voter, evidence of statutory eligibility for the presidential ballot, or affirmation indicating compliance with the criteria for the specific request).

[Eff 07/26/20; comp] (Auth: HRS

§§11-4, 11-15, 11-16) (Imp: HRS §11-4, 11-4, 11-15, 11-16, 11-105, 11-106, 11-107, 15-4)

§3-177-151 Voter registration forms; distribution. (a) Voter registration forms shall be available at the offices of the clerk and the chief election officer.

(b) The chief election officer shall designate state government agencies that provide public assistance and state funded agencies that provide service to persons with disabilities as voter registration agencies.

(c) Voter registration forms, or their equivalents, shall be available at federal, state, and county agency offices and other locations specified by law.

(d) Forms may also be distributed in accordance with procedures established by the chief election officer or clerk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 286-108)

§3-177-152 Voter registration forms; collection. (a) Voter registration forms of new voters shall be received by the clerk no later than 4:30 p.m. on the day of the closing of the register for the election for which the applicant seeks to be registered. Voter registration forms received after the closing of the register for an election shall not be valid for that election and shall be processed by the clerk to register the applicant for the next election, except in regard to any person appearing in person at any voter service center on or before election day, who is otherwise eligible to register to vote under HRS §11-15.2.

(b) Applicants to be new voters, who are not registering to vote in person at a voter service center, shall submit completed voter registration forms in the following manner:

(1) At designated drop off locations operated by the chief election officer or clerk;

(2) By delivering the completed voter registration form to the clerk or to designated representatives of the clerk. This includes, but is not limited to, any state motor vehicle authority or voter registration agency, as those terms are used in the National Voter Registration Act of 1993, as amended (e.g. driver license offices);

(3) By mailing the completed voter registration form to the clerk, provided that the completed voter registration form shall be mailed directly to the clerk and shall be postmarked no later than the day of the closing of the register for the election for which the applicant seeks to be registered. If the postmark is illegible or missing, an otherwise acceptable voter registration form shall be effective for an upcoming election:
    (A) If the voter registration form is executed on or before the close of registration for that election; and
    (B) The voter registration form is received by the clerk by mail no later than the second business day after the close of registration for that election; or

(4) Using the online voter registration system, authorized by HRS §11-15.3. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-15.3, 11-16, 11-24)

§3-177-153 Voter registration forms; electronic transmission by government agencies. (a) To the extent a government agency serves as a voter registration agency or is associated with a state motor vehicle authority, the agency may electronically transmit the information required to register a voter, if the voter has signed the equivalent of a voter registration form at the voter registration agency. The information transmitted will be considered the equivalent of an original of the voter registration

for all purposes. As it relates to the data sent, the voter registration agency shall also send a copy of the digitized signature in the voter registration agency's database. The digitized signature may be used by election officials to validate and confirm a voter's identity in any election-related matter in which a signature is necessary.

(b) "Voter registration agency" for purposes of this rule means any office designated under Section 7(a)(1) of the National Voter Registration Act of 1993, as amended, as a voter registration agency.

(c) "Associated with a state motor vehicle authority" means any office involved in the issuance of a personal identification document typically issued by a state motor vehicle authority under Section 5 of the National Voter Registration Act of 1993, as amended. This includes, but is not limited to, any county licensing examiner in conjunction with the issuance of a driver license or state identification card. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18, 52 USC §20504, 52 USC §20506) (Imp: HRS §11-4, 11-15, 11-16, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18, 52 USC §20504, 52 USC §20506)

§3-177-154 Transfer or change of registration initiated by the voter. (a) Once registered to vote, the voter need not register again or change the voter's registration ("reregister") for any succeeding election except upon change of name or address. If the voter's name has been removed from the registry, the voter shall be required to register to vote pursuant to Chapter 11 HRS.

(b) A voter may be allowed to reregister by completing and submitting any voter registration or related form, to the extent it contains the necessary information for the clerk to update the registration.

(c) A person shall be allowed to reregister at any time prior to the close of voting on election day.

(d) The date of reregistration shall be

determined pursuant to HAR §3-177-155. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-17, 11-18, 11-19, 11-20)

§3-177-155 Clerk's approval; when voter becomes registered. (a) Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegations of the applicant in information required in the voter registration form.

(b) The clerk may require the applicant to furnish substantiating evidence to the allegations in the applicant's voter registration form.

(c) To the extent an applicant has satisfied the clerk of the allegations of the voter registration form either in subsection (a) or (b), the voter will be considered registered as of the date of the receipt of the voter registration form, unless there is a basis for an earlier date.

(1) If a voter registration form was mailed to the clerk by the voter registration deadline but received after the deadline, the date of registration will be the date the form was signed; or

(2) If a voter registration form was delivered to a drop off point or to a designated representative, the date of registration will be the date of receipt at the drop off point or to the designated representative.

(d) Notwithstanding anything to the contrary, the clerk may administratively use the date of the signing of the form, to reflect the date of registration, to the extent it has no impact on whether an applicant would otherwise be eligible to vote in the upcoming election (e.g. there is no dispute that the date of actual receipt or the application of the provisions of the National Voter Registration Act of 1993, as amended, would otherwise reflect that the applicable voter registration deadline had been met). [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20504, 52 USC §20505, 52 USC §20506) (Imp: HRS §§11-15, 11-16, 52 USC §20504, 52 USC §20505, 52 USC §20506)

§3-177-156 Determination of residence. (a) In addition to the rules for determining residency provided in HRS §11-13, the following shall also be applicable in determining the residence of a person for election purposes:

(1) The residence of a person is that place in which the person's habitation is fixed, where the person intends to remain, and when absent, intends to return;

(2) When a person has more than one dwelling:

(A) If a person maintains a homeowner's property tax exemption on one of the dwellings, there shall be a rebuttable presumption that the dwelling subject to the homeowner's property tax exemption is that person's residence;

(B) If a person claims a renter's tax credit for one of the dwellings, there shall be a rebuttable presumption that the dwelling, subject to the renter's tax credit is that person's residence; and

(C) If a person has not physically lived at any one dwelling within the year immediately preceding the election, there shall be a rebuttable presumption that the dwelling in which the person has not lived at is not the person's residence.

(3) When a residence address does not have a street number or a person is considered homeless, the following information shall be required:

(A) A description of the location of the residence sufficient to ascertain a voting district and precinct; and

(B) A mailing address within the state, and where the person is legally entitled and does in fact receive

mail.

(4) When a person of this State is employed in the service of the United States, is a student of an institution of learning, or is in an institution, asylum, or prison:

(A) A person does not gain or lose residence in a precinct or this State solely by reason of being present in or absent from a precinct or this State; and

(B) A person once having established residency in a precinct shall be allowed to register and vote and to continue to vote from the address at which the person is registered even though, while residing outside of the precinct or the State, the person no longer has a place of abode in the precinct and the person's intent to return to the precinct may be uncertain.

(b) Should a person's circumstances change and the person takes up a domicile in another precinct or state, there shall be a rebuttable presumption that the new domicile is that person's residence.

(c) For purposes of this section, a rebuttable presumption is a presumption considered true unless proven false by evidence to the contrary.

(d) For purposes of this rule, "precinct" means "district" as that term is defined in HAR §3-177-57 and as used in HRS §11-92.1(b). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-13, 11-15, 11-92.1)

§3-177-157 National Voter Registration Act of 1993, as amended; general program to remove ineligible voters, using change of address information supplied by the postal service. (a) The clerk shall, in accordance with Section 8(a)(4) of the National Voter Registration Act of 1993, as amended, conduct a general program that makes a reasonable effort to remove the names of ineligible voters by reason of

death or change in residence, in accordance with Section 8(b),(c), and (d), from the lists of eligible voters.

(b) The clerk may meet the requirements of subsection (a) of this rule by establishing a program under which –

(1) Change-of-address information supplied by the U.S. Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(2) If it appears from information provided by the U.S. Postal Service that—

(A) A registrant has moved to a different residence address in the same county in which the registrant is currently registered, the clerk changes the registration record to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(B) The registrant has moved to a different residence address not in the same county, the clerk uses the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to confirm the change of address.

(c) The clerk's use of change-of-address information supplied by the U.S. Postal Service through its licensees to identify registrants whose addresses may have changed, as described in subsection (b), to meet the requirements of subsection (a), does not preclude the clerk from using a different program to meet the requirements of subsection (a). The clerk may use other bases to justify using the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to remove registrants due to a change in residence including, but not limited to,

the following:

(1) Sending a notice to every registered voter at specified intervals (e.g. once a year or before an election);

(2) Sending a notice to those who have turned in their driver licenses;

(3) Sending a notice to those who have not voted or engaged in any voter activity for a period of two years. "Voter activity" means casting a ballot in any election, filing a voter registration form, making a written request for an absentee ballot, updating a voting address, or otherwise initiating contact with election officials that results in a notation in the voter's registration record; or

(4) Sending a notice to those that a government agency has informed election officials have moved out of the county.

(d) The clerk shall not remove the name of a registrant from the voter registration rolls on the ground that the registrant has changed residence unless the registrant—

(1) Confirms in writing that the registrant has changed residence to a place outside the county in which the registrant is registered; or

(2) Has failed to respond to a notice described in subsection (i) of this rule and has not voted or appeared to vote (and, if necessary, correct the clerk's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(e) A "confirmation notice" is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(1) If the registrant did not change his or her residence, or changed residence but remained in the county, the registrant should return the card not later than the time provided for mail registration under Section 8(a)(1)(B) of the National Voter Registration Act of 1993, as amended. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and

(2) If the registrant has changed residence to a place outside the county in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20507) (Imp: HRS §§11-12, 11-16, 11-17, 11-18, 11-19, 11-20, 52 USC §20507)

§3-177-158 Transfer or change of registration initiated by the clerk. (a) The clerk shall use all reliable and pertinent information to keep the general county register up to date.

(b) The clerk may request information from the courts, the department of health, utility companies, condominium and apartment associations, and other agencies to gather information to keep the register up to date.

(c) Where the clerk has evidence indicating that a voter's registration should be transferred, the clerk shall notify the registered voter by first class mail of the intent to transfer. The notice shall

include:

(1) Any evidence indicating why the transfer or change should be made;

(2) The residence, and district of the voter according to current registration lists and any alleged new address and district;

(3) A reply form for the voter to agree or object to the transfer, to list the voter's reasons for the objection, and to sign; and

(4) A statement informing the voter to complete and return the reply form to the clerk by 4:30 p.m. on the tenth day after the form was mailed to prevent the transfer of registration from being completed.

(d) The clerk shall transfer the registration of a voter who does not respond by 4:30 p.m. on the fifteenth day after the form was mailed.

(e) A voter may contest the transfer on or before election day by presenting evidence to rebut the transfer which, if found valid by the clerk or the board of registration, shall entitle the voter to restore the voter's registration to what it was before the transfer.

(f) Notwithstanding anything to the contrary, a voter may be transferred to another district, pursuant to the National Voter Registration Act of 1993, as amended. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20507) (Imp: HRS §§11-20, 11-21, 11-22, 11-23, 52 USC §20507)

§3-177-159 Confidential registration. (a) A person can apply to keep confidential the person’s residence address and telephone number, as provided in the person’s voter registration form, if the person can show good cause that:

(1) Life threatening circumstances exist to the person or a member of that person’s family;

(2) Risk of bodily harm exists to the person or

a member of that person's family; or

(3) The person would be subject to an unwarranted invasion of privacy.

(b) An application for confidential registration shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the basis for the person's request for confidential registration; and

(2) An optional mailing address which may be released for election or government purposes.

(c) Voter registration information declared confidential pursuant to this section shall not be released, even for election or government purposes; provided that the optional mailing address set forth in the confidential registration application may be released in place of the person's residence address for election or government purposes.

(d) The clerk may request additional information regarding the reasons justifying confidential treatment.

(e) In no event shall confidential registration be released without notifying the person.

(f) Confidential registration shall retain its confidential status for two election cycles, after which time the person must reapply for confidential registration pursuant to this section, unless the clerk waives the requirement.

(g) A challenge to the voter registration of a person who has been granted confidential registration shall be processed in accordance with the procedures set forth in HAR §3-177-205.

(h) Notwithstanding anything to the contrary, when a program participant in the Chapter 801G, Hawaii Revised Statutes address confidentiality program submits a current and valid address confidentiality program authorization card to an election official, the election official shall accept the substitute address on the card as the program participant's

actual address to be used when creating a new public record.

(1) Election officials shall use a program participant's actual address for purposes of determining residency pursuant to HRS §11-13;

(2) The substitute address shall be used for all other purposes and the program participant's name, mailing address, actual address, or telephone number shall not be published in any list or register;

(3) Without regard to subsection (f), the voter will continue to be treated as a special class of confidential voter until such time as they are informed by the participant or the address confidentiality program that the voter is no longer a participant;

(4) Disclosure by an election official of a program participant's actual address shall be prohibited unless required by order of a court; and

(5) To the extent there is a voter challenge of a participant where the residence address is sought, the residence address will not be provided unless required by order of a court. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-14.5) (Imp: HRS §11-14.5)

§3-177-160 Voter registration information; prohibited uses. (a) Voter registration forms, the general county register, the statewide voter registration system, or any lists or data prepared therefrom shall be released or used for election or government purposes only, unless otherwise provided by law.

(b) Notwithstanding subsection (a), a voter's full name, district/precinct designation, and voter status is public information available for any purpose.

(c) Voter registration information that is not public under subsection (b), excluding the voter's

full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, may, as determined by the clerk, be made available for an election purpose (e.g. the clerk may not disclose information they determine would interfere with the operations of elections or unduly compromise the privacy of voters). At a minimum, unless otherwise prohibited by law, the residence address and mailing address will be provided.

(d) Voter registration information that is not public under subsection (b) may be made available to federal, state or county government agencies for government purposes.

(e) The following constitutes a non-exhaustive list of election or government purposes, unless otherwise provided by law:

(1) To support or oppose any candidate or incumbent for partisan or nonpartisan office;

(2) To support or oppose any proposed or existing ballot measure, proposition, or issue;

(3) To support or encourage voter registration or the voting process;

(4) To authorized government officials who, by the nature of their official responsibilities, must have access to the voter registration information for legitimate government purposes within the scope of their official duties;

(5) To challenge the right of any person to vote or to seek public office; or

(6) To satisfy the requirements of HRS §11-62 or HRS §11-113.

(f) Voter registration information that is not public under subsection (b) may not be used for any commercial purpose, such as mailing or delivering an advertisement or offer for any property, establishment, organization, product or service, or for the purpose of mailing or delivering any

solicitation for money, services, or anything of value; provided that service bureaus may charge a fee for their services involving the use or disclosure of voter registration information that is not public under subsection (b) so long as the underlying election or government purpose is verified.

(g) A request for voter registration information that is not public under subsection (b) shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought;

(2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes;

(3) Where the requesting party is a government agency seeking the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, a statement setting forth reasons why such information is required; and

(4) A sworn certification by self-subscribing oath that the information will not be sold, released, distributed, or used in any way for commercial purposes, provided that service bureaus may charge a fee for their services in accordance with subsection (f). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-14, 11-62, 11-97, 11-113, 19-6)

§§3-177-161 to 3-177-199 (Reserved)

SUBCHAPTER 5

VOTER CHALLENGES AND APPEALS

§3-177-200 Prerequisites and grounds for challenge. (a) Any registered voter may challenge the right of a person to be or to remain registered as a voter for any cause not previously decided by the board of registration or the courts in respect to the same person.

(b) Any voter rightfully in a voter service center may challenge the right to vote of any person who comes to the voter service center for voting purposes.

(c) The challenge shall be only on the following grounds:

(1) The person is not who the person claims to be; or

(2) The person is not entitled to vote.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-25)

§3-177-201 Challenges in writing not occurring in a voter service center; procedure.

(a) A challenge in writing not occurring in a voter service center, shall be delivered to the clerk, setting forth the grounds upon which it is based and signed by the person making the challenge.

(b) The clerk shall immediately notify the person challenged.

(c) The clerk shall, as soon as possible, investigate and rule upon the challenge.

(d) The clerk shall notify the challenger and the person challenged in writing of the clerk's decision. The clerk shall also notify the person ruled against of the person's right to appeal to the board within ten days of service of the adverse decision. Service of the decision shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mail, postage

prepaid, and addressed to each party's last known address.

(e) If an appeal is filed, both the challenger and the challenged voter shall be parties to the appeal. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26)

§3-177-202 Appeal to the board from a clerk's ruling on a challenge in writing not occurring in a voter service center. (a) Any appeal of the clerk's ruling that did not occur at a voter service center shall be made in writing by filing a notice of appeal with the respective clerk's office addressed to the chairperson of the board of registration within ten days of service of the clerk's decision. The notice of appeal shall include a statement of the clerk's decision being appealed, the grounds upon which it is being contended that the clerk's decision is erroneous, and the name of the person challenged. The appeal shall be exempted from the provisions of HRS Chapter 91, regarding contested case hearings.

(b) The board may hold an informal pre-hearing conference for the purpose of:

(1) Simplifying and clarifying issues;
(2) Making necessary or desirable amendments to the notice of the charges, or its answer, if any;
(3) Obtaining admissions of fact or documents to avoid unnecessary proof;
(4) Limiting the number of expert witnesses; and
(5) Reviewing any other materials that may aid in the reasonable and expeditious disposition of the matter.

Notice and opportunity to participate shall be given to each party and each party's attorney. The entire board or one of its members designated for such purpose shall preside at the conference. Prejudicial comment or conclusion on any issue being controverted shall not be made or stated at any time by any member or the presiding member of the board. Minutes of the

conference shall be kept, and agreements shall be concisely noted.

(c) The petitioner and the respondent shall have the opportunity to challenge any member of the board.

(d) The chairperson of the board shall be the presiding officer and shall be authorized to make any preliminary determinations necessary for the prompt and efficient management of the appeal hearing.

(e) Before presentation of the case, each party shall have the opportunity to make an opening statement. The usual order of the opening statements shall be:

(1) Opening statement by the petitioner;

(2) Opening statement by the respondent, or respondent may reserve respondent's opportunity to make the opening statement until after the witnesses for the petitioner have been presented; and

(3) Opening statements may be waived by a party.

(f) Witnesses may be called to testify and presented in the following order:

(1) Witnesses for the petitioner;

(2) Witnesses for the respondent;

(3) Witnesses for the petitioner in rebuttal;

(4) Witnesses for the respondent in rebuttal; and

(5) Additional witnesses as the board may deem necessary.

(g) Witnesses may be subpoenaed, and examined in the following order:

(1) Direct examination by the party calling the witness;

(2) Cross examination by the other party;

(3) Redirect examination by the party calling the witnesses;

(4) Recross examination by the other party; and

(5) Examination by the board.

(h) Rules of evidence as specified in HRS §91-10 shall be applicable thereto.

(i) After all the evidence has been presented, the board shall give each party the opportunity to summarize. The usual order of final argument shall be

as follows:

(1) Final argument by the petitioner;

(2) Final argument by the respondent; and

(3) Rebuttal argument by the petitioner, which shall be limited to countering whatever may be said by the respondent during the respondent's final argument. A reasonable time limit may be imposed by the board for the final arguments. Final arguments may be waived by a party.

(j) At the end of the hearing, the board may give an oral decision or take the matter under advisement with a written decision to be issued at a later date. Regardless of whether the board gives an oral decision, the board shall issue a written decision, including findings of fact and conclusions of law.

(k) Service of the written decision upon the appellant shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mail, postage prepaid, and addressed to the appellant's last known address. The board shall notify the party ruled against that the party may appeal to the intermediate appellate court, pursuant to the provisions of HRS §11-51. The board shall not consider motions for reconsideration.

(l) Unless the board's decision is timely appealed to the intermediate appellate court, the clerk shall make any necessary changes to the register of voters to conform to the decision. The clerk shall notify the challenger and the challenged voter of the voter's status on the register.

(m) "Filing a notice of appeal" for purposes of this rule means the physical delivery or mailing of the notice of appeal to the clerk by the statutory deadline of within ten days of service of the adverse decision, so long as any mailed notice of appeal is received no later than two business days after its mailing. The clerk will make a notation of the time of receipt and forward it to the chairperson of the board of registration. Going forward, the chairperson will determine the manner in which

subsequent filings in the matter are to be filed. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-25, 11-26, 11-41, 11-43, 11-51 through 11-54, 91-10)

§3-177-203 Challenge at the voter service center; procedure. (a) A challenge at the voter service center shall be brought to the clerk or their designated agent. It need not be in writing.

(b) The challenged voter shall be given the opportunity to make a correction to the voter's registration pursuant to HRS §11-21.

(c) The challenge shall be considered and decided immediately by the clerk, and the ruling shall be announced. To the extent the clerk is not physically available, the clerk may hear the matter by telephone, videoconference, or similar technology, or delegate their authority to another to consider and decide the challenge.

(d) The clerk shall inform the person decided against that the person may appeal the decision to the board at that time.

(e) The appeal shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the voter service center, whichever is earlier.

(f) If no appeal is made, the decision of the clerk shall stand. The challenged voter is allowed to vote on a regular ballot, or is not allowed to vote, in accordance with the decision.

(g) If an appeal is made, the procedures set forth in HAR §3-177-204 shall be followed. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-16, 11-25, 11-26)

§3-177-204 Appeal to the board from decision at the voter service center. (a) In the case of an appeal from a decision rendered by the clerk at the voter service center, the challenged voter shall vote on a challenged ballot. The clerk shall collect and

submit the facts of the challenge to the board. The voting of the challenged ballot and the board's hearing shall be conducted in accordance with the procedures in subsection (b).

(b) If an appeal is made to the board from a decision rendered by the clerk at the voter service center, the clerk shall:

(1) Direct the voter to vote the challenged ballot and to place the ballot, in the utility envelope provided for this purpose;

(2) Seal the envelope after the voter has voted and print the following information on the face of the envelope: the words "challenged ballot," the voter's name, the district, and the time the ballot was received by the clerk; and

(3) Secure the ballot so it may be segregated and await the disposition of the board of registration.

(c) The clerk shall contact the board to hear the appeal. The board may hear the appeal in person or by telephone, videoconference, or other electronic means. The board member serving as the presiding officer shall swear-in the challenger, the person challenged, the clerk or individual designated to perform the duties of the clerk, and any witnesses present. Each person who testifies before the presiding officer shall state the following for the record:

(1) Name as registered to vote; and

(2) Role in the challenge.

(d) The board shall listen to the evidence presented by each of the above persons and then shall close the hearing with the exception of the receipt of any documentary evidence any of the parties to the challenge notifies the board that the party is going to submit prior to the closing of the voter service center on the day of the election.

(e) The board shall discuss the challenge and come to a decision regarding the appeal. A summary of the discussion of the board, the decision of the board, and the reasons for the board's decision shall

be included in the board's minutes.

(f) The board shall notify the clerk of its decision. If necessary, the clerk shall issue a correction order to change the register to correspond to the board's decision. The clerk shall notify each party of the board's decision. The clerk shall also notify the party ruled against that the party may appeal to the intermediate appellate court, pursuant to the provisions of HRS §11-51.

(g) If no appeal is made, the clerk shall immediately notify the county counting center manager or designated representative of the disposition of the challenge. The challenged ballot shall be counted or disposed of pursuant to HAR §3-177-764.

(h) If an appeal is made, the ballot shall remain in the sealed envelope to be counted or rejected in accordance with the ruling on appeal and the register shall be corrected to conform with the court's decision.

(i) The secrecy of the challenged voter's ballot shall be safeguarded as provided in subsection (b). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26, 11-41, 11-51)

§3-177-205 Challenge to confidential registration; special procedure. (a) A challenge to the voter registration of a person who has been granted confidential registration pursuant to HAR §3-177-159, shall be treated as follows:

(1) The clerk shall immediately notify the person being challenged that a challenge to the person’s voter registration has been filed, including the charges set forth in the challenge and the challenger's name;

(2) The clerk shall investigate the challenge and if the clerk determines that the challenge is not frivolous, the clerk shall notify the person that the person's voter registration form may be released, unless a specific law prohibits its release;

(3) If the person wishes to contest the

challenge, the voter registration form may be released for inspection by the challenger, except if the voter being challenged has submitted a current and valid address confidentiality program authorization card to an election official, as provided for in HRS §801G-9, in which case it will not be released. The challenge, and appeal, if any, shall be conducted in accordance with this chapter; and

(4) If the person wishes to withdraw said person's voter registration, the voter registration form shall not be released, and said person shall not be allowed to vote. The challenger shall be notified that said person has not contested the challenge and that said person shall not be allowed to vote.

(b) Notwithstanding anything to the contrary, to the extent a voter who has submitted a current and valid address confidentiality program authorization card to an election official, as provided for in HRS §801G-9, has been challenged, election officials may decide to dismiss or not to proceed with the challenge from the challenger. However, election officials are not prohibited from using their separate authority to initiate on their own any investigation relating to maintaining the integrity of the general register. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-14.5, 801G-9)

§3-177-206 Correction of errors; appeal to the board of registration from clerk's ruling. A person claiming to be aggrieved by the refusal of the clerk to correct the person's registration information in those instances set forth in HRS §11-22, may appeal to the board either in writing pursuant to HAR §3-177-202 or at a voter service center pursuant to HAR §3-177-204. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-22, 11-26)

§3-177-207 Challenged ballot; electronic. To the extent a voter service center uses an electronic voting system that generates a voter verifiable paper audit trail, election officials may require the challenged voter to use the electronic voting system, so long as the votes of the voter may ultimately not be counted toward any ballot contests or questions, depending on the results of any appeal. For example, if the system permits the creation of a provisional access code to the system, a receipt with the provisional access code may be placed in the secret ballot envelope, so as to permit election officials to ensure those votes ultimately are counted or not counted, in accordance with the results of any appeal. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-22, 11-26)

§§3-177-208 to 3-177-249 (Reserved).

SUBCHAPTER 6

ACCESS TO GOVERNMENT RECORDS

§3-177-250 Access to election documents; general procedures. (a) Access to government records shall be provided in accordance with chapter 92F, Hawaii Revised Statutes, and the rules adopted under that chapter, unless public inspection of said records is prohibited by state or federal law; provided that the legal counsel for the chief election officer may determine which records may be exempted from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the chief election officer is or may be a party or to maintain the attorney-client and attorney work product privileges.

(b) Copying of government records maintained by the office of elections is governed by section 92-21, Hawaii Revised Statutes, unless otherwise provided by law. Copies shall be provided upon the furnishing of the payment of the reasonable cost of reproducing such copies, including costs for searching and segregating the records. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-97, 92-21, 92F-13, 92F-19, ch. 92F)

§§3-177-251 to 3-177-299 (Reserved)

SUBCHAPTER 7

PRESIDENTIAL PETITIONS

§3-177-300 Presidential petitions; issuing. (a) Any group wishing to petition to place the names of prospective candidates for president and vice president on the State's general election ballots, pursuant to HRS §11-113, shall submit a notarized statement of intent from the presidential and vice presidential candidates to the chief election officer before receiving the petition forms. The statement of each candidate shall be substantially in the following form:

(1) I, _____ (name of candidate), hereby declare that I intend to be a candidate for _____ (president or vice president) of the United States on the _____ (year) general election ballot in the State of Hawaii; and

(2) Shall be subscribed and sworn or affirmed to before a notary public.

(b) The party or group shall submit an application to the chief election officer before receiving the petition. The application for petition to place the names of candidates for president and vice president on State of Hawaii general election ballot shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) Name of a contact person responsible for the petition;

(2) Telephone number and mailing address;

(3) Year of the election for which the petition is being requested; and

(4) Party or group name and the names of the candidates for president and vice president.

(c) The petition shall be prescribed and provided by the chief election officer and contain the following information:

(1) Names of the presidential and vice presidential candidates;
(2) Name of the party or group;
(3) A statement that the persons signing intend to support those candidates;
(4) Name of each signatory;
(5) Signature of each signatory;
(6) Date of each signatory's signature;
(7) Residence address of each signatory; and
(8) Date of birth of each signatory.

(d) A petition will not be issued unless the chief election officer receives the notarized statement of intent from the presidential candidate and the vice presidential candidate; and the application.

(e) All petitions that have not been filed with the chief election officer by the date specified in HRS §11-113 shall be void the day after the statutory deadline for the general election for which it was issued. The petition may not be used for a subsequent general election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-113)

§3-177-301 Presidential petitions; withdrawal of signatures. (a) Any voter who signed a presidential petition pursuant to HRS §11-113, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. Written notice shall include:
(1) Name of voter;
(2) Residence address;
(3) Date of birth;
(4) Signature;
(5) Name of the presidential petition; and
(6) A statement that the voter wishes to remove the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw prior to the filing of the petition, the chief election officer shall notify the group to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-113)

§3-177-302 Presidential petitions; verification of signatories. (a) Upon receipt of a presidential petition, the chief election officer or designated representative shall verify within the time specified in HRS §11-113 whether the petition has met the requirements of HRS §11-113. (b) Upon receipt of a petition containing at least the minimum number of signatures required pursuant to HRS §11-113(c)(2)(b), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline. The calculation of the number of signatures required by HRS §11-113(c)(2)(b) may use the total of registered voters that had been entered into the statewide voter registration system by the deadline established in HRS §11-24 or reported as part of any certified election results.

(1) If the signatory on the petition exists as an active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on the petition, and the signatory is an active registered voter in the statewide voter registration system, then the signatory shall be counted once;

(4) If the signatory does not provide all of the required information on the petition, then the signatory may not be counted;

(5) If the information is not legible, then it may not be counted; and

(6) If the voter withdraws the voter's signature from the petition as prescribed in HAR §3-177-301, the voter's signature shall not be verified or counted.

(c) To the extent a document is initially received and subsequently found not to meet filing requirements, it may be provided back to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a petition is submitted and it is subsequently determined that it does not have the required number of verified signatures, the petition may be provided back to person submitting it so they can go out and get enough signatures and resubmit the document by the filing deadline.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match any reference signature of the voter.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the presidential and vice presidential candidates have met the signature requirements of HRS §11-113. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-113)

§§3-177-303 to 3-177-349 (Reserved)

SUBCHAPTER 8

POLITICAL PARTIES

§3-177-350 Political parties; qualification. (a) Any group of persons having qualified as a political party for election ballot purposes by petition, which shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS §11-62, or by vote, pursuant to HRS §11-61(b), for three consecutive general elections shall be deemed a political party for the following ten-year period (i.e., the following five general elections), provided that the qualified political party continues to field candidates for public office in the elections held during that period and to meet the requirements of HRS §§11-62, 11-63, and 11-64.

(1) The ten-year period will start with the general election immediately following the third consecutive general election in which the party qualified by petition pursuant to HRS §11-62, or by vote, pursuant to HRS §11-61(b).

(2) At the end of the ten-year period, the qualified party which has not been disqualified for other reasons, shall be subject to the requirements of HRS §11-61.

(b) Any party which is not exempt from and which does not meet HRS §11-61(b) shall be subject to disqualification. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-61, 11-62, 11-63, 11-65)

§3-177-351 Party petitions; issuing. (a) Any individual or group wishing to petition to qualify a new political party in the State, pursuant to HRS §11-62, shall complete an application before receiving the petition. An application for petition to qualify a political party shall be in the form prescribed and provided by the chief election officer requiring

substantially the following information:

(1) Name of the political party;

(2) Name of a contact person responsible for the petition;

(3) Date the application is completed; and

(4) Telephone number and mailing address at which the contact person or group can be contacted.

(b) The petition form shall be prescribed and provided by the chief election officer containing the information required in HRS §11-62.

(c) Before issuing the petition forms, the chief election officer shall place on the petition the political party name.

(d) All petitions that have not been filed with the chief election officer by the date specified in HRS §11-62 shall be void the day after the statutory deadline for the election for which it was issued. The petition may not be used for a subsequent election. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-62) (Imp: HRS §11-62)

§3-177-352 Party petitions; withdrawal of signatures. (a) Any voter who has signed a party petition pursuant to HRS §11-61, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. Written notice shall include:

(1) Name of voter;

(2) Residence address;

(3) Date of birth;

(4) Signature;

(5) Name of the political party petition; and

(6) A statement that the voter wishes to remove the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw prior to the filing of the petition, the chief election officer shall notify the group or individuals to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the

chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-61, 11-62)

§3-177-353 Party petitions; verification of signatories. (a) Upon receipt of a party petition, the chief election officer or designated representative shall verify within the time specified in HRS §11-62 whether the petition has met the requirements to qualify a political party.

(b) Upon receipt of a petition containing the minimum number of signatures required by HRS §11-62(a)(3), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline. The calculation of the number of signatures required by HRS §11-62(a)(3) may use the total of registered voters that had been entered into the statewide voter registration system by the deadline established in HRS §11-24 or reported as part of any certified election results.

(1) If the signatory on the petition exists as an active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the

statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on the petition, and the signatory is an active registered voter in the statewide voter registration system, then the signatory shall be counted once;

(4) If the signatory does not provide all of the required information on the petition, then the signatory may not be counted;

(5) If the information is not legible, then it may not be counted; and

(6) If a voter withdraws the voter's signature from the petition as prescribed in HAR §3-177-352, the voter's signature shall not be verified or counted.

(c) To the extent a document is initially received and subsequently found not to meet filing requirements, it may be provided back to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a petition is submitted and it is subsequently determined that it does not have the required number of verified signatures, the petition may be returned to the person submitting it so they can obtain sufficient signatures and resubmit the document by the filing deadline.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match any reference signature of the voter.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the political party has met the signature requirements of HRS §11-62. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-62)

§§3-177-354 to 3-177-399 (Reserved).

SUBCHAPTER 9

NOMINATION PAPER

§3-177-400 Nomination papers; when available, application, and format. (a) To obtain a nomination paper to file for candidacy, pursuant to HRS §12-3, any individual shall complete an application before receiving the nomination paper. The application for a nomination paper shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) Legal name;
(2) Name commonly known as (if different from legal name);
(3) Legal residence address;
(4) If no street address, a description of location of residence;
(5) Mailing address (if different from previously provided address);
(6) Telephone number;
(7) Date of birth;
(8) Hawaii Driver License or Hawaii State Identification Card Number;
(9) Last four digits of Social Security Number (if the applicant does not have a Hawaii Driver License or Hawaii State Identification Card);
(10) Statement of United States citizenship;
(11) Statement of legal residence in the State of Hawaii;
(12) Statement of being a registered voter of the State of Hawaii;
(13) Statement regarding whether the applicant has a current felony conviction that has not been finally discharged (i.e. HRS §831-2);
(14) Contest title;
(15) Jurisdiction or district;
(16) Party affiliation or nonpartisan;
(17) Party membership;
(18) Name of candidate's contact person;

(19) Relationship of contact person;
(20) Contact person's telephone number; and
(21) An affirmation by the application that the information is true and correct and authorizing the chief election officer and/or the clerk to verify the information on the application.

(b) Nomination papers shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS §12-3. The nomination papers shall be available from the first working day of February in every even-numbered year for the regularly scheduled election contests for that year; provided that in the case of a special primary or special election, nomination papers shall be made available at least ten days prior to the close of filing.

(c) Elections officials may provide for the application for a nomination paper to be completed online, and electronically issue the corresponding nomination paper. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-2.5, 12-3)

§3-177-401 Nomination papers; withdrawal of signature. (a) Any voter who has signed a nomination paper, may withdraw the voter's signature by submitting a written notice to the chief election officer, or clerk in the case of a county office, any time before the filing of the candidate's nomination paper; provided that the notice is received by the chief election officer, or clerk in the case of a county office, no later than 4:30 p.m. on the fourth business day prior to the close of filing pursuant to HRS §12-6. Written notice shall include:

(1) Name of voter;
(2) Residence address;
(3) Month and day portions of the date of birth;
(4) Signature;
(5) Name of the candidate; and
(6) A statement that the voter wishes to remove the voter's signature from the candidate's

nomination paper.

(b) Upon receipt of a written notice to withdraw prior to the filing of the nomination paper, the chief election officer, or clerk in the case of a county office, shall notify the candidate that the signature of the voter will not be counted.

(c) Upon receipt of the nomination paper for filing, the chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the nomination paper; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) Any request by a voter to remove the voter's signature from a candidate's nomination paper that is received by the chief election officer, or clerk in the case of a county office, after the candidate's nomination paper has been filed or after 4:30 p.m. on the fourth business day prior to the close of filing shall not be accepted. The voter shall be notified, in writing, that the voter’s notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5, 12-6)

§3-177-402 Nomination papers; verification of signatories. (a) Upon receipt of a nomination paper, the chief election officer, clerk, or their designated representatives, shall count and determine whether the nomination paper has met the signature requirements pursuant to HRS §12-5.

(b) If the nomination paper contains at least the required number of signatures pursuant to HRS §12-5, then the chief election officer, clerk, or designated representative may verify whether the signatory is eligible to sign the nomination paper. A nomination paper containing less than the required number of signatures shall be rejected without verification of signatories. To be eligible, the

signatory must:

(1) Appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline;

(2) Be registered at the residence address appearing on the nomination paper;

(3) Be registered in the district from which the candidate is running for office;

(4) Be eligible to vote for the candidate when the nomination paper is filed; and

(5) Not have withdrawn their name, pursuant to HRS §12-4(c).

(c) The chief election officer, clerk, or designated representative shall use the statewide voter registration system to verify whether the signatory is eligible to sign the nomination paper.

(1) If the signatory is an eligible voter pursuant to subsection (b), then the signatory shall be counted;

(2) If the signatory is not an eligible voter pursuant to subsection (b), then the signatory shall not be counted;

(3) If there are duplicate signatures on a nomination paper, and the signatory is an eligible voter pursuant to subsection (b), then the signatory shall be counted once;

(4) If the signatory does not provide all of the information required by HRS §12-3(a)(5), then the signatory may not be counted; and

(5) If the information is not legible, then it may not be counted.

(d) If a voter signs more than one nomination paper for the same office, then the signature on the nomination paper that is filed first will be accepted; provided that a voter may sign as many nomination papers for an office as there are seats available. The chief election officer or clerk shall use the date and time filed that is recorded on each nomination paper to determine which was filed first.

(e) To the extent a document is initially received and subsequently found not to meet filing

requirements, it may be returned to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a candidate submits a nomination paper and it is subsequently determined that it does not have the required number of verified signatures, the nomination paper may be returned to the candidate to obtain sufficient signatures and resubmit the document by the filing deadline.

(f) The chief election officer or designated representative may verify that the voter's signature on the nomination paper corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the nomination paper shall not be counted. The chief election officer or designated representative shall indicate on the nomination paper that the voter's signature is invalid because it does not match any reference signature of the voter.

(g) The chief election officer, clerk, or designated representative may verify only as many signatories as needed to ensure that the nomination paper has met the signature requirements of HRS §12-5. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5)

§3-177-403 Nomination papers; candidate name on ballot. (a) A candidate's name, including the Hawaiian or English equivalent or nickname, shall be limited to twenty-seven characters; provided that the twenty-seven characters shall include punctuation and blank spaces, and shall be set on one line.

(b) The name of the candidate appearing on the ballot may be the candidate's legal name or the name by which the candidate is most commonly known. If a candidate seeks to have a name other than the candidate's legal name, its commonly recognized equivalent, or a prior legal name, such as a maiden name, appear on the ballot, the candidate, at the time of filing nomination papers shall also file a declaration in which the candidate attests to the fact

that the name to appear on the ballot is the name by which the candidate is most commonly known throughout the district from which the candidate seeks election. Notwithstanding anything to the contrary, the election official may require the candidate to file a declaration, if there are questions as to whether a proposed name is in fact the commonly recognized equivalent of the candidate's legal name or if a proposed name was in fact the candidate's prior legal name.

(c) The ballot shall contain the names of the candidates in the format and order specified as follows:

(1) Last name in capital letters followed by a comma, followed by a blank space;
(2) First name in upper and lower case letters;
(3) Middle name in upper and lower case letters or initial or initials; preceded by a blank space; provided that each initial shall be followed by a period;
(4) Suffix such as "Jr." or "III" preceded by a blank space and a comma; and
(5) Nickname or Hawaiian equivalent if requested by the candidate in parenthesis preceded by a blank space.
(6) An example of a correct format is:

HAWAII, Jon T., Jr. (Keoni)

(d) Titles including titles that are part of nicknames, such as Doctor, Senator, Reverend, MD, or Major, shall not be printed on the ballot.

(e) Slogans shall not be printed on the ballot.

(f) The chief election officer shall be authorized to conform all names printed on the ballot to the format prescribed in subsection (c).

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 12-3)

§3-177-404 Nomination papers; candidate's name; office and district; political party affiliation or

nonpartisan designation. The candidate's name, office and district, and political party affiliation or nonpartisan designation shall be placed on the nomination paper by the chief election officer or the clerk prior to issuing the nomination paper to the candidate. The candidate's name, office and district, and political party affiliation or nonpartisan designation shall not be changed from that indicated on the nomination paper. If the candidate wishes to change the candidate's name, office and district, or political party affiliation or nonpartisan designation, the candidate may request the appropriate nomination paper from the chief election officer or the clerk and have it signed by the required number of registered voters. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 12-3) (Imp: HRS §12-3)

§3-177-405 Filing fee; payment of. In the case of federal, state, or county offices, payment of filing fees for nomination papers shall be made by cashier's check, certified check, money order, or cash. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-6)

§§3-177-406 to 3-177-449 (Reserved)

SUBCHAPTER 10

BALLOTS

§3-177-450 Ballot definition. (a) The term "ballot" shall be broadly defined, so as to permit voters to vote, to mean the following:

(1) A written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on;

(2) A ballot used in an election by mail, including a ballot approved for electronic transmission. "Electronic transmission" refers the transmission of a blank or voted ballot by facsimile or electronic mail delivery, or the use of an online ballot delivery and return system, which may include the ability to mark the ballot.

(A) HTML or similar technology may be used to represent a ballot including all contests and questions that the voter may vote on that is used in electronic transmission. Any such representation will be considered a ballot for purposes of these rules;

(B) HTML or similar technology may be used to represent how a voter voted. The manner of the representation of how the voter voted shall be considered a ballot. This may be in the form of an electronic image, which may be in a PDF or similar format, that contains the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on, along with marks indicating how the voter vote. Additionally, the electronic system may generate a ballot summary, to represent how the voter voted, which may be

considered a ballot for purposes of these rules. The ballot summary, similar to a voter verifiable paper audit trail, is a complete record of the ballot selections that is verified by the voter, which may be in a PDF or similar format, before being transmitted back through the electronic transmission system;

(C) To the extent an electronic image associated with the electronic transmission system is printed and not electronically returned, but instead is returned by mail or in-person, it shall be considered a ballot for purposes of these rules; or

(D) A facsimile of a ballot which is sent as an attachment to an electronic mail message or as part of a facsimile transmission shall be considered a ballot. In either case, the return of a voted facsimile of the ballot shall also be considered a ballot for purposes of these rules.

(3) A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use.

(b) A "voter verifiable paper audit trail" means the paper record that constitutes a complete record of ballot selections that is verified by the voter. To the extent, the vote of a voter cannot be determined, in relation to an electronic voting system due to technical issues, the voter verifiable paper audit trail may be considered the equivalent of a ballot.

(c) A "defective ballot" means any ballot delivered to the counting center in accordance with HRS §11-152 that cannot be read by the vote counting system. This includes, but is not limited to, any

ballot summary associated with electronic transmission, any voter verifiable paper audit trail associated with an underlying electronic voting system that cannot report how the voter voted, and any other damaged ballot that cannot be read by the ballot reading device.

(d) "Duplicate ballot" means a ballot used solely for the purpose of reproducing a defective ballot for counting and tabulation. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 11-119, 11-152)

§3-177-451 Ballot design and arrangement; candidate vacancies. (a) The design and arrangement of the ballot shall meet the requirements of the voting system. The maximum number of candidates or ballot questions for which the voter is legally entitled to vote in any given case shall be clearly indicated.

(b) In case of death, withdrawal, or disqualification of any candidate after filing, the applicable provisions of HRS §§11-117 and 11-118 shall apply.

(c) If the applicable deadline after a vacancy occurs is a Saturday, then the chief election officer, or clerk in the case of a county office, shall be available to receive the applicable filing via electronic mail on that day. The circumstances of the deadline occurring on a Saturday will not serve as a basis to extend the deadline.

(d) The chief election officer or county clerk in county elections may waive any or all of the requirements in HRS §11-118 under the following special circumstance that it is determined that there is still sufficient time to insert an alternate's name without putting the administration of the election at undue risk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 11-117, 11-118, 11-119)

§3-177-452 Ballots for voter service

centers. To the extent marksense ballots are to be used at a voter service center, election officials will have the ability to print ballots in the county. This may be satisfied by the use of ballot on demand printers or any other means by which ballots may be delivered to a voter service center in a timely manner. Notwithstanding anything to the contrary, any type of ballot authorized by election officials may be used in the voter service center. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-112, 11-119)

§3-177-453 Accountability and security of ballots. (a) The chief election officer or designated representative shall maintain a complete count of marksense ballots. All ballots shall be safeguarded to prevent mishandling or misuse.

(b) The clerk shall maintain a complete and current count of all marksense ballots issued, spoiled, and received in their county. The accounting of marksense ballots by the clerk shall be recorded on forms prescribed by the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-152)

§3-177-454 Electronic voting systems; marking of marksense ballot. (a) After receiving the marksense ballot, the voter shall properly mark the ballot in the manner and color of ink, softness of pencil graphite, or other manner prescribed by the chief election officer as described in the instructions. The voter shall designate each choice by completely filling in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote.

(b) The chief election officer may authorize the use of a ballot marking device, to the extent the voter is able to review the marksense ballot before casting it.

(c) The voting position area will be designated

by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(d) Below is a non-exhaustive list of examples of marks and whether they may be considered proper, marginal, or improper. The treatment of marks, including the disposition of marginal marks, is addressed in HAR §3-177-752.

(1) Example of a proper mark



(2) Examples of marginal marks are:



(3) Examples of improper marks are:



[Eff 07/26/20; comp] (Auth: HRS §11-4, 16-22) (Imp: HRS §§11-109, 12-31, 16-42)

§§3-177-455 to 3-177-499 (Reserved)

SUBCHAPTER 11

VOTER SERVICE CENTER AND PLACE OF DEPOSIT - GENERALLY

§3-177-500 Voter service center; general operation and services. (a) Voter service centers shall be established at the office of the clerk and may be established at additional locations within a county as may be designated by the clerk to service the needs of a county's voters. The clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause these voter service centers to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections.

(b) The office of the clerk refers to where the affairs of the clerk are transacted. The clerk may use different locations for different affairs of their office. As such, the clerk may designate a location to serve as the office of the clerk for purposes of the operation of a voter service center. This location may differ from the location normally associated with the clerk for other duties. For example, while the clerk may operate from one location for purposes of supporting their council or other duties, they may designate a location for the operation of the voter service center, so as to take into consideration the needs associated with the services to be provided (e.g. a larger facility for servicing the public, parking considerations, and other related matters).

(c) Voter service centers shall be open from the tenth business day preceding the day of the election during regular business hours until the time provided in HRS §11-131 on the date of the election and at the same times statewide. Likewise, it will provide the services specified under the definition of a "voter service center" in this rule.

(d) A "voter service center" means a location established to service all of the following purposes:

(1) Receive return envelopes for absentee ballots pursuant to chapter 15, HRS;
(2) Received returned identification envelopes in an election by mail;
(3) Provide voting machine services for persons with disabilities pursuant to the Help America Vote Act of 2002, P.L. 107-252, as amended, and any other federal or state law relating persons with disabilities;
(4) Provide any other voting services as provided by laws; and
(5) Any other purposes the chief election officer or clerk may deem necessary if a natural disaster or other exigent circumstance occurs before an election.

(e) Voting machine services may be provided to voters with or without disabilities. Voting machine services may involve any voting system or device or combination of systems or devices. The provision of a particular type of voting machine service at one voter service center will not require that the same type or types of voting machines services be provided at another voter services center. For example, a voter service center may decide to only utilize direct recording electronic voting devices that generate a voter verifiable paper audit trail, while another may choose to utilize a marksense ballot voting system and a direct recording electronic voting device that generate a voter verifiable paper audit trail, while finally another might utilize a ballot marking device. In the end, each of these is permissible, so long as the voter is provided services that would otherwise comply with Help America Vote Act of 2002, P.L. 107-252, as amended, and any other federal or state law relating persons with disabilities.

(f) "Provide any other voting service as provided by law" as used in this rule concerning voter service centers refers to any service that explicitly by statute is defined as being provided at a voter service center. For example, HRS §11-15.2 provides that "a person who is eligible to vote but is not registered to vote may register by appearing in person

at any voter service center on or before election day." To the extent a service is not defined as occurring at a voter service center it may not be provided as part of the operation of the voter service center. For example, a voter service center may not issue replacement ballots, as it is not statutorily a service required to be provided at a voter service center. Instead, a separate statutory process addresses the issuances of replacement ballots. In such a situation, the voter service center officials would inform the voter of the specific location or procedures to obtain a replacement ballot, if the voter does not wish to utilize the voting machine services available at the voter service center.

(g) To the extent that a proposed or existing voter service center cannot comply with subsection (c) the clerk shall document the reasons for such a variation in its operation either in the hours or days of its operation or the services that it can provide. Upon a finding by the clerk that it is in the interest of the voters of a county to operate a proposed voter service center or to continue to operate an existing voter services center, it may do so, so long as appropriate notice to the public is provided of any variation in the hours or days of its operation or the services that it can provide. For example, if due to a lack of available personnel, shortage of facilities that can be used for ten business days, or similar reasons a modified schedule or modified services to be provided may be considered by the clerk.

(h) The hours of voting at voter service center shall be regular business hours as prescribed HRS §11-109 and by the clerk. However, on election day the hours of voting will be from 7:00 a.m. until 7:00 p.m. of that day. If at 7:00 p.m. on an election day, any voter is standing in line at a voter service center with the desire of entering and voting, but due to the voter service center being overcrowded has been unable to do so, the voter shall be allowed to vote. No voter shall be permitted to enter or join the line after the prescribed hours of voting specified in HRS §11-131. [Eff 07/26/20; comp] (Auth: HRS §11-

4) (Imp: HRS §§11-1, 11-15.2, 11-105, 11-109, 11-131, ch. 15)

§3-177-501 Voter service center; security and regulation of activities. (a) The clerk shall designate the voter service centers and shall assign personnel and issue operating instructions which provide for the security of all ballots and secrecy of the voted ballots.

(b) The clerk shall post in a conspicuous place, prior to the opening of the voter service center, a map designating an area around the voter service center for purposes of HRS §19-6.

(c) The clerk may designate the area of the voter service center to encompass an area up to the area prescribed in HRS §11-132.

(d) Admission within the voter service center shall be limited to the following:

(1) Election officials;

(2) Watchers, if any, pursuant to HRS §11-77;

(3) Candidates, provided that a candidate engaged in any activity that would otherwise attract attention including, but not limited to interviews and press conferences, shall do so outside the boundary set forth pursuant to this rule;

(4) Any voters engaged in voting, going to vote or returning from voting;

(5) Any person authorized to assist a voter; and

(6) Any person or nonvoter group authorized by the clerk to observe the election for educational purposes, provided that they conduct themselves so that the conduct of the person or group does not interfere with the election process; and

(7) A child for purposes of observing the voting process when accompanied by an adult who is voting, provided that this activity does not disrupt or interfere with normal voting procedures. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-77, 11-109,

11-132, 19-6)

§3-177-502 Voter service center; collection of voting materials. (a) The chief election officer, clerk, or designated representative may authorize the collection of voted ballots, vote data storage media, voter verifiable paper audit trails, and similar items before and after the closing of the voter service center on any day of operation.

(b) The voting materials from the voter service center shall be transported to the counting center or designated locations in secured containers in accordance with procedures established by the chief election officer, clerk, or designated representative.

(c) Other election materials will be sealed and returned in accordance with procedures established by the chief election officer, clerk, or designated representative. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-152, 11-154, 15-10)

§3-177-503 Voter service center; return of materials. (a) After the voter service center closes on election day, or any earlier day as determined by the clerk, the voter service center officials shall follow the procedures for closing the voter service center. The voter service center officials shall return all of the following materials to the designated supply collection center:

(1) Sealed ballot transport containers containing unissued ballot packets or ballots;
(2) Supply box; and
(3) Other election documents and materials as specified by the chief election officer or clerk.

(b) Procedures associated with the return of specific voter service center materials prior to election day may be established by the chief election officer, clerk, or designated representative. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp:

HRS §§11-109, 11-154)

§3-177-504 Voter service center; officials. The clerk may employ regular employees or temporary employees of their office as voter service center officials. Additionally, the clerk may employ election day officials, enter into personal services contracts, or use a temporary staffing agency for the employment of voter service center officials. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: §11-109)

§3-177-505 Voter service center; watchers. (a) Each qualified political party shall:

(1) Be entitled to appoint watchers to serve at each voter service center in which the candidates of such party are on the ballot so long as there is only one watcher of the political party present at a time; and

(2) Submit a list of watchers not later than 4:30 p.m. on the twentieth day before any election to the clerk.

(b) Each voter service center watcher shall:

(1) Receive identification from the clerk;

(2) Be permitted to observe the conduct of the election in the voter service center to which they are assigned.

(c) A designated voter service center watcher may relieve another voter service center watcher as long as there is not more than one represented at the voter service center at a time.

(d) The voter service center watcher shall not interfere with the orderly process of the election.

(e) Any violation of the election law shall be reported to the clerk. If the clerk fails to correct the violation, the voter service center watcher may appeal to the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-77)

§3-177-506 Places of deposit; generally. (a) The clerk may designate and provide for places of deposit to be open five business days before the election

until 7:00 p.m. on the day of the election; provided that the locations and apparatus for receiving voted ballots can be securely maintained during the period of use for each election, and as may be permitted by the operational hours.

(b) To the extent that places of deposit, due to a need to address security or operational hours, cannot be open uniformly across the county, the clerk shall document the reasons for such a variation in its operation. Upon a finding by the clerk that it is in the interest of the voters of a county to operate a proposed place of deposit or to continue to operate an existing place of deposit, the clerk may do so, so long as appropriate notice to the public is provided of any variation in operation of the place of deposit. For example, if due to a lack of available personnel, shortage of facilities that can be used for five business days, security matters, or similar reasons a modified schedule or modified services to be provided may be considered by the clerk.

(c) The clerk shall account for the security of the places of deposit and the ballots cast at such locations. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109)

§3-177-507 Voter service center and place of deposit; campaign activities. (a) No person at a voter service center, place of deposit, or its appurtenances shall be permitted to exhibit on his or her person, or distribute any communication which is in any way intended to directly or indirectly solicit, influence, or address any candidate contest or question on the ballot. An official shall request that any person in violation of this rule remove or cover any clothing, button, hat, armband or other campaign material that is being exhibited by the person. Any person who refuses to comply with the request of the official shall be required to leave the area prescribed in HRS §11-132.

(b) Except when a vehicle is used by a person traveling to or from a voter service center or place

of deposit for the purpose of voting, a vehicle parked within the area prescribed in HRS §11-132, may not exhibit any sign, bumper sticker, or other campaign material on said vehicle. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§3-177-508 Voter service center and place of deposit; non-campaign activities. The chief election officer or the clerk as designated by the chief election officer may establish procedures to ensure that non-electioneering activities, including exit polling, within the area prescribed in HRS §11-132, do not interfere in any way with the orderly conduct of elections. Such procedures may include:

(1) The prohibition of commercial activity, other than those which were pre-existing, involving advertising, solicitation or sales;
(2) Requiring prior notification, ten days before an election, and approval for any organized activity;
(3) Limiting the number and proximity of persons involved or places where the activity takes place;
(4) The prohibition of loudspeakers or other amplification devices;
(5) Requiring that the clerk be advised of the activity;
(6) The cessation or removal of any activity which interferes with the conduct of the election; and
(7) Prohibiting the solicitation or approaching of persons proceeding to or from a voter service center or place of deposit. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§§3-177-509 to 3-177-549 (Reserved)

SUBCHAPTER 12

VOTER SERVICE CENTER – VOTING PROCEDURE

§3-177-550 Voter service center; verification of the identity of currently registered voters. (a) The voter may be required to fill out an application that will be used in conjunction with the statewide voter registration system. In the alternative, they may sign a poll book, record book, or similar means of documenting matters depending on how the voter service center is operated. In either case, the poll book, record book, application, or similar means of documenting matters shall include the ability for the voter to make a mark in the appropriate place if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The voter service center official shall print "witnessed by" next to the voter's mark and sign the voter service center official's name.

(b) To the extent the clerk utilizes an application as part of the voting process, the identity of a voter will be considered verified upon the acceptance and determination by an election official that the application is in proper order. The application additionally may serve to update a voter's registration record or permit an individual to register to vote for the first time.

(c) Any such application used for purposes of verification will require the voter to provide their name, date of birth, residence address, and mailing address. Additionally, the voter will provide their Hawaii Driver License Number, Hawaii State Identification number, or the last four digits of their Social Security Number, if they do not have a Hawaii Driver License or Hawaii State Identification Card. If the voter indicates they originally had none of these when they initially registered and instead were issued a unique identification number by election officials, then the applicant shall write that number on the application. The contents of the application

may additionally require any information that might otherwise be required for a first time registration or to update a current registration.

(d) Any such application used for verification purposes will not be initially considered in proper order if the individual's name, date of birth, or the identification number they provided (i.e. Hawaii Driver License Number, Hawaii State Identification Card Number, or Social Security Number) does not match the statewide voter registration. In the event of a non-match, the application will be treated initially as a new registration or provisional ballot application, to the extent it contains the necessary information. Otherwise, the applicant will be directed to fill out an application that can serve those purposes.

(e) A clerk may choose to verify a voter's identity, without the above application. As such, the voter may be asked for one of the following:

(1) The provision of a current and valid photo identification:
    (A) Hawaii State Driver License;
    (B) Hawaii State Identification Card;
    (C) Hawaii Student Identification Card;
    (D) U.S. Department of Defense Identification Card (including identification cards issued to dependents);
    (E) U.S. Passport or U.S. Passport Card; or
    (F) Driver License or State Photo Identity Card issued by a Department of Motor Vehicles (or equivalent) in another U.S. jurisdiction.
(2) The provision of a current utility bill, bank statement, government check, paycheck, or other government document showing name and address;
(3) An oral recitation of specific information in the voter's record to the satisfaction of clerk or their designee that the individual is who they claim to be (e.g. name, residence address, mailing address, date of

birth, last four digits of the Social Security Number, or any combination of information in the record);

(4) The provision in writing of the information noted in subsection (d)(3);

(5) The provision of a witness, who is a registered voter, who will vouch in writing for the identity of the voter; or

(6) The provision of evidence that the individual considers sufficient to establish their identity. The individual has the burden of proof in this situation to satisfy the clerk or their designee by the preponderance of the evidence that the individual is who they claim to be.

(f) To the extent everything is in order, the individual will be able to proceed to vote in the manner associated with the voter service center.

(g) In the event an individual is not issued a ballot, they will retain whatever right they may have to a provisional ballot and the corresponding procedures related to the disposition of such ballots.

(h) Nothing in this rule shall be construed as preventing the clerk from exercising their underlying authority to demand that an individual furnish substantiating evidence to allegations in their voter registration application or any application related to voter registration. This includes any application at a voter service center that could serve to register an individual or to update their registration. For example, a clerk may be satisfied as to the identity of an applicant but may question other aspects of the application, such as residence, and correspondingly demand substantiating evidence. Likewise, this rule does not foreclose the ability of another voter properly in the voter service center from challenging the voter on the grounds that the voter is not who they allege to be or that the voter is not entitled to vote. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21082, 52 USC §21083) (Imp: HRS §§11-4, 11-11, 11-15, 11-16, 11-18, 11-20, 11-21, 11-22, 11-23, 11-109, 52 USC §21082, 52 USC §21083)

§3-177-551 Voter service center; verification of the identity of applicants registering in-person to vote. (a) To the extent the clerk indicates that an individual has just been registered in-person at the voter service center, the registration process will be treated as having verified the identity of the voter.

(b) In the event an individual is not issued a ballot, they will retain whatever right they may have to a provisional ballot and the corresponding procedures related to the disposition of such ballots.

(c) Nothing in this rule shall be construed as preventing the clerk from exercising their underlying authority to demand that an individual furnish substantiating evidence to allegations in their voter registration application or any application related to voter registration. Likewise, this rule does not foreclose the ability of another voter properly in the voter service center from challenging the voter on the grounds that the voter is not who they allege to be or that the voter is not entitled to vote. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21082, 52 USC §21083) (Imp: HRS §§11-4, 11-11, 11-15, 11-16, 11-18, 11-20, 11-21, 11-22, 11-23, 11-109, 52 USC §21082, 52 USC §21083)

§3-177-552 Demonstration ballots. (a) For each election, there shall be provided as many demonstration ballots as the chief election officer, clerk, or designated representative deems appropriate.

(b) The demonstration ballots shall be designed to prevent tabulation by the computer programmed to count the ballots in the election.

(c) The demonstration ballots may not contain the names of candidates or ballot questions to be voted on in the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-4, 11-109)

§3-177-553 Voter service center; marksense ballots; spoiled. (a) If a voter spoils a ballot in the process of voting, or receives a spoiled ballot,

the voter shall be issued another ballot, by the voter service center officials.

(b) Before issuing the new ballot, the voter service center official shall:

(1) Give the voter a utility envelope, ask the voter to place the spoiled ballot in the envelope, and seal the envelope;

(2) Write "spoiled" across the face of the envelope and sign the voter service center official's name;

(3) Deposit the utility envelope in the spoiled ballot envelope;

(4) Write in the poll book, record book, application, or similar means of documenting matters "spoiled ballot"; and

(5) Have the voter place the voter's initials next to the words "spoiled ballot."

(c) The voter service center officials shall, after the above procedures in subsection (b) are completed, give the voter a new ballot. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-109, 11-140)

§3-177-554 Provisional voting; general procedures. (a) If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the voter service center or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to a cast a provisional ballot as follows:

(1) An election official shall notify the individual that the individual may cast a provisional ballot in that election;

(2) The individual shall be permitted to cast a provisional ballot at that voter service center upon the execution of a written affirmation, by the individual before an

election official, stating that the individual is

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) The written affirmation shall be in a form prescribed by the chief election officer and shall contain substantially all the information required to register to vote under HRS §11-15 and shall document that the individual is requesting a provisional ballot.

(b) An election official shall transmit the provisional ballot to the county clerk for prompt verification.

(c) The adjudication of provisional ballots shall be as follows:

(1) If any part of the provisional ballot application form or affirmation statement is incomplete, not executed, or altered, the provisional ballot may be not be counted.

(2) If the clerk determines the individual is eligible under state law to vote in the district the individual wishes to vote in, the provisional ballot shall be counted in accordance with state law.

(3) If the clerk determines the individual is not eligible to vote in the district associated with the provisional ballot was cast, then the provisional ballot shall not be counted.

(d) The individual will be able to access for free a system by which the individual may discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

(e) The term "jurisdiction" for purposes of provisional voting refers to the specific voting precinct where an individual must be registered, in order to vote on the ballot designated for that precinct. It does not refer to a county, state, or

federal jurisdiction. As such, if an individual casts a provisional ballot in a precinct the individual is not properly registered in, no portion of the provisional ballot will be counted.

(f) The individual will have until the fifth business day after the election to provide the clerk with any document or information the individual may want the clerk to consider in determining the individual's eligibility under state law.

(g) All provisions of Help America Vote Act of 2002, as amended, regarding provisional voting in federal elections shall be followed. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21082) (Imp: HRS §§11-15, 11-20, 11-21, 11-24, 52 USC §21082)

§§3-177-555 to 3-177-599 (Reserved)

SUBCHAPTER 13

BALLOT PACKAGE PROCEDURES

§3-177-600 Ballot packages; contents; eligibility. (a) Unless the context indicates otherwise, a ballot package is used by any voter in an election by mail, unless the voter votes in-person at a voter service center by using a voting device (e.g. a voter directly using a voting system such as a direct recording electronic device or a marksense ballot counter).

(b) A ballot package, unless it is transmitted electronically, consists of the following:

(1) An official ballot;

(2) A return identification envelope with postage prepaid;

(3) A secrecy envelope or secrecy sleeve;

(4) The instructions provided for in HRS §11-104; and

(5) A statement to be subscribed to by the voter that affirms the fact that the voter is the person voting and that the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot did not assist the voter, as described in HRS §11-139, along with the instruction that the voter's ballot will be valid only if the affirmation statement is signed. The statement may appear on the return identification envelope or separately, depending on the means of transmission utilized or authorized by the clerk.

(c) A ballot package may be sent by electronic transmission. "Electronic transmission" refers to transmission by facsimile or electronic mail delivery, or the use of an online ballot and return system, which may include the ability to mark the ballot. An electronic ballot package additionally will include a waiver of secrecy under HRS §11-137. This waiver may

be combined with the affirmation statement. Additionally, instructions on how to return the ballot or ballot summary, depending on the type of electronic ballot system used, by electronic transmission or alternatively by mail, may be included.

(d) Ballot packages may generally be issued in the following contexts:

(1) To any registered voter who has not already voted and is legally eligible under state or federal law to receive a ballot;

(2) To any registered voter who has requested an absentee ballot;

(3) In response to a request for a replacement ballot by a voter; or

(4) Pursuant to a request by a voter covered under chapter 15D, HRS, or the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as amended, or any other applicable federal or state law.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-104, 11-107, 11-137, 11-139, 15-4, 15D-7)

§3-177-601 Ballot packages; timing of transmittal, generally. (a) To the extent practicable, the clerk shall mail a ballot package by non-forwardable mail to each registered voter in the county to enable voters to receive the ballot package approximately eighteen days before the election.

(b) In determining the initial mailing date of the ballot package, the clerk shall consider the mailing place of origin and the most recent postal service delivery standards. Public notice of the date or dates on which the initial ballot packages are to be mailed shall be given by the clerks before the ballot packages are made available to voters.

(c) The clerk shall continue mailing ballot packages to voters who update their voter registration address no later than fourteen days before the date of the election. However, the clerk may continue to mail ballots to those who have updated their voter

registration address after the fourteenth day, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline.

(d) The clerk shall not mail a ballot package to any voter in the county register who is an inactive voter or to a voter otherwise having an outdated or non-deliverable mailing address. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-103)

§3-177-602 Ballot packages; timing of transmittal, military and overseas voter requests. (a) Notwithstanding any law to the contrary, to the extent a valid military-overseas ballot application is made, pursuant to HRS §15D-7, and the request is received no later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, no later than the business day preceding the forty-fifth day, the clerk shall transmit a ballot package by that date.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's county, internet delivery.

(c) The clerk in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(d) If a ballot application from a covered voter arrives after the county begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit them to the voter no later than two business days or as soon as allowable after the application arrives. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §15D-7, 15D-9)

§3-177-603 Ballot packages; timing of transmittal, absentee requests. (a) Notwithstanding any law to the contrary, as it relates to ballot packages requested pursuant to HRS §15-4, any request received by the seventh day prior to an election seeking the mailing of a ballot package shall be processed and the ballot package mailed to the voter. Requests received on the last day specified in HRS §15-4 will result in a ballot package being mailed no later than twenty-four hours after receipt.

(b) The clerk may continue to mail ballots to those whose requests have been received after the seventh day prior to an election, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§15-4, 15-5)

§3-177-604 Ballot packages; timing of transmittal, replacement requests to be transmitted by mail. (a) Notwithstanding any law to the contrary, as it relates to replacement ballot package requested pursuant to HRS §11-105, any request received by the seventh day prior to an election seeking the mailing of a ballot package shall be processed and the ballot package mailed to the voter. Requests received on the last day specified in HRS §15-4 will result in a ballot package being mailed no later than twenty-four hours after receipt.

(b) The clerk may continue to mail ballots to those whose requests have been received after the seventh day prior to an election, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-105, 11-140, 15-4)

§3-177-605 Ballot packages; timing of transmittal, in-person pick up. Notwithstanding any law to the contrary, a voter may request that the

clerk make the ballot package available for pick up by them or through an intermediary other than the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot. However, the clerk may limit the processing of such requests to no earlier than the fifth day prior to an election. Additionally, the clerk will determine where the ballot package will be made available for pickup. A single location may be determined by the clerk for such purposes (e.g. the issuance of ballot packages may not occur at a voter service center but instead at a location determined by the clerk). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-105, 11-140, 15-4, 15-5, 15D-9)

§3-177-606 Ballot packages; timing of transmittal, replacement requests to be transmitted by electronic transmission. (a) If a ballot package is not received by a voter by the fifth day before the date of the election or a voter otherwise requires a replacement ballot within five days of an election, the voter may request that a ballot be forwarded by electronic transmission; provided that a voter with special needs may request that a ballot be forwarded by electronic transmission at any time.

(b) "Voter with special needs" for purpose of this rule includes an individual with a disability. The term "disability" refers to a physical or mental impairment that substantially limits one or more major life activities of an individual. "Major life activities" include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. A "voter with special needs" may also include any voter that the clerk determines would otherwise not be able to return their ballot by the day of the election, if the ballot were to be transmitted at its originally scheduled time (e.g. a voter who will be traveling to a place without timely mail service who requests that they be mailed their ballot prior to their trip, so they can

vote before they leave). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-107, 11-140, 15-5)

§3-177-607 Ballot packages; replacement and absentee requests, form. (a) To the extent a voter requires a ballot package beyond the one initially authorized by HRS §11-102 to be mailed to them, an application may be required.

(b) Election officials may use different applications for different situations and the applications shall be in a form prescribed and approved by the chief election officer or clerk.

(c) The applications may include information to permit the verification of the identity of the applicant, such as applicant's name, date of birth, and one of the following:

(1) Hawaii State Driver License Number;

(2) Hawaii State Identification Number; or

(3) Last Four Digits of the Social Security Number.

(d) Depending on the type of application request, other information relevant to the request may be requested (e.g. mailing address, temporary mailing address, electronic mail address, name of designee picking up a ballot for the voter, evidence of statutory eligibility for the presidential ballot, or affirmation indicating compliance with the criteria for the request).

(e) The clerk may initially accept an oral request for a ballot package in an emergency situation to expedite the transmission of the ballot package but they may still require the voter to complete and return a signed application before accepting the ballot.

(f) Notwithstanding anything to the contrary, in special cases the clerk may waive any of the foregoing requirements related to the submission of an application (e.g. the clerk may determine under the totality of the circumstances that it is sufficient to make a notation of the oral request in the voter's record, issue the ballot package, and review signature on the return identification envelope, when it is

returned). The following constitutes a non-exhaustive list of special cases:

(1) Any voter who has confidential voter registration status pursuant to HRS § 11-14.5 or the provisions of chapter 801G, HRS;

(2) Under any circumstances the clerk determines may unduly interfere with the ability of a voter to vote; or

(3) Under any circumstances the clerk determines to constitute an emergency.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-105, 11-107, 11-14.5, 15-4, ch. 801G)

§§3-177-608 to 3-177-649 (Reserved)

SUBCHAPTER 14

RETURN IDENTIFICATION ENVELOPE PROCEDURES

§3-177-650 Return and receipt of return identification envelopes; manner, location, and time of receipt. (a) Return identification envelopes may be returned in person or by mail. To the extent a ballot package was electronically transmitted to a voter, the voter will also have the option of returning the electronic equivalent of the return identification envelope by electronic transmission. In such a situation, the voter will be required to return at a minimum the ballot or ballot summary, depending on the type of electronic ballot system used, the waiver of secrecy under HRS §11-137, and applicable affirmation statement. The waiver may be combined with the affirmation statement.

(b) Any statutory reference to the return of ballots or return identification envelopes by mail shall not be interpreted to preclude those items being delivered in-person by a voter or their agent.

(c) Any statutory reference to the receipt of ballots or return identification envelopes by the "clerk" or "office of the clerk" shall be interpreted consistently to reflect that appropriate receipt shall have occurred if the clerk, their staff, or others delegated authority by the clerk take custody of return identification envelopes from anyone at any location, including the U.S. Postal Service post office, no later than the applicable deadline provided for in statute.

(d) The following constitutes a non-exhaustive list of locations where identification envelopes (i.e. ballots) may be received:

(1) Voter Service Centers;

(2) Places of Deposit;

(3) Any location designated by the clerk for the receipt of return identification envelopes (e.g. the clerk may have locations that cannot support a voter service center, but

could still reasonably accommodate the receipt of return identification envelopes, so long as they are received than the applicable deadline provided for in statute); or

(4) Any location where the clerk, their staff, or others delegated authority by the clerk take custody of return identification envelopes (e.g. the clerk may make arrangements to pick up return identification envelopes at a U.S. Postal Service post office, so long as they are received by the applicable deadline provided for in statute).

(e) To the extent a voter is standing in line at the applicable deadline provided in statute at a place of deposit or at a voter service center with the intent of returning their return identification envelope, they shall be allowed to vote. Likewise, a person or a mail carrier delivering return identification envelopes on behalf of voters, to the extent they are standing in line at a place of deposit or at a voter service center, with the intent of delivering said return identification envelopes they will be permitted to deliver them and they will be considered to have met the applicable deadline. The term "mail carrier" includes the U.S. Postal Service and any private delivery service.

(f) Once a return identification envelope is received, the voter's ballot shall be deemed cast and may not be recast in the election.

(g) Election officials shall secure the return identification envelopes and deliver them to any location that is established to validate signatures or otherwise process the envelopes or their contents. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-104, 11-105, 11-107, 11-109, 11-137, 15-4)

§3-177-651 Return identification envelopes; general preparing of ballots for counting. (a) Upon

receipt of the return identification envelope, the clerk may prepare the ballots for counting. Before opening return identification envelopes and counting the ballots, the return identification envelopes shall be checked for the following:

(1) Signature on the affirmation statement;

(2) Whether the signature corresponds with a reference signature image using the provisions of HAR §3-177-652; and

(3) Whether there is a condition that would not allow the counting of the contents of the return identification envelope (e.g. the voter has already voted, or otherwise returned a return identification envelope that has been validated).

(b) If any requirement listed in subsection (a) is not met or if the return identification envelope appears to be tampered with, the clerk shall mark across the face of the envelope "invalid" and it shall be kept in the custody of the clerk and disposed of as prescribed for ballots in HRS §11-154, unless it is subsequently determined to be valid. To the extent a return identification envelope is deemed invalid, the provisions of HAR §3-177-654 relating to the correction of deficient return identification envelopes may apply.

(c) Notwithstanding anything to the contrary, if a return identification envelope is initially determined to be valid and it is subsequently found that the return identification envelope is empty or otherwise the contents cannot be counted, it may be invalidated (e.g. the return identification envelope typically has a hole that permits one to confirm that there is an enclosed secret ballot envelope, sleeve, or ballot).

(d) The return identification envelope of any voter who was eligible to vote at the time the ballot was cast shall not be deemed invalid solely because the voter became ineligible to vote after casting the ballot (e.g. subsequent death or other basis of ineligibility will not invalidate ballot). For the purposes of this subsection, "cast" means that the

voter has:

(1) Deposited the return identification envelope in the mail;

(2) Delivered the return identification envelope to the clerk; or

(3) Completed voting in person at a voter service center.

However, a ballot will not be considered for counting if it was not received by the applicable statutory deadline on the day of the election.

(e) All return identification envelopes complying with subsection (a) shall be deemed valid and secured by election officials for subsequent processing and counting. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-106, 11-107, 11-108, 11-154, 15-3.5, 15-9, 15D-10, 15D-10.5)

§3-177-652 Return identification envelopes; signature validation. (a) The clerk will initially compare the signature on a return identification envelope with the reference signature or reference signatures of the voter. The clerk may authorize the use of a signature device, as defined in HAR §3-177-653, to compare signatures. A signature considered matched by a signature device will be considered valid and not require further verification.

(b) A "reference signature" is any signature provided in connection with the administration of elections or any signature provided to election officials from a governmental entity obtained in the ordinary course of business (e.g. voter signatures on any election issued form or application, correspondence with election officials, signature capture cards sent to and returned by voters, signatures from the Department of Transportation or county licensing examiners, or signatures from any governmental entity shared with election officials).

(c) Any signature not initially validated by the signature device or that was not submitted to a signature device will be visually compared by the election official.

(1) As a return identification envelope was issued and transmitted to the voter, the return of the return identification envelope or electronic equivalent will be rebuttably presumed to be from the voter and any signature contained therein as that of the voter;
(2) A voter is permitted to use a variation of their name, to the extent it can be recognized as such by the reviewing election official;
(3) The election official will review the general appearance of the signatures taking into account the above noted rebuttable presumption, permitted name variations, and the following:
    (A) type of writing (e.g. cursive versus print);
    (B) speed of writing (e.g. harmonious versus slow and deliberate);
    (C) overall spacing;
    (D) overall size and proportions;
    (E) position of the signature (e.g. slanted versus straight); and
    (F) spelling and punctuation.
(4) The election official will consider whether any apparent differences can be reasonably explained, by the facts and circumstances surrounding the signatures. The election official may consider, but not be limited to, the following considerations:
    (A) When the signatures were made in comparison to each (e.g. a significant period of time has transpired between signatures);
    (B) The age of the writer at the time of the signatures;
    (C) How the signatures were made (e.g. driver license offices may use an electronic signature pad to record signatures, including those used for voter registration, while an envelope

may be signed in ink); or

(D) Whether household members signed and returned each other's return identification envelope by accident, in which case, if the signatures match each of the correct voter's signature reference image and the voters have not otherwise voted, such that the counting of the impacted ballots would not result in a voter having voted a ballot not associated with their residence or containing questions or contests they are not eligible to vote on, the impacted return identification envelopes may be considered valid.

(d) A voter may make a mark in place of a signature on the affirmation statement on the return identification envelope so long as there is a witness' signature and address on the affirmation statement. In such a situation, the return identification envelope will be considered valid. If no witness' signature and address appear on the affirmation statement, then the return identification envelope will be deemed invalid. However, if a voter is physically unable to sign or to make a mark, they may use the provisions of HRS §456-19 to have a notary sign on their behalf, and the return identification envelope will be considered valid. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 11-106, 11-107, 11-108, 15-9, 15D-10, 456-19)

§3-177-653 Return identification envelopes; signature device. (a) A "signature device" refers to a device that either captures images or uses imported images which it analyzes and compares to existing signature reference images. A signature device can be incorporated into any automated ballot sorting system or similar system or it may be a stand-alone device.

(b) The clerk may conduct audits relating to the signature device and may discontinue the use of the device at any time, without regard to the results of

any auditing. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-106, 11-107, 11-108, 15-9, 15D-10)

§3-177-654 Return identification envelopes; notification and correction of deficiencies. (a) Any return identification envelope initially identified as invalid will be considered a deficient return identification envelope for purposes of HRS §11-106, if the voter has not already voted. The clerk shall make an attempt to notify the voter by first class mail, telephone, or electronic mail to inform the voter of the procedure to correct the deficiency. The voter shall have five business days after the date of the election to cure the deficiency. The counting of ballots and disclosure of subsequent election results may continue during the time period permitted to cure a deficiency. The clerk's inability to contact voters shall not be grounds for a contest for cause under HRS §11-172.

(b) A deficient return identification envelope may be corrected and treated as valid in any manner that satisfies the clerk due to one of the following:

(1) the signatory to the return identification envelope is the voter who was assigned the return identification envelope; or

(2) the basis of the deficiency has been properly addressed and removed.

(c) The manner of correction may include, but not be limited to the following:

(1) The returning of a signed form including the voter's name and date of birth, in addition to the voter's Hawaii State Driver License number, Hawaii State Identification Card number, or the last four digits of their Social Security Number, indicating that the voter signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope. The form may be returned in any manner

authorized by the clerk, including electronic transmission;

(2) The use of an online voter registration system or similar state or county system that permits a voter to log in through the submission of their name and date of birth, along with their Hawaii State Driver License number, Hawaii State Identification Card number, and allows the voter to indicate they signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope;

(3) Any other program or service used by the state or county, including through a third party, that permits a voter to indicate that they signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope; or

(4) The clerk, at their discretion, repeating the prior signature validation process or aspects of it, in conjunction with any updates to the signature reference images to the statewide voter registration system.

(c) For purposes of this rule, a voter as part of the correcting of a deficiency may not mark a new ballot after the applicable statutory deadline on election day. Instead, only the original deficient return identification envelope may be considered cured and now valid (i.e. a voter after the results of an election are known cannot change who they voted for, as they can only ensure that their original ballot received by the applicable statutory deadline on election day is considered valid).

(d) A voter who has been informed prior to the applicable statutory deadline on election day for voting that their return identification envelope is deficient will not be prevented from requesting a replacement return identification ballot or otherwise voting at a voter service center by the applicable statutory deadline on election day, so long as

ultimately only one ballot is counted (e.g. a voter whose signature was found not to match may decide to simply vote in person at a voter service center and not have their prior return identification envelope counted). Otherwise, such a voter may correct the originally deficient return identification envelope within five business days of the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§ 11-106, 11-172)

§§3-177-655 to 3-177-699 (Reserved)

SUBCHAPTER 15

VOTING SYSTEMS

§3-177-700 Voting system requirements. (a) In addition to, and not in lieu of, any other election processes contained in Title 2 of the Hawaii Revised Statutes, the chief election officer, or the clerk in the case of a county only election, may use a voting system or voting systems that comply with one, or a combination of the following:

(1) The federal voting system standards as printed in the Federal Election Commission publication: Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems (1990);

(2) The federal voting system standards as printed in the Federal Election Commission publication: Voting System Standards, Volumes I & II (April 2002);

(3) The federal voluntary voting system guidelines as printed in the United States Election Assistance Commission publication: 2005 Voluntary Voting System Guidelines Version 1.0, Volumes I & II (2005), and subsequently published in the Federal Register, Vol. 71, No. 70 (April 12, 2006);

(4) The Voluntary Voting System Guidelines 1.1 adopted by the United States Election Assistance Commission on March 31, 2015;

(5) Any subsequent iteration of the Voluntary Voting System Guidelines adopted by the United States Election Assistance Commission, its designee, or as provided for in the Help America Vote Act of 2002, as amended; or

(6) Any federal guidelines, manuals, forms, policies, or opinions issued by the United States Election Assistance Commission.

(b) To the extent a voting system uses COTS or MOTS and was originally compliant with this rule, the

subsequent use of a more current version of the original COTS or MOTS or the use of another brand of COTS or MOTS will not undermine the original finding of compliance and no subsequent certification or compliance process will be required.

(1) "COTS" for purposes of these rules is understood to be the following: "Software, firmware, device or component that is used in the United States by many different people or organizations for many different applications other than certified voting systems and that is incorporated into the voting system with no manufacturer- or application-specific modification;"

(2) Similarly, for purposes of these rules "Modified COTS (or MOTS – Modified Off-the-Shelf) refers to an off-the-shelf product that is customized by a commercial vendor to respond to specific requirements of the election community;" and

(3) These definitions are from the United States Election Assistance Commission, *Considerations for Implementing Voting Systems with COTS Products,* Posted March 21, 2017 at https://www.eac.gov/documents/2017/03/21/considerations-for-implementing-voting-systems-with-cots-products/.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2, 16-11, 16-12, 16-22, 16-41, 16-42, 52 USC §20961, 52 USC §20962, 52 USC §20971)

§3-177-701 Approval of all voting equipment, materials, and procedures. The chief election officer or designated representative shall approve all necessary forms, supplies, and procedures used in the operation of any voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2)

§3-177-702 County elections; assistance. In county elections, the clerk may request the assistance of the chief election officer and staff in administering and using the voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-703 Elections services; provision and charges. The chief election officer may provide election related services and equipment to government and private non-profit organizations to assist with the conduct of elections or surveys subject to the following conditions:

(1) A request is made on a form provided by the chief election officer;

(2) The provision of such election services or equipment does not interfere with the preparation for, or conducting of any primary, special primary, general, special general election, or special election;

(3) The services or equipment are not used in connection with any activity or message intended to influence the outcome of any contest or question in any primary, special primary, general, special general election, or special election;

(4) The requesting party directly assumes all costs associated with the conduct of the election or survey other than those associated with the personnel and equipment of the chief election officer; and

(5) The requesting party agrees to reimburse the chief election officer for an amount not to exceed the actual costs associated with the personnel and equipment used, provided that this requirement may be waived in writing by the chief election officer for government offices or agencies. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §16-3)

§3-177-704 Testing the vote counting system; electronic voting systems. (a) Prior to election day, the vote counting system prepared for counting and tabulating the votes shall be tested in the presence of the following persons:

(1) The chief election officer, clerk, or designated representative;

(2) Official observers; and

(3) Other authorized interested persons, as space permits.

(b) The test may include a predetermined number of votes for each candidate and for and against each question and a predetermined number of excess or "over" votes and blank votes for each candidate or question.

(1) Each official observer and other authorized persons may prepare test ballots for the test of the vote counting system;

(2) The vote counting system shall not be approved unless it produces the exact count of all votes, rejects all improper votes, and meets all other test criteria;

(3) After the test has been satisfactorily conducted, all test ballots, test results, and the vote counting system shall be secured and shall not be subsequently open except in the presence of not less than two official observers who are of different political party or organizational affiliations. Notwithstanding this, voting equipment that has been initially secured under this rule for subsequent delivery to another location, such as a voter service center, counting center, or similar location, may be opened by the election officials present at that subsequent location;

(4) Official observers shall sign a certification that the vote counting system was tested, found accurate, and approved.

(c) In the event of a vote counting system malfunction, the test shall be rerun upon completion

of the maintenance or corrective work. There shall be no further processing until the test indicates that the vote counting system is working properly. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-42, 16-43, 16-45)

§3-177-705 Experimental voting systems; rules and procedures. In an election where the chief election officer experiments with voting systems of a different kind, all rules which can be reasonably applied to that system shall be followed. Temporary procedures shall be used as required for the experimental voting systems only. Nothing herein is to be used to diminish, take away or otherwise impair the rights of the voter. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §16-1)

§3-177-706 Electronic voting systems; generally. An "electronic voting system" means any method of recording, counting, and tabulating votes via automatic tabulating equipment. For purposes of these rules, an electronic voting system includes, but is not limited to, the "marksense ballot voting system" and the "direct recording electronic voting system." To the extent an electronic voting system is not a "marksense ballot voting system" or a "direct recording electronic voting system," all rules associated with those systems which can be reasonably applied to the new system shall be followed. Temporary procedures shall be used as required if the rules associated with the "marksense ballot voting system" or a "direct recording electronic voting system" cannot be reasonably applied to the new system and followed. Nothing herein is to be used to diminish, take away or otherwise impair the rights of the voter. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-1, 16-41, 16-42)

§3-177-707 Electronic voting systems; marksense

voting system. A "marksense voting system" means an automatic tabulation system using ballots and optical scanning or similar technology equipment. The voter manually records votes by marking the appropriate voting position on the ballot, with a prescribed marking device, in the manner instructed by the chief election officer. The marks on the ballots are subsequently read by the optical scan or similar technology device, in conformance with the specifications of the voting system selected by the chief election officer. As used in these rules, a "marksense voting system" is considered to be a "mechanical tabulation system," which may be used in any context requiring or permitting the use of a mechanical tabulation system. A "mechanical tabulation system" means an automatic tabulation system, including a marksense ballot voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-1, 16-41, 16-42)

§§3-177-708 to 3-177-749 (Reserved)

SUBCHAPTER 16

VOTE DISPOSITION

§3-177-750 Electronic voting systems; documentation of overages and underages; records. The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party or official observers. If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. Any overages or underages in any district shall be documented. The list of any such overages or underages shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections. After all ballots have been tabulated, they shall be sealed in containers. [Eff 07/26/20; comp] (Auth: HRS§§11-4, 11-154)(Imp: HRS §§11-153, 11-154, 11-155)

§3-177-751 Electronic voting systems; centralized and decentralized counting. (a) Centralized counting involves the receipt of ballots which are counted at a counting center designated by the chief election officer.

(b) Decentralized counting involves ballots which are counted at the voter service center by the voting device or voting devices associated with the voter service center, including marksense voting devices, direct recording electronic voting devices, or similar technology.

(c) A "counting center" means the facilities and surrounding premises designated by the chief election officer or the clerk where ballots or other electronic voting system votes are processed, counted, and tabulated.

(d) The chief election officer may use centralized counting, decentralized counting, or a combination thereof. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-

47)

§3-177-752 Electronic voting systems; marksense voting system; disposition of marks. (a) As noted in HAR §3-177-454, the voter shall properly mark the ballot in the manner and color of ink, softness of pencil graphite, or other manner as described by the instructions prescribed by the chief election officer.

(b) A mark made in the manner indicated in subsection (a) shall be considered a "proper mark" and counted by a properly functioning voting system as a vote.

(c) A mark made outside of the voting position will be considered an "improper mark" and will not be counted by a properly functioning voting system as a vote.

(d) A "marginal mark" involves a mark in the voting position area in which the voter may have used an improper marking device or did not completely fill in the voting position area as instructed. As indicated by its name, such marks are marginal. The disposition of a marginal mark as to whether it will be counted as a vote will be based on whether a properly functioning voting system has read the mark as a vote. A marginal mark will be read by the voting system as a vote under two circumstances:

(1) The vote counting system has been tested pursuant to HAR §3-177-704 and it has determined that the mark has met the threshold of the system for a vote; or

(2) The voting system in using an algorithm or similar process to eliminate false overvotes caused by pen rests, dirt, or other small marks on the ballot, determines that the mark is in fact a vote.

(A) The use of such an algorithm will be determined by the chief election officer prior to the election and the official observers will be able to test the vote counting system to ensure it is working properly; and

(B) The chief election officer may authorize such an algorithm to be used in conjunction with the processing of ballots at the counting center or at a voter service center. However, the chief election officer may elect to only authorize it in certain settings. For example, situations in which the voter does not have the benefit of an in-person voting system to inform them of a possible voting error on the ballot that they could address before the ballot is cast. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21081) (Imp: HRS §§11-104, 11-108, 16-2, 16-41 through 16-47, 52 USC 21081)

§3-177-753 Electronic voting systems, transmission, receipt, and tabulation of votes. (a) The transmission or receipt of vote data, including but not limited to votes, vote tabulation, or similar information, shall be permitted between locations authorized by the chief election officer or clerk in the case of county elections. Election results, accumulated from said transmissions, may be distributed to the general public while awaiting receipt of the ballots, vote data storage media, or other materials associated with the transmissions and the completion of any procedures intended to verify the proper transmission and accumulation of data.

(b) "Vote data storage media" is the means of storing vote data such as a PCMCIA card or other device that may be secured in the voting equipment or any part of the overall voting system.

(c) The following requirements shall be employed when transmitting election data electronically:

(1) The voting system shall be self-contained and not connected to any network infrastructure that is not under the direct control of the office of elections or the clerk in the case of county elections;

(2) The transmission and accumulation of election results shall be subject to a testing and verification prior to the election;

(3) The electronic transmission of official election vote data shall occur via virtual private network or other secured network. Where possible and to the extent that the voting system design permits, data transfers between system components should incorporate the use of digital signatures or encryption to authenticate the data for the particular election.

(4) Accumulated election results shall be considered uncertified unless it can be independently verified prior to transmission and following receipt and until certified by the chief election officer. Independent verification may be accomplished via manual inspection of election results prior to and following electronic transmission or by employing the use of a cryptographic hashing algorithm on randomly selected data files prior to and after transmission.

(c) Any election results transmitted by modem shall be considered "uncertified" unless transmitted via a virtual private network or until compiled directly from the source media.

(d) In elections where voting results are tabulated at multiple locations and accumulated at a central location, election results tabulated and produced at the distributed counting center locations shall be considered the source of election results for verification purposes. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-104, 11-108, 16-2, 16-41 through 16-47)

§3-177-754 Electronic voting systems; marksense ballot voting system results. Uncertified results from a marksense ballot voting system may be distributed to the general public, while awaiting the completion of

any audit under HAR §3-177-762, and any other procedures required by law. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-755 Electronic voting systems; direct recording electronic voting system results. The chief election officer, clerk, or designees may distribute electronic tallies created directly from a direct recording electronic voting device, while the requirements of HRS §16-42(b) are being met. In the event the chief election officer, clerk, or designee determines that the electronic tallies from a direct recording electronic voting device are not reliable, the chief election officer, clerk, or designee shall promptly notify the official observers and count the voter verifiable paper audit trails by hand or a mechanical tabulation system. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-756 Electronic voting systems; inspection, audit, and experimental testing. Prior to election day, the chief election officer, county clerk, or designees shall test the electronic voting system. If, as a result of the initial testing, the chief election officer determines additional inspection, auditing or testing is required, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or retesting needed to ensure that the voting system is working properly. If, after election day, the post-election, pre-certification audit indicates misreporting within the system, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or retesting performed to ascertain the nature of the problem. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-757 Electronic voting system; counting center procedures. (a) The handling of ballots, vote data storage media, and voter verifiable paper audit trails shall occur only in the presence of representatives who are not of the same political party or official observers, except in cases where technical knowledge and skill is required when authorized by the chief election officer, clerk, or designated representative.

(b) The official observers shall observe the processes within the counting center and shall report any changes or deviations from the rules or procedures to the chief election officer, clerk in county elections, or designated representative. The observers shall also participate in all certifications that may be required by the chief election officer, clerk, or designated representative.

(c) No person shall be permitted into the counting center without the authorization of the chief election officer, clerk in county elections, or designated representative.

(d) There shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a ballot question prior to the closing of the polls as specified in HRS §11-131.

(e) If a system becomes inoperative, the chief election officer, clerk, or designated representatives shall evaluate and determine the extent of the malfunction. Provisions for backup procedures shall be available and may be put into effect. All tests and operational procedures stated in these rules shall apply to any standby equipment used.

(f) After all ballots are counted, the election database and vote data storage media, test ballots and results, the election results, and the voted ballots shall be sealed in containers or cabinets.

(g) Subsequent audits may be conducted by the chief election officer, clerk, or designated representative in accordance with established procedures.

(h) A written record shall be maintained of each

opening and sealing of these storage containers or cabinets. The record shall include all of the following:

(1) Date and time;

(2) Name of each person requesting opening and reasons for opening;

(3) Seal numbers; and

(4) Signatures of two or more witnesses attesting to the opening and closing of these containers or cabinets and certifying that ballots were handled in their presence at all times.

(i) The containers or cabinets shall be sealed and stored for twenty-two months in accordance with federal law. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-131, 11-154, 16-44) (Imp: HRS §§11-108, 11-154, 16-2, 16-41 through 16-47)

§3-177-758 Electronic voting system centralized counting; receipt at counting center. Counting center officials shall receive and sign for the containers from the voter service centers and the valid return envelopes for processing. The containers shall be unsealed and opened in accordance with established procedures and in the presence of not less than two representatives who are not of the same political party or official observers. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 11-154, 15-9, 15-10, 16-2, 16-41 through 16-47)

§3-177-759 Electronic voting system counting; duplication procedure. (a) Counting center officials shall record and reconcile the number of defective ballots before and after the ballot is duplicated.

(b) Counting center officials, in the presence of representatives who are not of the same political party or official observers, shall prepare a duplicate ballot to replace each defective ballot. To the extent a defective ballot is the result of the wrong ballot type having been used for a particular

district, counting center officials shall ensure that all votes cast in contests for which the voters in that district are entitled to vote are properly duplicated onto the duplicate ballot associated with the correct ballot type for counting. All of the votes in contests for which the voters in that district are not entitled to vote will not be counted and as such will not be duplicated onto a duplicate ballot. Unvoted ballots for duplication and voting devices shall be authorized in the counting center for this purpose.

(c) Counting center officials shall prepare a reconciliation of the number of duplicated ballots used to replace the defective ballots. The defective ballots shall be invalid and stored in accordance with subsection (f).

(d) Duplicated ballots shall be returned to the appropriate originating counting center officials for final verification.

(e) All valid ballots shall be read and counted by the vote counting system. If, during the scanning of the ballots additional defective ballots are rejected, the defective ballots shall be processed in accordance with subsections (a) through (d).

(f) After the duplicated ballots are counted, the counted ballots and the invalid ballots shall be logged and sealed. The ballots shall be stored in containers or cabinets which shall be sealed. The storage of the ballots and sealing of the cabinets shall be done in the presence of not less than two representatives who are not of the same political party or official observers. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 16-46, 52 USC §21081) (Imp: HRS §§11-108, 11-154, 16-2, 16-41 through 16-46, 52 USC §21081)

§3-177-760 Electronic voting system decentralized counting; receipt at counting center.

(a) Counting center officials shall receive and sign for the sealed containers of voted ballots that have already been counted by the precinct counters,

sealed containers of voted ballots that have not been counted by the precinct counters, if any, and any other sealed container from each voter service center.

(b) Counting center officials shall track and log sealed containers of ballots, voter verifiable paper audit trails, vote data storage media, and other election related materials, such as zero reports, as they are processed at the counting center and received from the voter service centers in the presence of not less than two representatives not of the same political party or official observers.

[Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 16-2, 16-41 through 16-45)

§3-177-761 Electronic voting system; handling of vote data storage media. Election officials shall process the vote data storage media as follows:

(1) Receipt of vote data storage media and zero reports shall be logged; and

(2) The vote data storage media is readied for processing:

(A) The location or voting equipment that the vote data storage media came from shall be logged; and

(B) Any identifying information, such as a serial number, associated with the vote data storage media shall be logged.

[Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 15-10, 16-2, 16-41 through 16-45)

§3-177-762 Electronic voting system; auditing.

(a) The chief election officer or the clerk shall conduct an audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts.

(1) The manual audit may be conducted by

election officials or by counting center officials;

(2) Except for designated election officials, counting center officials, or official observers, no person shall be permitted to witness the audit without the authorization of the chief election officer, clerk, or designated representative. The area in which the audit is conducted shall be kept secure;

(3) Observers may request to conduct a manual audit;

(4) Whenever ballots are removed from storage, the handling of the ballots shall be witnessed by not less than two representatives who are not of the same political party or official observers;

(5) Election officials and counting center officials shall certify the conduct of and results of the manual audit; and

(6) The manual audit shall not be considered a recount pursuant to the election contest provisions of the law.

(b) In the event discrepancies are found in the audit, the chief election officer may authorize an expanded audit to determine the extent of misreporting within the system.

(1) The chief election officer may use official observers, election day officials, county or state election employees, or other designated individuals as part of the expanded audit.

(2) The chief election officer will determine when the expanded audit is concluded.

(3) The results of the expanded audit will be filed with the office of elections.

(c) In lieu of relying on the initial results from an electronic voting system, the chief election officer may count ballots or voter verifiable paper audit trails by hand or with a mechanical tabulation system, or a combination thereof.

(1) Any counting of ballots or voter verifiable

paper audit trails, through the use of a mechanical tabulation system, will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) As the marksense ballot voting system, is a mechanical tabulation system, and the ballots were intended to be read by the devices associated with that system, the chief election officer, will to the extent possible, use those voting devices of the system that did not experience misreporting problems; and

(B) In the event there are inadequate voting equipment that did not experience misreporting problems, the chief election officer, in consultation with the official observers, may use voting equipment that have been repaired to the satisfaction of the chief election officer.

(2) Any counting by hand of ballots or voter verifiable paper audit trails will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) Ballots that were marked for use by a marksense ballot voting system, will be counted in accordance with those rules associated with that system to the extent reasonably possible. Any hand count of marksense ballots will not use any statute or rules associated with the paper ballot voting system, as those marking instructions and vote disposition rules are uniquely different from those statutes and rules associated with other voting systems; and

(B) Voter verifiable paper audit trails from a direct recording electronic device voting system will be counted in accordance with the ballot selections indicated on them.

(d) The chief election will, to the extent possible, resolve any misreporting problem, prior to the end of the contest period stated in HRS §11-173.5, in the case of a primary, or special primary election, or HRS §11-174.5, in the case of a general, special general, or special election. Any resolution of a misreporting problem shall be documented and filed with the office of elections.

(e) "Precinct" for purposes of this rule, consistent with HAR §3-177-57, refers to the ballot type that corresponds to the manner in which results are reported (i.e. if results are reported by state representative district-precinct, such as DP 17-01, then the ballot type associated with DP 17-01 is the applicable precinct for auditing purposes).

[Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21081) (Imp: HRS §§11-4, 11-108, 11-153, 16-2, 16-41, 16-42, 52 USC §21081)

§3-177-763 Electronic voting system; recount.

(a) No person shall be permitted in the counting center without the written authorization of the chief election officer or clerk for purposes of the recount.

(b) The "counting center" means the facilities and surrounding premises designated by the chief election officer or the clerk in county elections where electronic voting system ballots are processed, counted, and tabulated.

(c) The office of elections or the clerk in the case of county elections shall notify candidates affected by a recount, of the date and time the recount will begin. The candidate or their designated representative may attend and witness the recount. The candidate or their representative will be provided with identification, which they must wear when present in the counting center for the recount.

(d) An attempt will be made to contact candidates affected by the recount to inform them of the time and place of the recount. Contact may be attempted through using the telephone number or electronic mail address provided to election officials as part of the candidate's application for their nomination paper. Election officials are not responsible for the non-receipt of such notice by the candidate.

(e) Given the need to conclude any recount within seventy-two hours of the closing of polls on election day, any notice may be provided on Saturdays, Sundays, or holidays. Such a notice will not serve to extend the initiation or conclusion of the recount.

(f) As the ballot typically contain various contest beyond the contest that triggered the recount, the system may read all marks on the ballot, when the ballots are scanned. This may result in the system generating not only new results for the contest in question but also other contests on the impacted ballots. However, any results for those other contests will not be considered official and will not change the previous official results in those contests.

(g) Any counting of ballots or voter verifiable paper audit trails will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with. As the marksense ballot voting system, is a mechanical tabulation system, and the ballots were intended to be read by the devices associated with that system, the election officials, will to the extent possible, use voting devices associated with the system.

(h) The results of the recount will be subject to auditing under HAR §3-177-762.

(i) After the conclusion of any audit of the recount, the results of the recount for the contest that triggered the recount will be publicly announced.

(j) The recount will include only those ballots that were a part of the initial tabulation, which HRS §11-108(b) required to be completed no later than 6:00

a.m. on the day following an election day.

(k) Ballots whose validity had not been initially determined and as such were not included in the initial tabulation, will be counted separately after being validated. This includes, but is not limited to, any ballots that were initially deficient but were subsequently corrected by voters, pursuant to HRS §11-106. The counting of these ballots will result in updated election results. However, the updated election results may not serve as a basis for the triggering of another recount. As these ballots are not a part of the initial tabulation subject to recount, the provisions related to a recount shall not apply to the counting of them. However, the date and time of the counting of these ballots will be provided to the official observers, pursuant to HRS §16-45. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21081) (Imp: HRS §§11-108, 11-158, 16-2, 16-41 through 16-45, 52 USC §21081)

§3-177-764 Challenged voter's ballot; disposition of at counting center. (a) As it relates to a challenged voter's ballot, it will only be counted if the clerk informs the counting center manager that the resolution of the challenge is for the challenged voter's ballot to be counted. The resolution of the challenge may occur through the expiration of the deadline to appeal a decision of the board of registration saying the ballot should be counted, the waiving of any right of appeal prior to the deadline, or a ruling by the intermediate court of appeals to count the ballot.

(b) If the challenged voter's ballot is to be counted, counting center officials shall prepare the ballot for processing. The ballot shall be counted using procedures established by the chief election officer. In all cases, the secrecy of the ballot must be preserved. If the secrecy of the ballot cannot be preserved, the challenged ballot shall not be processed except to break a tie vote, as ordered by the appellate court. It shall be disposed of as

provided by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-54)

§3-177-765 Election results; certification of. The chief election officer or clerk, as the case may require, shall prepare a certified statement of the results of votes cast for the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-155, 11-156)

§3-177-766 Certificate of election and certificate of results, form. (a) The chief election officer or clerk shall deliver certificates of election to the persons elected as determined under HRS §11-155. The chief election officer or clerk in county elections shall issue certificates of results where a question has been voted upon.

(b) Certificates of election shall be delivered only after the:

(1) Filing of reports in accordance with HRS §§11-331 and 11-333; and

(2) Payment of any fine assessed by the campaign spending commission,

by the person elected in accordance with Part XIII of Chapter 11, Hawaii Revised Statutes and after the expiration of time for bringing an election contest.

(c) The certificate of election shall be substantially in the form found in HRS §11-156.

(d) If there is an election contest these certificates shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-156)

§3-177-767 Processing of voted ballots at the counting center; return identification envelopes; centralized counting. (a) Valid return identification envelopes, including validated mail ballot packages returned by electronic transmission, shall be

transported to the counting center or designated location in secured containers in accordance with procedures established by the chief election officer.

(b) Opening and processing of valid return envelopes for tabulation may begin no sooner than the tenth day before the election. In the presence of official observers, counting center officials may open the return identification envelopes and count the ballots; provided that any tabulation of the number of votes cast for a candidate or question appearing on the ballot, including a counting center printout or other disclosure, shall be kept confidential and shall not be disclosed to the public until after 7:00 p.m. on the date of the election or after the last person in line at a voter service center desiring to vote at 7:00 p.m. on the date of the election has voted, as provided in HRS §11-131, whichever is later.

(c) Valid return identification envelopes shall be opened and processed in accordance with procedures established by the chief election officer.

(d) Upon opening the return identification envelopes, counting center officials shall indicate that a ballot is invalid for the following reasons:

(1) More than one secret ballot envelope or secret ballot sleeve containing a ballot;

(2) Secret ballot envelopes or secret ballot sleeves containing more than one ballot, provided that in an election which requires more than one ballot card or sheet, ballots constituting a paired ballot shall be valid (i.e. if an election contains more candidates and/or ballot questions that can fit on one ballot card);

(3) The ballot returned is defective and cannot be duplicated;

(4) The ballot returned is for the wrong election; or

(5) No ballot has actually been returned in the secret ballot envelope or secret ballot sleeve.

(e) Invalidated ballots shall be noted as being "invalid," placed in an invalid ballot box or

otherwise securely segregated. Any reconciliation form shall be adjusted to reflect any invalidating conditions.

(f) The counting of ballots and certification of results shall occur in accordance with Subchapter 16 to Chapter 3-177, Hawaii Administrative Rules. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-108, 15-9)

§3-177-768 Processing of uncounted voted ballots from voter service centers. Voter service center officials shall identify and pack any uncounted voted ballots at the voter service center in a secure container to transfer to the counting center to be counted. Election officials shall process uncounted voted ballots that were unable to be counted at a voter service center as follows:

(1) The location and container number shall be logged; and

(2) The uncounted voted ballots shall be readied for counting. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 16-2, 16-41 through 16-46)

§3-177-769 Reconciliation of voted ballots. (a) The clerk shall prepare a reconciliation of voted mail and voter service center ballots recorded on a form prescribed by the chief election officer. The form shall summarize the following totals by precinct:

(1) Walk-in voter service center ballots;

(2) Valid mail return identification envelopes; and

(3) Invalidated mail ballots.

(b) If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-153, 11-155)

§§3-177-770 to 3-177-799 (Reserved).

SUBCHAPTER 17
PAPER BALLOT VOTING SYSTEM

§3-177-800 Paper ballot voting system; voting procedure at the voter service center. (a) The "paper ballot voting system" means the method of recording votes which are counted manually in accordance with HRS §§16-21 to 16-29. Neither the paper ballot voting system or paper ballot voting system procedures apply to ballots that were originally meant for any other voting system, such as the marksense voting system (e.g. marksense ballots cannot be marked or counted under the rules associated with this subchapter).

(b) If a paper ballot voting system is to be used, a demonstration of the proper method to use in marking a paper ballot, shall be available to all voters at the voter service center. A card of instruction detailing the method of marking ballots and voting shall be posted outside the voter service center and in each voting booth.

(c) The voter may be asked to verify their identity.

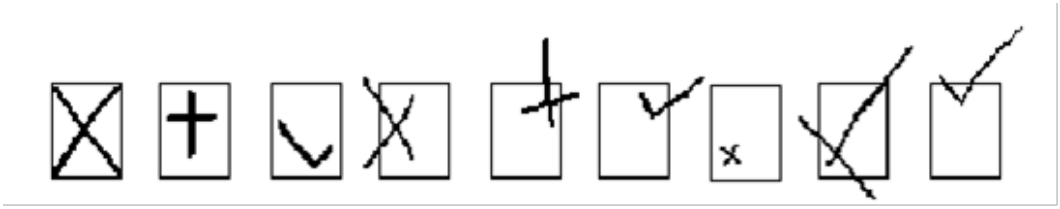
(d) The voter may be required to fill out an application that will be used in conjunction with the statewide voter registration system. In the alternative, they may sign a poll book, depending on how the voter service center is operated. In either case, the poll book or application shall include the ability for the voter to make a mark in the appropriate place if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The voter service center official shall print "witnessed by" next to the voter's mark and sign the voter service center official's name.

(e) Before issuing a ballot to a voter, the voter service center official shall fold the ballot in the manner prescribed by the chief election officer or clerk so as to conceal the contents.

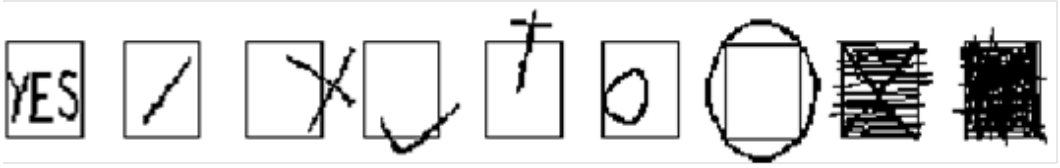
(f) Upon receiving the folded ballot, the voter shall proceed into the voting booth and shall mark the

ballot in the manner and color of ink or grade of softness of pencil graphite prescribed by the chief election officer as described in the card of instruction. Within the voting booth the voter shall designate each choice by marking an "X", "+", or "%" in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote. The voting position area will be designated by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(1) Examples of proper marks are:



(2) Examples of improper marks are:



(g) The voter shall then refold the ballot using the same folds as when handed to the voter by the voter service center official and shall give the folded ballot to the voter service center official at the ballot box. The official shall not open or unfold the ballot, but shall ensure that the correct number of ballots are deposited in the ballot box.

(h) The voter service center official at the ballot box shall give the voter a receipt.

(i) Voter assistance shall be provided at the voter service center. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 16-22) (Imp: HRS §§11-109, 11-139, 12-31, 16-22, 16-23)

§3-177-801 Paper ballot voting system; counting ballots. (a) All counting shall be conducted by the election officials in accordance with HRS §16-25.

(b) Insofar as the limits of the room in which the voting takes place reasonably allow, no person shall be prevented from attending the counting of the ballots on election day, unless it is necessary to restrict access to preserve the peace.

(c) All tallying shall be done on the official tally sheet, and no one but an election official shall be permitted to assist in calling, tallying, or performing any other work involved in counting the votes cast. The election officials shall also tally the number of:

(1) Questionable ballots, as defined in HRS §16-26, which shall be placed in an envelope provided for that purpose; and

(2) Totally blank ballots.

(d) When tallying is completed, an election official, in the presence of at least one other election official not of the same political party, shall circle the last block containing the last tally mark with a red pen.

(1) Immediately to the right of the circled block, an election official shall record the total number of tally marks including those in that block, and the election official and the other election officials shall affix their initials.

(2) The total count shown on the tally sheet shall be recorded on the results of votes cast form.

(3) The election officials shall then complete and sign the certification on the tally sheet and the results of votes cast form.

(e) When the election officials have ascertained

the number of votes given for each candidate and ballot question, they shall make public declaration of the whole number of votes cast, the names of the persons voted for, the ballot questions, and the number of votes for each person and ballot question." [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-152, 11-153, 11-154, 16-24 through 16-29)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

The amendments to and compilation of chapter 3-177, Hawaii Administrative Rules, on the Summary page dated _____, were adopted on _____, after public notice was given in _____
_____
_____
_____

These amendments to and compilation of chapter 3-177, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

_____
SCOTT T. NAGO
Chief Election Officer

_____
JOSH GREEN, M.D.
Governor
State of Hawaii

DATE: _____

APPROVED AS TO FORM:

_____
Deputy Attorney General

_____
Filed

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-177
Hawaii Administrative Rules

September 14, 2026

1. Chapter 3-177, Hawaii Administrative Rules, entitled "Rules of the Office of Elections," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13 OFFICE OF ELECTIONS

CHAPTER 177

RULES OF THE OFFICE OF ELECTIONS

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§3-177-2 Petitions for the adoption, amendment, or repeal of rules
§3-177-3 Adoption, amendment, or repeal of rules
§3-177-4 Conduct of hearing
§3-177-5 Decision; taking effect of rules
§3-177-6 Emergency rule making
§§3-177-7 to 3-177-49 (Reserved)

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§3-177-51 Construction of laws
§3-177-52 Election officials
§3-177-53 Office of the clerk
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§3-177-55 Format of election documents
§3-177-56 Receipt, filing, or accessibility of election documents
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§3-177-59 Postponement of elections; natural disaster
§3-177-60 Compensation for election day officials
§3-177-61 Security of ballots and election supplies.

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§3-177-155 Clerk's approval; when voter becomes registered
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§3-177-201 Challenges in writing not occurring in a voter service center; procedure

§3-177-202 Appeal to the board from a clerk’s ruling on a challenge in writing not occurring in a voter service center
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§3-177-206 Correction of errors; appeal to the board of registration from clerk's ruling
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Subchapter 6 Access To Government Records

§3-177-250 Access to election documents; general procedures
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§3-177-300 Presidential petitions; issuing
§3-177-301 Presidential petitions; withdrawal of signatures
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§3-177-400 Nomination papers; when available, application, and format
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§3-177-550 Voter service center; verification of the identity of currently registered voters
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§3-177-602 Ballot packages; timing of transmittal, military and overseas voter requests
§3-177-603 Ballot packages; timing of transmittal, absentee requests
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§3-177-653 Return identification envelopes; signature device
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§3-177-702 County elections; assistance
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§3-177-753 Electronic voting systems, transmission, receipt, and tabulation of votes
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§3-177-755 Electronic voting systems; direct recording electronic voting system results
§3-177-756 Electronic voting systems; inspection, audit, and experimental testing
§3-177-757 Electronic voting system; counting center procedures
§3-177-758 Electronic voting system centralized counting; receipt at counting center
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§3-177-764 Challenged voter's ballot; disposition of at counting center
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§3-177-766 Certificate of election and certificate of results, form
§3-177-767 Processing of voted ballots at the counting center; return identification envelopes; centralized counting
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§3-177-769 Reconciliation of voted ballots.
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Subchapter 17 Paper Ballot Voting System

§3-177-800 Paper ballot voting system; voting procedure at the voter service center

§3-177-801 Paper ballot voting system; counting ballots

SUBCHAPTER 1

ADOPTION, AMENDMENT, OR REPEAL OF RULES
BY CHIEF ELECTION OFFICER

§3-177-1 Chief election officer initiates. When upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule for state, combined state and county, or county elections, a notice of proposed rule making shall be published as required by law. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-3, 92-41)

§3-177-2 Petitions for the adoption, amendment, or repeal of rules. (a) Any interested person or agency may petition the chief election officer for the adoption, amendment, or repeal of any election rule. The petition need not be in any prescribed form, but it shall contain all of the following:

(1) The name, address, zip code, and telephone number of the petitioner;
(2) The signature of the petitioner;
(3) A statement of the nature of petitioner's interest;
(4) A draft or substance of the proposed rule or amendment or a designation of the provisions sought to be repealed;
(5) A statement of the reasons in support of the proposed rule, amendment, or repeal; and
(6) Any other information pertinent to the petition.

(b) An original copy of the petition shall be filed with the chief election officer. Each petition shall be date-stamped upon receipt and shall become a public record upon filing. The chief election officer may require the petitioner to furnish copies of the petition to other persons or governmental agencies known to be interested in the proposed rule making, amendment, or repeal.

(c) The chief election officer, within thirty days after the receipt of the petition, shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with the provisions of §3-177-1 for the adoption, amendment, or repeal of rules. Any petition which does not conform to the requirements specified in this section may be rejected.

(d) No public hearing, oral argument, or other form of proceeding shall be held directly on the granting or denial of the petition. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 91-6) (Imp: HRS §§11-4, 91-2, 91-6)

§3-177-3 Adoption, amendment, or repeal of rules. When, pursuant to a petition therefore, or upon the chief election officer's own motion, the chief election officer proposes to adopt, amend, or repeal a rule, the rule shall be adopted, amended, or repealed in accordance with the procedures set forth in chapter 91 and section 92-41, HRS. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§91-3, 91-6, 92-41)

§3-177-4 Conduct of hearing. (a) The chief election officer shall afford all interested persons the opportunity to submit data, views, or arguments, orally or in writing.

(1) Written testimony shall be submitted to the chief election officer at least twenty-four hours prior to the hearing.

(2) Any person submitting written testimony on the day of the hearing shall furnish ten copies of such testimony to the chief election officer's staff prior to the hearing.

(3) In addition, or in lieu of written testimony, any person may file with the chief election officer within two days following the close of the public hearing a written protest or other comments or

recommendations in support of or in opposition to the proposed rule making. Such persons shall notify the chief election officer at the time of the hearing that they intend to file written materials after the hearing. The period for filing written protests, comments, or recommendations may be extended by the chief election officer for good cause.

(b) The chief election officer or the designated representative shall conduct the public hearing.

(c) The presiding officer shall do all of the following:

(1) Read the notice of hearing and outline briefly the procedures to be followed;

(2) Receive testimony from any person with respect to the matters specified in the notice of hearing according to the announced procedures. Each person giving testimony shall state the person's name, address, and whom the person represents at the hearing before testifying;

(3) Have a concise record of the proceedings kept. Unless otherwise specifically ordered by the presiding officer, testimony given at the hearings shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are considered by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impractical, two copies of exhibits shall be submitted; and

(4) Make any decision concerning the continuance of the hearing. As determined by the presiding officer, the hearing held at the time and place set in the notice of hearing may be continued from day to day or adjourned to a later date or to a different

place without notice other than the announcement thereof at the hearing. [Eff 07/26/20; comp] (Auth: HRS §11-4)(Imp: HRS §§11-4, 91-3)

§3-177-5 Decision; taking effect of rules. (a) At the close of the final public hearing, the presiding officer shall announce the decision or announce the date when the decision shall be published.

(b) The adoption, amendment, or repeal of any rule shall be subject to the approval of the governor as required by law.

(c) Each rule change announced by the governor shall become effective ten days after a certified copy is filed with the lieutenant governor as provided by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4) (Imp: HRS §§11-4, 91-3, 91-4)

§3-177-6 Emergency rule making. The chief election officer may adopt emergency rules as provided in §91-4, HRS. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§§3-177-7 to 3-177-49 (Reserved)

SUBCHAPTER 2

GENERAL PROVISIONS

§3-177-50 Purpose; general applicability. The purpose of these administrative rules is to provide for consistency in the administration of elections. The rules in this chapter are generally applicable to all election matters, unless the context indicates otherwise. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-51 Construction of laws. Chapter 1, Hawaii Revised Statutes, consisting of HRS §§1-1 through 1-32, may be consulted in the construction of all statutes and administrative rules. If the chief election officer or a court of competent jurisdiction determines there is a conflict between these rules and the provisions of federal law, such as the Voter Rights Act of 1965, National Voter Registration Act of 1993, Help America Vote Act of 2002, the provisions of the federal law shall control, and the chief election officer or the clerk, as may be applicable under state law, shall perform the duties and discharge the obligations contained in the federal act. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§1-1 through 1-32)

§3-177-52 Election officials. Unless the context indicates otherwise, "election official" refers to the chief election officer, county clerk, or any of their designees. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-53 Office of the clerk. (a) Office of the clerk or similar words such as "county clerk" or "county elections division" means where the affairs of the clerk, such as processing voter registration and mailing and receipt of ballots, are transacted. This

includes, but is not limited to, voter service centers, satellite offices, and anywhere the clerks exercise control through their staff, or others they delegated authority, over ballots or other election matters associated with the duties and powers of their office conferred by law.

(b) Any requirement relating to ballots being received at the office of the clerk will be deemed satisfied by the taking of custody of ballots at the United States Postal Service post office or from anyone at any location, by the clerk, their staff, or others delegated authority by the clerk, so long as the applicable statutory deadline has been met (e.g., ballots received in such a manner by the close of polls will be deemed to have met the statutory deadline).

(c) Any requirement for a voter service center at the office of the clerk will be deemed satisfied by the use of a physical location temporarily managed by the clerk to perform the services associated with a voter service center.

(d) Any requirement for the receipt of voter registration applications, absentee applications, or other election documents will be deemed satisfied by the taking of custody of it at the United States Postal Service post office or from anyone at any location, by the clerk, their staff, or others delegated authority by the clerk, so long as the applicable statutory deadline has been met. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 489E-15) (Imp: HRS 11-4, 11-15, 11-16, 11-104, 11-106, 11-107, 11-109, 12-6, 15, 15-9, 489E-15)

§3-177-54 Office of the chief election officer. (a) "Office of the chief election officer," "office of elections," or similar words, unless the context indicates otherwise, means where the affairs of the chief election officer are transacted. For example, the facilities or locations designated by the chief election officer where nomination papers, ballots or other election materials are received, processed,

counted, or tabulated. This includes anywhere the chief election officer exercises control through themselves, their staff, or others they delegated authority, over ballots or other election matters associated with the duties and powers of their office conferred by law.

(b) Any requirement relating to nomination papers or any other election document being filed at the office of the chief election officer will be deemed satisfied by the filing of those nomination papers or election documents at their main office, satellite office, or the offices of the clerks who are authorized to file nomination papers and other election documents on behalf of the office of elections.

(c) Any requirement for the receipt of nomination papers or other election documents will be deemed satisfied by the taking of custody of it at the United States Postal Service post office or from anyone at any location, by the chief election officer, their staff, or others delegated authority by the chief election officer, so long as the applicable statutory deadline has been met. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 489E-15) (Imp: HRS §11-4, 11-113, 12-6, 489E-15)

§3-177-55 Format of election documents. (a) Election documents may be initially created by election officials in or converted to an electronic format. Election documents may be broadly interpreted to include all records and documents related to elections. A document in electronic format may be considered the equivalent of the original.

(b) In addition to paper forms, election officials may use electronic forms, electronic transmission, computer programs, websites, or similar technology to solicit applications from the public or to generate an electronic document containing the relevant information required by law. For example, election officials may use an online voter registration system, online candidate filing system,

online ballot delivery, marking, and return system, online ballot signature rehabilitation system, electronic mail, or fax.

(c) The election official, to the extent not otherwise required by law or by the chief election officer, may choose not to use technology in the manner noted above. Instead, they may choose to rely on a paper based process for some or all of their operations.

(d) Unauthorized paper forms, electronic forms, or computer programs or services to generate electronic documents are not permitted.

(e) Election officials may authorize third parties to use or otherwise duplicate election documents for distribution. However, the mere distribution of any election document by a third party, will not, in and of itself, create an agency with any election official.

(f) Third parties are cautioned that unless authorized under HRS §11-97, it is unlawful for any person to use, print, publish, or distribute information acquired directly or indirectly from any list prepared therefrom. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-5, 489E-7, 489E-12, 489E-15, 489E-17, 489E-18) (Imp: HRS §§11-2, 11-4, 11-14, 11-97, 11-106, 11-107, 15-1, 15-4, 489E-5, 489E-7, 489E-12, 489E-15, 489E-17, 489E-18)

§3-177-56 Receipt, filing, or accessibility of election documents. (a) Assuming a document is returned in the manner authorized by election officials, the nature of the document and the totality of the circumstances will determine when it is considered received, filed, or accessible for election purposes.

(b) The receipt of a document is merely a ministerial notation of when a document was received and is not the equivalent of a determination that the document is in proper order and can be counted in the context of a ballot, filed in the context of a nomination paper or similar document, or the applicant

treated as registered in the context of a voter registration application. To the extent a document is initially received and subsequently found not to meet filing requirements, it may be returned to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a candidate submits a nomination paper and it is subsequently determined that it does not have the required amount of verified signatures, the candidate may be provided the document back so they can obtain sufficient signatures and resubmit the document by the filing deadline.

(c) The filing of a document occurs to the extent the underlying statute refers to filing and the election official determines that the document submitted for filing meets the statutory or administrative rule requirement for filing. If a document submitted for filing does not satisfy the requirements for filing it will not be considered filed. Similarly, if it is considered to have met the requirements of filing it will be considered filed at the time of receipt. An initial indication that a document has been filed does not preclude it from being determined not to have met the requirements for filing. In such a case, any such document may be considered void ab initio and not considered filed (i.e., void from the beginning).

(d) Generally, documents may be received during the hours established by the chief election officer or county clerks, with the understanding election officials can adjust hours. Additionally, the county clerk or chief election officer may receive documents at any location. As it relates to the online voter registration system or any other electronic system operated by the chief election officer or the county clerks, which may operate otherwise outside of normal work hours, the document will be deemed filed upon receipt unless determined otherwise. Documents delivered after normal work hours may be treated as received as of the next business day.

(e) A voter standing in line at a place of deposit or voter service center at the closing time

provided in HRS §11-131 with the intent to return a ballot and casting a vote shall be allowed to vote. This does not preclude a voter from otherwise standing in line at any other location established by an election official by the closing time provided in HRS §11-131 with the intent of returning a ballot and casting a vote from being allowed to vote (e.g., the county clerk may establish a receiving area for ballots in the parking lot of a county building, as opposed to requiring voters to go into a county building to get to the voter service center).

(f) As it relates to matters covered by federal law, receipt shall be determined by the applicable federal law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-4, 11-6, 11-15, 11-15.3, 11-16, 11-62, 11-63, 11-64, 11-77, 11-104, 11-105, 11-106, 11-107, 11-113, 11-117, 11-131, 12-6, 12-8, 15-4, 15-9, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18)

§3-177-57 Districts, precincts, polling places, and ballot types. (a) "District" means, unless otherwise specified, the district of political representation with the fewest eligible voters in a particular election. The use of the general term "district," without reference to a specific office, such as councilmember district, state representative district, state senatorial district, or U.S. Representative District, shall be comparable to the prior utilization of the term "precinct" or "district-precinct" before the enactment of elections by mail. Specifically, election administrators may account for the intersecting boundaries associated with different offices or jurisdictions to establish the "districts" that will be used for administrative and reporting purposes. Similarly, election administrators may take into account historical reporting of results by specific regions or communities in establishing the "districts" that will be used for administrative and reporting purposes.

(b) To the extent a statute continues to refer to a "precinct," unless the context indicates

otherwise, it will be understood to have the same definition as a district in subsection (a).

(c) In terms of identifying a district used for administrative or reporting purposes a two-part naming convention may be used. For example, a district may be represented with a hyphen, dash, or forward slash between a state representative district number and the administrative district within it, to facilitate identifying the boundaries of the district in relation to the larger boundaries of intersecting offices or jurisdictions (e.g., DP 07-01 or DP 07/01). Otherwise, a different naming convention may be used, so long as there is on file a description of the boundaries of the district. No changes to any such district boundaries shall be made later than 4:30 p.m. on the tenth day before the close of filing for an election.

(d) "Polling place," "polls," or "pollbooks" unless the context indicates otherwise, refers to a voter service center or something in connection with a voter service center.

(e) "Ballot type," unless the context indicates otherwise, means the unique ballot containing the contests, question, or issues of the voters of a specific district. The ballot type associated with one district may contain the same contests, question, or issues associated with a different ballot type to be used by the voters of a different district, with the only difference being the administrative identification of a ballot type.

(f) Election officials may accommodate other ballot types, as may be necessary, including the distinction between ballots cast at voter service centers, ones associated with ballot packages, those associated with electronic transmission, categories of voters required by state or federal law to have a particular type of ballot, and any other category that facilitates the reporting of results or the inventory control of ballots.

(g) A particular ballot type associated with a district or category of voter may be used for different district or category of voter, if the

contests, questions, and issues are the same. To the extent there are differences, they will be addressed by the counting center officials, pursuant to HAR §3-177-759. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-1, 11-4, 11-5, 11-11, 11-12, 11-13, 11-15.2, 11-17, 11-18, 11-20, 11-21, 11-22, 11-25, 11-26, 11-92.1, 11-92.3, 11-96, 11-97, 11-102 through 11-109, 11-112, 11-117, 11-138, 11-153, 11-155, 11-172, 11-174.5, 13D-3, 15-2.5, 15-4, 15-11, 15-14, 15D-10, 16-1, 16-22, 16-23, 16-26, 16-27, 16-28, 16-42)

§3-177-58 Saturday, deadlines. To the extent a statutory deadline occurs on a Saturday, the chief election officer or clerk may make themselves available to receive the applicable filing by electronic mail on that day. The circumstances of a deadline occurring on a Saturday will not serve as a basis to extend any statutory deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-15) (Imp: HRS §1-29, 11-64, 11-77, 15-4, 489E-15)

§3-177-59 Postponement of elections; natural disaster. (a) The conducting of an election may be postponed in any district or county by the chief election officer or the clerk of a county in the case of county elections if:

(1) Flooding, high winds, earthquake, tsunami, volcanic eruption, or other natural disaster has occurred in, or in the proximity of, the district, or county; and
(2) Access to voter service centers are restricted due to:
    (A) Damage to, or closing of, roads;
    (B) The absence or suspension of public transportation;
    (C) The absence of electricity, telephone, or other public telecommunications or utilities;
    (D) Extensive property damage or personal injury throughout the affected area;

(E) Damage to a voter service center or voter service centers which endangers the health or safety of voters or election officials; or

(F) Damage to a voter service center or voter service centers which makes it impracticable for such locations to function as election sites.

(b) An election may be postponed no more than twenty-one days from its scheduled date. The chief election officer, or clerk in the case of county elections, may, subject to applicable law, alter the method or manner of voting or counting to accommodate the conditions which necessitated the postponement. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-92.3, 11-109)

§3-177-60 Compensation for election day officials. (a) All election day officials shall be compensated in accordance with a stipend schedule approved by the chief election officer containing substantially the following information:

(1) County designation;

(2) Position title; and

(3) Stipend amount per election.

(b) The stipend schedule is as follows:

ELECTION DAY OFFICIAL
Base Pay

COUNTY	POSITION		STIPEND PER ELECTION SERVED
COUNTING CENTER			
O	Chairperson:	Base Pay	105.00
H, M	Chairperson:	Base Pay	95.00
K	Chairperson:	Base Pay	90.00
O	Assistant:	Base Pay	100.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
H, M	Assistant:	Base Pay	90.00
K	Assistant:	Base Pay	85.00
O	Member:	Base Pay	95.00
H, M	Member:	Base Pay	85.00
K	Member:	Base Pay	80.00
CONTROL CENTER			
O, H, K, M	Board of Registration Member		85.00
O, H, K, M	Board of Registration Secretary		100.00
O, H, K, M	Computer Terminal Operator		85.00
O	Control Center Assistant Manager		140.00
O, H, K, M	EIS Multilingual		85.00
O	Electioneering Chairperson		70.00
O	Electioneering Member		60.00
O, K	Messenger		60.00
O, H, K, M	Phone Operator		85.00
O, H, K, M	Troubleshooter		145.00
DELIVERY/COLLECTION (D/C)			
O, H, K, M	D/C Chairperson	00-10 miles	70.00
O, H, K, M	D/C Chairperson	11-20 miles	75.00
O, H, K, M	D/C Chairperson	21-30 miles	80.00
O, H, K, M	D/C Chairperson	31-40 miles	85.00
O, H, K, M	D/C Chairperson	41-50 miles	90.00
O, H, K, M	D/C Chairperson	51-60 miles	95.00
O, H, K, M	D/C Chairperson	61-70 miles	100.00

COUNTY	POSITION		STIPEND PER ELECTION SERVED
O, H, K, M	D/C Chairperson	71 + miles	105.00
O	D/C Controller		90.00
K	D/C Driver	00-10 miles	75.00
K	D/C Driver	11-20 miles	80.00
K	D/C Driver	21-30 miles	85.00
K	D/C Driver	31-40 miles	90.00
K	D/C Driver	41-50 miles	95.00
K	D/C Driver	51-60 miles	100.00
K	D/C Driver	61-70 miles	105.00
K	D/C Driver	71-80 miles	110.00
O, H, K, M	D/C Member	00-10 miles	65.00
O, H, K, M	D/C Member	11-20 miles	70.00
O, H, K, M	D/C Member	21-30 miles	75.00
O, H, K, M	D/C Member	31-40 miles	80.00
O, H, K, M	D/C Member	41-50 miles	85.00
O, H, K, M	D/C Member	51-60 miles	90.00
O, H, K, M	D/C Member	61-70 miles	95.00
O, H, K, M	D/C Member	71 + miles	100.00
O	D/C Standby		50.00
O, H, K, M	Election Support		100.00
SUPPLY COLLECTION (SC)			
O	Supply Collection Chair		60.00
O	Supply Collection Coordinator		65.00
O	Supply Collection Custodian		10.00

COUNTY	POSITION	STIPEND PER ELECTION SERVED
O	Supply Collection Member	50.00

O = City & County of Honolulu H = County of Hawaii
K = County of Kauai M = County of Maui

(c) The stipend amount per election may vary based on workloads and time differentials or at the discretion of the chief election officer; provided that the stipend amount be established prior to election day. This includes the ability to authorize split shifts if necessary.

(d) The stipend amounts shall be considered minimum stipends, subject to possible increase, in the event of available legislative appropriations. Any such increased stipend amount will be established prior to election day.

(e) Notwithstanding anything to the contrary, the chief election officer or the clerk may employ regular employees or temporary employees of their office to perform any duties that may be performed by an election day official, in addition to procuring any services necessary for the execution of their responsibilities, to the extent permitted by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-76)

§3-177-61 Security of ballots and election supplies. (a) The procedure for ensuring the security of a container used to store or transport ballots, voter verifiable paper audit trails, vote data storage media, and other sensitive election materials shall be as follows:

(1) Made of suitable materials to prevent breakage or tampering;

(2) Securable using a nonreusable seal;

(b) A record shall be maintained to list the seals used to secure such containers and to provide an

accurate chronological posting of seals used during the opening and closing of each container. A section for witnesses' signatures shall also be provided.

(c) Election officials shall make periodic checks of the seals on such containers to ensure that no tampering has occurred. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-152)

§3-177-62 By lot. (a) "By lot" means, unless otherwise specified, the making of a selection or decision purely by random chance, such as drawing names from a container, flipping a coin, or rolling dice.

(b) Unless the context indicates otherwise, any statute referring to a selection or decision being made "by lot," by drawing, or similar words reflecting by random chance shall be done by drawing names from a container. Hereinafter, this will be referred to as the "drawing."

(c) The names of the candidates or political parties may be handwritten or printed by a machine on individual pieces of paper.

(d) The paper shall be folded in such a manner that the name cannot be read from the outside. The paper for each individual name will be placed in the container.

(e) Unless determined otherwise, individual capsules will be used to contain each individual piece of paper. The capsules containing each piece of paper shall be placed within the container. To the extent individual capsules are not readily available, capsules may not be used and only the pieces of paper will be placed in the container.

(f) The container, depending on the type of container, will be shaken or rotated by someone other than the person who will be drawing the capsule or piece of paper. The person drawing will avert their eyes, so they do not see the capsule or piece of paper when they draw it from the container. The drawer will announce the name that was drawn.

(g) To the extent the drawer is to draw multiple

capsules or pieces of paper, such as in the case of determining the political party order for the primary election, the drawer will announce the name drawn after each selection.

(h) The office of elections or the clerk in the case of county elections shall attempt to notify candidates or political parties, in the event of a drawing to determine political party order on the ballot, that will be affected by the drawing of its time and place. Contact may be attempted through using the telephone number or electronic mail address provided to election officials by the candidate or political party that is on file with election officials.

(i) Election officials are not responsible for the non-receipt of such notice by the candidate or political party or their non-attendance.

(j) The drawer for purposes of any state or federal contest shall be the chief election officer. Similarly, the drawer for purposes of any county contest shall be the county clerk.

(k) Unless stated otherwise, as it relates to any state or federal contest, the drawing will be conducted on Oahu. The location of the drawing for a county contest will be in the county.

(l) The equipment used for the drawing will be available for viewing immediately prior to it being conducted.

(m) Election officials will attempt to record the drawing. However, election officials are not responsible for any technical issues with making a recording or playing it back. Having said that, the attendees of the drawing will have the ability to make their own recording, to the extent it is not disruptive or otherwise interferes with the drawing.

[Eff and comp] (Auth: HRS §11-4) (Imp: HRS §§11-100, 11-157, 12-21, 14-27, 17-3)

§§3-177-63 to 3-177-99 (Reserved)

SUBCHAPTER 3

VOTER EDUCATION

§3-177-100 Purpose. The chief election officer may establish voter education programs, including publishing voter information pamphlets, conducting voter awareness media campaigns, and employing other voter information methods deemed appropriate by the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-2)

§3-177-101 Voter pamphlet. (a) The chief election officer or the clerk may produce a voter information pamphlet in printed form or published on an online website.

(b) The chief election officer or clerk may select the district or districts to be covered by the voter information pamphlet. The pamphlet may be made available, by mail, or other methods, to households within the selected district with one or more registered voters. In the alternative, the pamphlet may be made on the office of elections' website or that of the office of the clerk.

(c) The chief election officer or clerk may authorize the pamphlet to contain contact information for the candidates (e.g. telephone number, electronic mail address, fax, or website); provided that the candidate submits the information before the deadline established by the chief election officer or clerk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-2)

§3-177-102 Election equipment loans. (a) The chief election officer or clerk may establish a program to authorize the use of any available election equipment by schools or community organizations at no cost. The chief election officer or clerk may charge a school or community organization for applicable

shipping and delivery charges and for the repair or replacement of equipment damaged by the school or community organization.

(b) The following election equipment may be made available: voting booths, steel ballot box, and other election equipment.

(c) The equipment may be available from the chief election officer, clerk, or designated representative.

(d) Organizations under this program shall assign a coordinator who will be the point of contact and who will assume the responsibility for the election equipment. [Eff 07/26/20; comp] (Auth: HRS §§11-2, 11-4, 16-3) (Imp: HRS §11-2, 16-3)

§§3-177-103 to 3-177-149 (Reserved)

SUBCHAPTER 4

VOTER REGISTRATION

§3-177-150 Voter registration and related forms. (a) The affidavit on the application for voter registration form shall be in a form prescribed and approved by the chief election officer containing substantially the following information:

(1) Name;

(2) Applicant's Hawaii driver license number or Hawaii state identification card number; provided that:

(A) If no driver license or identification card has been issued to the applicant, the last four digits of the applicant's social security number; and

(B) If no social security number has been issued to the applicant, an election official or county clerk shall assign the applicant a unique identification number for voter registration purposes and enroll the applicant in the State's computerized voter registration list, if any;

(3) Date of birth;

(4) A statement that the applicant is at least sixteen years of age at the time of completing the registration form;

(5) Residence, including mailing address;

(6) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein;

(7) That the person is a citizen;

(8) That the person swears to the truth of the allegations by self-subscribing affirmation in the affidavit on application for voter

registration or other form prescribed by the chief election officer;

(9) A space for a signature of a witness, along with their address and telephone number, when the applicant is unable to sign and instead makes a mark; and

(10) A statement which says that the office, site, or location at which an applicant registers to vote, or the declination on the part of the applicant to register to vote will remain confidential and will be used for voter registration purposes only.

(b) The voter registration form may also include other information deemed appropriate by the chief election officer including but not limited to the following information:

(1) Applicant's telephone number;

(2) Applicant's electronic mail address;

(3) If the applicant was previously registered in a state other than Hawaii, an authorization by the applicant to cancel the applicant's previous voter registration; and

(4) A statement notifying applicants of the penalty for falsifying information on the voter registration form or for falsifying the self-subscribing oath.

(c) The following forms shall also be accepted for voter registration:

(1) Federal Postcard Application (FPCA);

(2) National Mail Voter Registration Form;

(3) Any simultaneous application for voter registration and either a driver license or state identification card;

(4) Any online voter registration application; and

(5) Any other form or manner of registration required by state or federal law.

(d) The chief election officer may prescribe and approve other forms for the purpose of updating an existing voter registration record, verifying the identity of a voter in relation to a request by a voter, or as part of an inquiry by an election

official to a voter (e.g. a request by a voter to update their voter registration record; an application for an absentee ballot, replacement ballot, or to vote in person at voter service center; or an inquiry to a voter in relation to a voter registration challenge or transfer).

(1) These forms may require substantially any information required by subsections (a) and (b), to verify the identity of the voter, ensure information is current, or otherwise update the voter registration record. However, if an election official has transmitted a form to a voter or is otherwise satisfied that the individual returning the form is who they claim to be, then the election official may, depending on the circumstances, not require information that would otherwise be required by subsections (a) and (b) for a new voter in conjunction with a transaction with a current voter. For example, if an election mailing is addressed to a specific voter with an enclosed card or form to be returned, elections officials may choose to require a signature, which would be used to verify the identity of the voter. Similarly, if a form is utilized at an election official's office and the voter has presented satisfactory identification to an election official, the provision of information associated in subsections (a) and (b) for a new voter may not be required for a current voter; and

(2) Depending on the type of application request, other information relevant to the request may be requested (e.g. temporary mailing address, name of designee picking up a ballot for the voter, evidence of statutory eligibility for the presidential ballot, or affirmation indicating compliance with the criteria for the specific request).

[Eff 07/26/20; comp] (Auth: HRS

§§11-4, 11-15, 11-16) (Imp: HRS §11-4, 11-4, 11-15, 11-16, 11-105, 11-106, 11-107, 15-4)

§3-177-151 Voter registration forms; distribution. (a) Voter registration forms shall be available at the offices of the clerk and the chief election officer.

(b) The chief election officer shall designate state government agencies that provide public assistance and state funded agencies that provide service to persons with disabilities as voter registration agencies.

(c) Voter registration forms, or their equivalents, shall be available at federal, state, and county agency offices and other locations specified by law.

(d) Forms may also be distributed in accordance with procedures established by the chief election officer or clerk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 286-108)

§3-177-152 Voter registration forms; collection. (a) Voter registration forms of new voters shall be received by the clerk no later than 4:30 p.m. on the day of the closing of the register for the election for which the applicant seeks to be registered. Voter registration forms received after the closing of the register for an election shall not be valid for that election and shall be processed by the clerk to register the applicant for the next election, except in regard to any person appearing in person at any voter service center on or before election day, who is otherwise eligible to register to vote under HRS §11-15.2.

(b) Applicants to be new voters, who are not registering to vote in person at a voter service center, shall submit completed voter registration forms in the following manner:

(1) At designated drop off locations operated by the chief election officer or clerk;

(2) By delivering the completed voter registration form to the clerk or to designated representatives of the clerk. This includes, but is not limited to, any state motor vehicle authority or voter registration agency, as those terms are used in the National Voter Registration Act of 1993, as amended (e.g. driver license offices);

(3) By mailing the completed voter registration form to the clerk, provided that the completed voter registration form shall be mailed directly to the clerk and shall be postmarked no later than the day of the closing of the register for the election for which the applicant seeks to be registered. If the postmark is illegible or missing, an otherwise acceptable voter registration form shall be effective for an upcoming election:
    (A) If the voter registration form is executed on or before the close of registration for that election; and
    (B) The voter registration form is received by the clerk by mail no later than the second business day after the close of registration for that election; or

(4) Using the online voter registration system, authorized by HRS §11-15.3. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-15.3, 11-16, 11-24)

§3-177-153 Voter registration forms; electronic transmission by government agencies. (a) To the extent a government agency serves as a voter registration agency or is associated with a state motor vehicle authority, the agency may electronically transmit the information required to register a voter, if the voter has signed the equivalent of a voter registration form at the voter registration agency. The information transmitted will be considered the equivalent of an original of the voter registration

for all purposes. As it relates to the data sent, the voter registration agency shall also send a copy of the digitized signature in the voter registration agency's database. The digitized signature may be used by election officials to validate and confirm a voter's identity in any election-related matter in which a signature is necessary.

(b) "Voter registration agency" for purposes of this rule means any office designated under Section 7(a)(1) of the National Voter Registration Act of 1993, as amended, as a voter registration agency.

(c) "Associated with a state motor vehicle authority" means any office involved in the issuance of a personal identification document typically issued by a state motor vehicle authority under Section 5 of the National Voter Registration Act of 1993, as amended. This includes, but is not limited to, any county licensing examiner in conjunction with the issuance of a driver license or state identification card. [Eff 07/26/20; comp] (Auth: HRS §11-4, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18, 52 USC §20504, 52 USC §20506) (Imp: HRS §11-4, 11-15, 11-16, 489E-5, 489E-7, 489E-9, 489E-12, 489E-15, 489E-17, 489E-18, 52 USC §20504, 52 USC §20506)

§3-177-154 Transfer or change of registration initiated by the voter. (a) Once registered to vote, the voter need not register again or change the voter's registration ("reregister") for any succeeding election except upon change of name or address. If the voter's name has been removed from the registry, the voter shall be required to register to vote pursuant to Chapter 11 HRS.

(b) A voter may be allowed to reregister by completing and submitting any voter registration or related form, to the extent it contains the necessary information for the clerk to update the registration.

(c) A person shall be allowed to reregister at any time prior to the close of voting on election day.

(d) The date of reregistration shall be

determined pursuant to HAR §3-177-155. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-17, 11-18, 11-19, 11-20)

§3-177-155 Clerk's approval; when voter becomes registered. (a) Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegations of the applicant in information required in the voter registration form.

(b) The clerk may require the applicant to furnish substantiating evidence to the allegations in the applicant's voter registration form.

(c) To the extent an applicant has satisfied the clerk of the allegations of the voter registration form either in subsection (a) or (b), the voter will be considered registered as of the date of the receipt of the voter registration form, unless there is a basis for an earlier date.

(1) If a voter registration form was mailed to the clerk by the voter registration deadline but received after the deadline, the date of registration will be the date the form was signed; or

(2) If a voter registration form was delivered to a drop off point or to a designated representative, the date of registration will be the date of receipt at the drop off point or to the designated representative.

(d) Notwithstanding anything to the contrary, the clerk may administratively use the date of the signing of the form, to reflect the date of registration, to the extent it has no impact on whether an applicant would otherwise be eligible to vote in the upcoming election (e.g. there is no dispute that the date of actual receipt or the application of the provisions of the National Voter Registration Act of 1993, as amended, would otherwise reflect that the applicable voter registration deadline had been met). [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20504, 52 USC §20505, 52 USC §20506) (Imp: HRS §§11-15, 11-16, 52 USC §20504, 52 USC §20505, 52 USC §20506)

§3-177-156 Determination of residence. (a) In addition to the rules for determining residency provided in HRS §11-13, the following shall also be applicable in determining the residence of a person for election purposes:

(1) The residence of a person is that place in which the person's habitation is fixed, where the person intends to remain, and when absent, intends to return;

(2) When a person has more than one dwelling:

(A) If a person maintains a homeowner's property tax exemption on one of the dwellings, there shall be a rebuttable presumption that the dwelling subject to the homeowner's property tax exemption is that person's residence;

(B) If a person claims a renter's tax credit for one of the dwellings, there shall be a rebuttable presumption that the dwelling, subject to the renter's tax credit is that person's residence; and

(C) If a person has not physically lived at any one dwelling within the year immediately preceding the election, there shall be a rebuttable presumption that the dwelling in which the person has not lived at is not the person's residence.

(3) When a residence address does not have a street number or a person is considered homeless, the following information shall be required:

(A) A description of the location of the residence sufficient to ascertain a voting district and precinct; and

(B) A mailing address within the state, and where the person is legally entitled and does in fact receive

mail.

(4) When a person of this State is employed in the service of the United States, is a student of an institution of learning, or is in an institution, asylum, or prison:

(A) A person does not gain or lose residence in a precinct or this State solely by reason of being present in or absent from a precinct or this State; and

(B) A person once having established residency in a precinct shall be allowed to register and vote and to continue to vote from the address at which the person is registered even though, while residing outside of the precinct or the State, the person no longer has a place of abode in the precinct and the person's intent to return to the precinct may be uncertain.

(b) Should a person's circumstances change and the person takes up a domicile in another precinct or state, there shall be a rebuttable presumption that the new domicile is that person's residence.

(c) For purposes of this section, a rebuttable presumption is a presumption considered true unless proven false by evidence to the contrary.

(d) For purposes of this rule, "precinct" means "district" as that term is defined in HAR §3-177-57 and as used in HRS §11-92.1(b). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-13, 11-15, 11-92.1)

§3-177-157 National Voter Registration Act of 1993, as amended; general program to remove ineligible voters, using change of address information supplied by the postal service. (a) The clerk shall, in accordance with Section 8(a)(4) of the National Voter Registration Act of 1993, as amended, conduct a general program that makes a reasonable effort to remove the names of ineligible voters by reason of

death or change in residence, in accordance with Section 8(b),(c), and (d), from the lists of eligible voters.

(b) The clerk may meet the requirements of subsection (a) of this rule by establishing a program under which –

(1) Change-of-address information supplied by the U.S. Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(2) If it appears from information provided by the U.S. Postal Service that—

(A) A registrant has moved to a different residence address in the same county in which the registrant is currently registered, the clerk changes the registration record to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(B) The registrant has moved to a different residence address not in the same county, the clerk uses the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to confirm the change of address.

(c) The clerk's use of change-of-address information supplied by the U.S. Postal Service through its licensees to identify registrants whose addresses may have changed, as described in subsection (b), to meet the requirements of subsection (a), does not preclude the clerk from using a different program to meet the requirements of subsection (a). The clerk may use other bases to justify using the notice procedure described in Section 8(d)(2) of the National Voter Registration Act of 1993, as amended, to remove registrants due to a change in residence including, but not limited to,

the following:

(1) Sending a notice to every registered voter at specified intervals (e.g. once a year or before an election);

(2) Sending a notice to those who have turned in their driver licenses;

(3) Sending a notice to those who have not voted or engaged in any voter activity for a period of two years. "Voter activity" means casting a ballot in any election, filing a voter registration form, making a written request for an absentee ballot, updating a voting address, or otherwise initiating contact with election officials that results in a notation in the voter's registration record; or

(4) Sending a notice to those that a government agency has informed election officials have moved out of the county.

(d) The clerk shall not remove the name of a registrant from the voter registration rolls on the ground that the registrant has changed residence unless the registrant—

(1) Confirms in writing that the registrant has changed residence to a place outside the county in which the registrant is registered; or

(2) Has failed to respond to a notice described in subsection (i) of this rule and has not voted or appeared to vote (and, if necessary, correct the clerk's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(e) A "confirmation notice" is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(1) If the registrant did not change his or her residence, or changed residence but remained in the county, the registrant should return the card not later than the time provided for mail registration under Section 8(a)(1)(B) of the National Voter Registration Act of 1993, as amended. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and

(2) If the registrant has changed residence to a place outside the county in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20507) (Imp: HRS §§11-12, 11-16, 11-17, 11-18, 11-19, 11-20, 52 USC §20507)

§3-177-158 Transfer or change of registration initiated by the clerk. (a) The clerk shall use all reliable and pertinent information to keep the general county register up to date.

(b) The clerk may request information from the courts, the department of health, utility companies, condominium and apartment associations, and other agencies to gather information to keep the register up to date.

(c) Where the clerk has evidence indicating that a voter's registration should be transferred, the clerk shall notify the registered voter by first class mail of the intent to transfer. The notice shall

include:

(1) Any evidence indicating why the transfer or change should be made;

(2) The residence, and district of the voter according to current registration lists and any alleged new address and district;

(3) A reply form for the voter to agree or object to the transfer, to list the voter's reasons for the objection, and to sign; and

(4) A statement informing the voter to complete and return the reply form to the clerk by 4:30 p.m. on the tenth day after the form was mailed to prevent the transfer of registration from being completed.

(d) The clerk shall transfer the registration of a voter who does not respond by 4:30 p.m. on the fifteenth day after the form was mailed.

(e) A voter may contest the transfer on or before election day by presenting evidence to rebut the transfer which, if found valid by the clerk or the board of registration, shall entitle the voter to restore the voter's registration to what it was before the transfer.

(f) Notwithstanding anything to the contrary, a voter may be transferred to another district, pursuant to the National Voter Registration Act of 1993, as amended. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §20507) (Imp: HRS §§11-20, 11-21, 11-22, 11-23, 52 USC §20507)

§3-177-159 Confidential registration. (a) A person can apply to keep confidential the person’s residence address and telephone number, as provided in the person’s voter registration form, if the person can show good cause that:

(1) Life threatening circumstances exist to the person or a member of that person’s family;

(2) Risk of bodily harm exists to the person or

a member of that person's family; or

(3) The person would be subject to an unwarranted invasion of privacy.

(b) An application for confidential registration shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the basis for the person's request for confidential registration; and

(2) An optional mailing address which may be released for election or government purposes.

(c) Voter registration information declared confidential pursuant to this section shall not be released, even for election or government purposes; provided that the optional mailing address set forth in the confidential registration application may be released in place of the person's residence address for election or government purposes.

(d) The clerk may request additional information regarding the reasons justifying confidential treatment.

(e) In no event shall confidential registration be released without notifying the person.

(f) Confidential registration shall retain its confidential status for two election cycles, after which time the person must reapply for confidential registration pursuant to this section, unless the clerk waives the requirement.

(g) A challenge to the voter registration of a person who has been granted confidential registration shall be processed in accordance with the procedures set forth in HAR §3-177-205.

(h) Notwithstanding anything to the contrary, when a program participant in the Chapter 801G, Hawaii Revised Statutes address confidentiality program submits a current and valid address confidentiality program authorization card to an election official, the election official shall accept the substitute address on the card as the program participant's

actual address to be used when creating a new public record.

(1) Election officials shall use a program participant's actual address for purposes of determining residency pursuant to HRS §11-13;

(2) The substitute address shall be used for all other purposes and the program participant's name, mailing address, actual address, or telephone number shall not be published in any list or register;

(3) Without regard to subsection (f), the voter will continue to be treated as a special class of confidential voter until such time as they are informed by the participant or the address confidentiality program that the voter is no longer a participant;

(4) Disclosure by an election official of a program participant's actual address shall be prohibited unless required by order of a court; and

(5) To the extent there is a voter challenge of a participant where the residence address is sought, the residence address will not be provided unless required by order of a court. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-14.5) (Imp: HRS §11-14.5)

§3-177-160 Voter registration information; prohibited uses. (a) Voter registration forms, the general county register, the statewide voter registration system, or any lists or data prepared therefrom shall be released or used for election or government purposes only, unless otherwise provided by law.

(b) Notwithstanding subsection (a), a voter's full name, district/precinct designation, and voter status is public information available for any purpose.

(c) Voter registration information that is not public under subsection (b), excluding the voter's

full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, may, as determined by the clerk, be made available for an election purpose (e.g. the clerk may not disclose information they determine would interfere with the operations of elections or unduly compromise the privacy of voters). At a minimum, unless otherwise prohibited by law, the residence address and mailing address will be provided.

(d) Voter registration information that is not public under subsection (b) may be made available to federal, state or county government agencies for government purposes.

(e) The following constitutes a non-exhaustive list of election or government purposes, unless otherwise provided by law:

(1) To support or oppose any candidate or incumbent for partisan or nonpartisan office;

(2) To support or oppose any proposed or existing ballot measure, proposition, or issue;

(3) To support or encourage voter registration or the voting process;

(4) To authorized government officials who, by the nature of their official responsibilities, must have access to the voter registration information for legitimate government purposes within the scope of their official duties;

(5) To challenge the right of any person to vote or to seek public office; or

(6) To satisfy the requirements of HRS §11-62 or HRS §11-113.

(f) Voter registration information that is not public under subsection (b) may not be used for any commercial purpose, such as mailing or delivering an advertisement or offer for any property, establishment, organization, product or service, or for the purpose of mailing or delivering any

solicitation for money, services, or anything of value; provided that service bureaus may charge a fee for their services involving the use or disclosure of voter registration information that is not public under subsection (b) so long as the underlying election or government purpose is verified.

(g) A request for voter registration information that is not public under subsection (b) shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought;

(2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes;

(3) Where the requesting party is a government agency seeking the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, a statement setting forth reasons why such information is required; and

(4) A sworn certification by self-subscribing oath that the information will not be sold, released, distributed, or used in any way for commercial purposes, provided that service bureaus may charge a fee for their services in accordance with subsection (f). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-14, 11-62, 11-97, 11-113, 19-6)

§§3-177-161 to 3-177-199 (Reserved)

SUBCHAPTER 5

VOTER CHALLENGES AND APPEALS

§3-177-200 Prerequisites and grounds for challenge. (a) Any registered voter may challenge the right of a person to be or to remain registered as a voter for any cause not previously decided by the board of registration or the courts in respect to the same person.

(b) Any voter rightfully in a voter service center may challenge the right to vote of any person who comes to the voter service center for voting purposes.

(c) The challenge shall be only on the following grounds:

(1) The person is not who the person claims to be; or

(2) The person is not entitled to vote.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-25)

§3-177-201 Challenges in writing not occurring in a voter service center; procedure.

(a) A challenge in writing not occurring in a voter service center, shall be delivered to the clerk, setting forth the grounds upon which it is based and signed by the person making the challenge.

(b) The clerk shall immediately notify the person challenged.

(c) The clerk shall, as soon as possible, investigate and rule upon the challenge.

(d) The clerk shall notify the challenger and the person challenged in writing of the clerk's decision. The clerk shall also notify the person ruled against of the person's right to appeal to the board within ten days of service of the adverse decision. Service of the decision shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mail, postage

prepaid, and addressed to each party's last known address.

(e) If an appeal is filed, both the challenger and the challenged voter shall be parties to the appeal. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26)

§3-177-202 Appeal to the board from a clerk's ruling on a challenge in writing not occurring in a voter service center. (a) Any appeal of the clerk's ruling that did not occur at a voter service center shall be made in writing by filing a notice of appeal with the respective clerk's office addressed to the chairperson of the board of registration within ten days of service of the clerk's decision. The notice of appeal shall include a statement of the clerk's decision being appealed, the grounds upon which it is being contended that the clerk's decision is erroneous, and the name of the person challenged. The appeal shall be exempted from the provisions of HRS Chapter 91, regarding contested case hearings.

(b) The board may hold an informal pre-hearing conference for the purpose of:

(1) Simplifying and clarifying issues;
(2) Making necessary or desirable amendments to the notice of the charges, or its answer, if any;
(3) Obtaining admissions of fact or documents to avoid unnecessary proof;
(4) Limiting the number of expert witnesses; and
(5) Reviewing any other materials that may aid in the reasonable and expeditious disposition of the matter.

Notice and opportunity to participate shall be given to each party and each party's attorney. The entire board or one of its members designated for such purpose shall preside at the conference. Prejudicial comment or conclusion on any issue being controverted shall not be made or stated at any time by any member or the presiding member of the board. Minutes of the

conference shall be kept, and agreements shall be concisely noted.

(c) The petitioner and the respondent shall have the opportunity to challenge any member of the board.

(d) The chairperson of the board shall be the presiding officer and shall be authorized to make any preliminary determinations necessary for the prompt and efficient management of the appeal hearing.

(e) Before presentation of the case, each party shall have the opportunity to make an opening statement. The usual order of the opening statements shall be:

(1) Opening statement by the petitioner;

(2) Opening statement by the respondent, or respondent may reserve respondent's opportunity to make the opening statement until after the witnesses for the petitioner have been presented; and

(3) Opening statements may be waived by a party.

(f) Witnesses may be called to testify and presented in the following order:

(1) Witnesses for the petitioner;

(2) Witnesses for the respondent;

(3) Witnesses for the petitioner in rebuttal;

(4) Witnesses for the respondent in rebuttal; and

(5) Additional witnesses as the board may deem necessary.

(g) Witnesses may be subpoenaed, and examined in the following order:

(1) Direct examination by the party calling the witness;

(2) Cross examination by the other party;

(3) Redirect examination by the party calling the witnesses;

(4) Recross examination by the other party; and

(5) Examination by the board.

(h) Rules of evidence as specified in HRS §91-10 shall be applicable thereto.

(i) After all the evidence has been presented, the board shall give each party the opportunity to summarize. The usual order of final argument shall be

as follows:

(1) Final argument by the petitioner;

(2) Final argument by the respondent; and

(3) Rebuttal argument by the petitioner, which shall be limited to countering whatever may be said by the respondent during the respondent's final argument. A reasonable time limit may be imposed by the board for the final arguments. Final arguments may be waived by a party.

(j) At the end of the hearing, the board may give an oral decision or take the matter under advisement with a written decision to be issued at a later date. Regardless of whether the board gives an oral decision, the board shall issue a written decision, including findings of fact and conclusions of law.

(k) Service of the written decision upon the appellant shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mail, postage prepaid, and addressed to the appellant's last known address. The board shall notify the party ruled against that the party may appeal to the intermediate appellate court, pursuant to the provisions of HRS §11-51. The board shall not consider motions for reconsideration.

(l) Unless the board's decision is timely appealed to the intermediate appellate court, the clerk shall make any necessary changes to the register of voters to conform to the decision. The clerk shall notify the challenger and the challenged voter of the voter's status on the register.

(m) "Filing a notice of appeal" for purposes of this rule means the physical delivery or mailing of the notice of appeal to the clerk by the statutory deadline of within ten days of service of the adverse decision, so long as any mailed notice of appeal is received no later than two business days after its mailing. The clerk will make a notation of the time of receipt and forward it to the chairperson of the board of registration. Going forward, the chairperson will determine the manner in which

subsequent filings in the matter are to be filed. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-25, 11-26, 11-41, 11-43, 11-51 through 11-54, 91-10)

§3-177-203 Challenge at the voter service center; procedure. (a) A challenge at the voter service center shall be brought to the clerk or their designated agent. It need not be in writing.

(b) The challenged voter shall be given the opportunity to make a correction to the voter's registration pursuant to HRS §11-21.

(c) The challenge shall be considered and decided immediately by the clerk, and the ruling shall be announced. To the extent the clerk is not physically available, the clerk may hear the matter by telephone, videoconference, or similar technology, or delegate their authority to another to consider and decide the challenge.

(d) The clerk shall inform the person decided against that the person may appeal the decision to the board at that time.

(e) The appeal shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the voter service center, whichever is earlier.

(f) If no appeal is made, the decision of the clerk shall stand. The challenged voter is allowed to vote on a regular ballot, or is not allowed to vote, in accordance with the decision.

(g) If an appeal is made, the procedures set forth in HAR §3-177-204 shall be followed. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-43) (Imp: HRS §§11-16, 11-25, 11-26)

§3-177-204 Appeal to the board from decision at the voter service center. (a) In the case of an appeal from a decision rendered by the clerk at the voter service center, the challenged voter shall vote on a challenged ballot. The clerk shall collect and

submit the facts of the challenge to the board. The voting of the challenged ballot and the board's hearing shall be conducted in accordance with the procedures in subsection (b).

(b) If an appeal is made to the board from a decision rendered by the clerk at the voter service center, the clerk shall:

(1) Direct the voter to vote the challenged ballot and to place the ballot, in the utility envelope provided for this purpose;

(2) Seal the envelope after the voter has voted and print the following information on the face of the envelope: the words "challenged ballot," the voter's name, the district, and the time the ballot was received by the clerk; and

(3) Secure the ballot so it may be segregated and await the disposition of the board of registration.

(c) The clerk shall contact the board to hear the appeal. The board may hear the appeal in person or by telephone, videoconference, or other electronic means. The board member serving as the presiding officer shall swear-in the challenger, the person challenged, the clerk or individual designated to perform the duties of the clerk, and any witnesses present. Each person who testifies before the presiding officer shall state the following for the record:

(1) Name as registered to vote; and

(2) Role in the challenge.

(d) The board shall listen to the evidence presented by each of the above persons and then shall close the hearing with the exception of the receipt of any documentary evidence any of the parties to the challenge notifies the board that the party is going to submit prior to the closing of the voter service center on the day of the election.

(e) The board shall discuss the challenge and come to a decision regarding the appeal. A summary of the discussion of the board, the decision of the board, and the reasons for the board's decision shall

be included in the board's minutes.

(f) The board shall notify the clerk of its decision. If necessary, the clerk shall issue a correction order to change the register to correspond to the board's decision. The clerk shall notify each party of the board's decision. The clerk shall also notify the party ruled against that the party may appeal to the intermediate appellate court, pursuant to the provisions of HRS §11-51.

(g) If no appeal is made, the clerk shall immediately notify the county counting center manager or designated representative of the disposition of the challenge. The challenged ballot shall be counted or disposed of pursuant to HAR §3-177-764.

(h) If an appeal is made, the ballot shall remain in the sealed envelope to be counted or rejected in accordance with the ruling on appeal and the register shall be corrected to conform with the court's decision.

(i) The secrecy of the challenged voter's ballot shall be safeguarded as provided in subsection (b). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-26, 11-41, 11-51)

§3-177-205 Challenge to confidential registration; special procedure. (a) A challenge to the voter registration of a person who has been granted confidential registration pursuant to HAR §3-177-159, shall be treated as follows:

(1) The clerk shall immediately notify the person being challenged that a challenge to the person’s voter registration has been filed, including the charges set forth in the challenge and the challenger's name;

(2) The clerk shall investigate the challenge and if the clerk determines that the challenge is not frivolous, the clerk shall notify the person that the person's voter registration form may be released, unless a specific law prohibits its release;

(3) If the person wishes to contest the

challenge, the voter registration form may be released for inspection by the challenger, except if the voter being challenged has submitted a current and valid address confidentiality program authorization card to an election official, as provided for in HRS §801G-9, in which case it will not be released. The challenge, and appeal, if any, shall be conducted in accordance with this chapter; and

(4) If the person wishes to withdraw said person's voter registration, the voter registration form shall not be released, and said person shall not be allowed to vote. The challenger shall be notified that said person has not contested the challenge and that said person shall not be allowed to vote.

(b) Notwithstanding anything to the contrary, to the extent a voter who has submitted a current and valid address confidentiality program authorization card to an election official, as provided for in HRS §801G-9, has been challenged, election officials may decide to dismiss or not to proceed with the challenge from the challenger. However, election officials are not prohibited from using their separate authority to initiate on their own any investigation relating to maintaining the integrity of the general register. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-14.5, 801G-9)

§3-177-206 Correction of errors; appeal to the board of registration from clerk's ruling. A person claiming to be aggrieved by the refusal of the clerk to correct the person's registration information in those instances set forth in HRS §11-22, may appeal to the board either in writing pursuant to HAR §3-177-202 or at a voter service center pursuant to HAR §3-177-204. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-22, 11-26)

§3-177-207 Challenged ballot; electronic. To the extent a voter service center uses an electronic voting system that generates a voter verifiable paper audit trail, election officials may require the challenged voter to use the electronic voting system, so long as the votes of the voter may ultimately not be counted toward any ballot contests or questions, depending on the results of any appeal. For example, if the system permits the creation of a provisional access code to the system, a receipt with the provisional access code may be placed in the secret ballot envelope, so as to permit election officials to ensure those votes ultimately are counted or not counted, in accordance with the results of any appeal. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-22, 11-26)

§§3-177-208 to 3-177-249 (Reserved).

SUBCHAPTER 6

ACCESS TO GOVERNMENT RECORDS

§3-177-250 Access to election documents; general procedures. (a) Access to government records shall be provided in accordance with chapter 92F, Hawaii Revised Statutes, and the rules adopted under that chapter, unless public inspection of said records is prohibited by state or federal law; provided that the legal counsel for the chief election officer may determine which records may be exempted from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the chief election officer is or may be a party or to maintain the attorney-client and attorney work product privileges.

(b) Copying of government records maintained by the office of elections is governed by section 92-21, Hawaii Revised Statutes, unless otherwise provided by law. Copies shall be provided upon the furnishing of the payment of the reasonable cost of reproducing such copies, including costs for searching and segregating the records. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-97, 92-21, 92F-13, 92F-19, ch. 92F)

§§3-177-251 to 3-177-299 (Reserved)

SUBCHAPTER 7

PRESIDENTIAL PETITIONS

§3-177-300 Presidential petitions; issuing. (a) Any group wishing to petition to place the names of prospective candidates for president and vice president on the State's general election ballots, pursuant to HRS §11-113, shall submit a notarized statement of intent from the presidential and vice presidential candidates to the chief election officer before receiving the petition forms. The statement of each candidate shall be substantially in the following form:

(1) I, _____ (name of candidate), hereby declare that I intend to be a candidate for _____ (president or vice president) of the United States on the _____ (year) general election ballot in the State of Hawaii; and

(2) Shall be subscribed and sworn or affirmed to before a notary public.

(b) The party or group shall submit an application to the chief election officer before receiving the petition. The application for petition to place the names of candidates for president and vice president on State of Hawaii general election ballot shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) Name of a contact person responsible for the petition;

(2) Telephone number and mailing address;

(3) Year of the election for which the petition is being requested; and

(4) Party or group name and the names of the candidates for president and vice president.

(c) The petition shall be prescribed and provided by the chief election officer and contain the following information:

(1) Names of the presidential and vice presidential candidates;
(2) Name of the party or group;
(3) A statement that the persons signing intend to support those candidates;
(4) Name of each signatory;
(5) Signature of each signatory;
(6) Date of each signatory's signature;
(7) Residence address of each signatory; and
(8) Date of birth of each signatory.

(d) A petition will not be issued unless the chief election officer receives the notarized statement of intent from the presidential candidate and the vice presidential candidate; and the application.

(e) All petitions that have not been filed with the chief election officer by the date specified in HRS §11-113 shall be void the day after the statutory deadline for the general election for which it was issued. The petition may not be used for a subsequent general election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-113)

§3-177-301 Presidential petitions; withdrawal of signatures. (a) Any voter who signed a presidential petition pursuant to HRS §11-113, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. Written notice shall include:
(1) Name of voter;
(2) Residence address;
(3) Date of birth;
(4) Signature;
(5) Name of the presidential petition; and
(6) A statement that the voter wishes to remove the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw prior to the filing of the petition, the chief election officer shall notify the group to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-113)

§3-177-302 Presidential petitions; verification of signatories. (a) Upon receipt of a presidential petition, the chief election officer or designated representative shall verify within the time specified in HRS §11-113 whether the petition has met the requirements of HRS §11-113. (b) Upon receipt of a petition containing at least the minimum number of signatures required pursuant to HRS §11-113(c)(2)(b), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline. The calculation of the number of signatures required by HRS §11-113(c)(2)(b) may use the total of registered voters that had been entered into the statewide voter registration system by the deadline established in HRS §11-24 or reported as part of any certified election results.

(1) If the signatory on the petition exists as an active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on the petition, and the signatory is an active registered voter in the statewide voter registration system, then the signatory shall be counted once;

(4) If the signatory does not provide all of the required information on the petition, then the signatory may not be counted;

(5) If the information is not legible, then it may not be counted; and

(6) If the voter withdraws the voter's signature from the petition as prescribed in HAR §3-177-301, the voter's signature shall not be verified or counted.

(c) To the extent a document is initially received and subsequently found not to meet filing requirements, it may be provided back to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a petition is submitted and it is subsequently determined that it does not have the required number of verified signatures, the petition may be provided back to person submitting it so they can go out and get enough signatures and resubmit the document by the filing deadline.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match any reference signature of the voter.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the presidential and vice presidential candidates have met the signature requirements of HRS §11-113. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-113)

§§3-177-303 to 3-177-349 (Reserved)

SUBCHAPTER 8

POLITICAL PARTIES

§3-177-350 Political parties; qualification. (a) Any group of persons having qualified as a political party for election ballot purposes by petition, which shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS §11-62, or by vote, pursuant to HRS §11-61(b), for three consecutive general elections shall be deemed a political party for the following ten-year period (i.e., the following five general elections), provided that the qualified political party continues to field candidates for public office in the elections held during that period and to meet the requirements of HRS §§11-62, 11-63, and 11-64.

(1) The ten-year period will start with the general election immediately following the third consecutive general election in which the party qualified by petition pursuant to HRS §11-62, or by vote, pursuant to HRS §11-61(b).

(2) At the end of the ten-year period, the qualified party which has not been disqualified for other reasons, shall be subject to the requirements of HRS §11-61.

(b) Any party which is not exempt from and which does not meet HRS §11-61(b) shall be subject to disqualification. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-61, 11-62, 11-63, 11-65)

§3-177-351 Party petitions; issuing. (a) Any individual or group wishing to petition to qualify a new political party in the State, pursuant to HRS §11-62, shall complete an application before receiving the petition. An application for petition to qualify a political party shall be in the form prescribed and provided by the chief election officer requiring

substantially the following information:

(1) Name of the political party;

(2) Name of a contact person responsible for the petition;

(3) Date the application is completed; and

(4) Telephone number and mailing address at which the contact person or group can be contacted.

(b) The petition form shall be prescribed and provided by the chief election officer containing the information required in HRS §11-62.

(c) Before issuing the petition forms, the chief election officer shall place on the petition the political party name.

(d) All petitions that have not been filed with the chief election officer by the date specified in HRS §11-62 shall be void the day after the statutory deadline for the election for which it was issued. The petition may not be used for a subsequent election. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-62) (Imp: HRS §11-62)

§3-177-352 Party petitions; withdrawal of signatures. (a) Any voter who has signed a party petition pursuant to HRS §11-61, may withdraw the voter's signature by submitting a written notice to the chief election officer any time prior to the filing of the petition. Written notice shall include:

(1) Name of voter;

(2) Residence address;

(3) Date of birth;

(4) Signature;

(5) Name of the political party petition; and

(6) A statement that the voter wishes to remove the voter's signature from the petition.

(b) Upon receipt of a written notice to withdraw prior to the filing of the petition, the chief election officer shall notify the group or individuals to whom the petition was issued that the signature of the voter will not be counted.

(c) Upon receipt of the petition for filing, the

chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the petition; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) If the written notice to withdraw is received by the chief election officer after the petition has been filed, then the chief election officer shall notify the voter, in writing, that the voter's notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-6, 11-61, 11-62)

§3-177-353 Party petitions; verification of signatories. (a) Upon receipt of a party petition, the chief election officer or designated representative shall verify within the time specified in HRS §11-62 whether the petition has met the requirements to qualify a political party.

(b) Upon receipt of a petition containing the minimum number of signatures required by HRS §11-62(a)(3), the chief election officer or designated representative shall verify whether the signatory is eligible to sign the petition. To be eligible, the signatory must appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline. The calculation of the number of signatures required by HRS §11-62(a)(3) may use the total of registered voters that had been entered into the statewide voter registration system by the deadline established in HRS §11-24 or reported as part of any certified election results.

(1) If the signatory on the petition exists as an active registered voter in the statewide voter registration system, then the signatory shall be counted;

(2) If the signatory on the petition does not exist as an active registered voter in the

statewide voter registration system, then the signatory shall not be counted;

(3) If there are duplicate signatories on the petition, and the signatory is an active registered voter in the statewide voter registration system, then the signatory shall be counted once;

(4) If the signatory does not provide all of the required information on the petition, then the signatory may not be counted;

(5) If the information is not legible, then it may not be counted; and

(6) If a voter withdraws the voter's signature from the petition as prescribed in HAR §3-177-352, the voter's signature shall not be verified or counted.

(c) To the extent a document is initially received and subsequently found not to meet filing requirements, it may be provided back to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a petition is submitted and it is subsequently determined that it does not have the required number of verified signatures, the petition may be returned to the person submitting it so they can obtain sufficient signatures and resubmit the document by the filing deadline.

(d) The chief election officer or designated representative may verify that the voter's signature on the petition corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the petition shall not be counted. The chief election officer or designated representative shall indicate on the petition that the voter's signature is invalid because it does not match any reference signature of the voter.

(e) The chief election officer or designated representative may verify only as many signatories as needed to ensure that the political party has met the signature requirements of HRS §11-62. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-62)

§§3-177-354 to 3-177-399 (Reserved).

SUBCHAPTER 9

NOMINATION PAPER

§3-177-400 Nomination papers; when available, application, and format. (a) To obtain a nomination paper to file for candidacy, pursuant to HRS §12-3, any individual shall complete an application before receiving the nomination paper. The application for a nomination paper shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

(1) Legal name;
(2) Name commonly known as (if different from legal name);
(3) Legal residence address;
(4) If no street address, a description of location of residence;
(5) Mailing address (if different from previously provided address);
(6) Telephone number;
(7) Date of birth;
(8) Hawaii Driver License or Hawaii State Identification Card Number;
(9) Last four digits of Social Security Number (if the applicant does not have a Hawaii Driver License or Hawaii State Identification Card);
(10) Statement of United States citizenship;
(11) Statement of legal residence in the State of Hawaii;
(12) Statement of being a registered voter of the State of Hawaii;
(13) Statement regarding whether the applicant has a current felony conviction that has not been finally discharged (i.e. HRS §831-2);
(14) Contest title;
(15) Jurisdiction or district;
(16) Party affiliation or nonpartisan;
(17) Party membership;
(18) Name of candidate's contact person;

(19) Relationship of contact person;
(20) Contact person's telephone number; and
(21) An affirmation by the application that the information is true and correct and authorizing the chief election officer and/or the clerk to verify the information on the application.

(b) Nomination papers shall be upon a form prescribed and provided by the chief election officer containing the information required in HRS §12-3. The nomination papers shall be available from the first working day of February in every even-numbered year for the regularly scheduled election contests for that year; provided that in the case of a special primary or special election, nomination papers shall be made available at least ten days prior to the close of filing.

(c) Elections officials may provide for the application for a nomination paper to be completed online, and electronically issue the corresponding nomination paper. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-2.5, 12-3)

§3-177-401 Nomination papers; withdrawal of signature. (a) Any voter who has signed a nomination paper, may withdraw the voter's signature by submitting a written notice to the chief election officer, or clerk in the case of a county office, any time before the filing of the candidate's nomination paper; provided that the notice is received by the chief election officer, or clerk in the case of a county office, no later than 4:30 p.m. on the fourth business day prior to the close of filing pursuant to HRS §12-6. Written notice shall include:

(1) Name of voter;
(2) Residence address;
(3) Month and day portions of the date of birth;
(4) Signature;
(5) Name of the candidate; and
(6) A statement that the voter wishes to remove the voter's signature from the candidate's

nomination paper.

(b) Upon receipt of a written notice to withdraw prior to the filing of the nomination paper, the chief election officer, or clerk in the case of a county office, shall notify the candidate that the signature of the voter will not be counted.

(c) Upon receipt of the nomination paper for filing, the chief election officer shall:

(1) Verify that the signature on the written notice to withdraw corresponds with the voter's signature on the nomination paper; and

(2) If the signature corresponds, document that the voter has withdrawn the voter's signature.

(d) Any request by a voter to remove the voter's signature from a candidate's nomination paper that is received by the chief election officer, or clerk in the case of a county office, after the candidate's nomination paper has been filed or after 4:30 p.m. on the fourth business day prior to the close of filing shall not be accepted. The voter shall be notified, in writing, that the voter’s notice was not received in time and was not accepted. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5, 12-6)

§3-177-402 Nomination papers; verification of signatories. (a) Upon receipt of a nomination paper, the chief election officer, clerk, or their designated representatives, shall count and determine whether the nomination paper has met the signature requirements pursuant to HRS §12-5.

(b) If the nomination paper contains at least the required number of signatures pursuant to HRS §12-5, then the chief election officer, clerk, or designated representative may verify whether the signatory is eligible to sign the nomination paper. A nomination paper containing less than the required number of signatures shall be rejected without verification of signatories. To be eligible, the

signatory must:

(1) Appear in the statewide voter registration system as an active registered voter no later than 4:30 p.m. on the day of the filing deadline;

(2) Be registered at the residence address appearing on the nomination paper;

(3) Be registered in the district from which the candidate is running for office;

(4) Be eligible to vote for the candidate when the nomination paper is filed; and

(5) Not have withdrawn their name, pursuant to HRS §12-4(c).

(c) The chief election officer, clerk, or designated representative shall use the statewide voter registration system to verify whether the signatory is eligible to sign the nomination paper.

(1) If the signatory is an eligible voter pursuant to subsection (b), then the signatory shall be counted;

(2) If the signatory is not an eligible voter pursuant to subsection (b), then the signatory shall not be counted;

(3) If there are duplicate signatures on a nomination paper, and the signatory is an eligible voter pursuant to subsection (b), then the signatory shall be counted once;

(4) If the signatory does not provide all of the information required by HRS §12-3(a)(5), then the signatory may not be counted; and

(5) If the information is not legible, then it may not be counted.

(d) If a voter signs more than one nomination paper for the same office, then the signature on the nomination paper that is filed first will be accepted; provided that a voter may sign as many nomination papers for an office as there are seats available. The chief election officer or clerk shall use the date and time filed that is recorded on each nomination paper to determine which was filed first.

(e) To the extent a document is initially received and subsequently found not to meet filing

requirements, it may be returned to the individual to obtain the necessary signatures or to otherwise be corrected, before being resubmitted. For example, if a candidate submits a nomination paper and it is subsequently determined that it does not have the required number of verified signatures, the nomination paper may be returned to the candidate to obtain sufficient signatures and resubmit the document by the filing deadline.

(f) The chief election officer or designated representative may verify that the voter's signature on the nomination paper corresponds with the reference signature or reference signatures of the voter. If the signature does not correspond, then the voter's signature on the nomination paper shall not be counted. The chief election officer or designated representative shall indicate on the nomination paper that the voter's signature is invalid because it does not match any reference signature of the voter.

(g) The chief election officer, clerk, or designated representative may verify only as many signatories as needed to ensure that the nomination paper has met the signature requirements of HRS §12-5. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-4, 12-5)

§3-177-403 Nomination papers; candidate name on ballot. (a) A candidate's name, including the Hawaiian or English equivalent or nickname, shall be limited to twenty-seven characters; provided that the twenty-seven characters shall include punctuation and blank spaces, and shall be set on one line.

(b) The name of the candidate appearing on the ballot may be the candidate's legal name or the name by which the candidate is most commonly known. If a candidate seeks to have a name other than the candidate's legal name, its commonly recognized equivalent, or a prior legal name, such as a maiden name, appear on the ballot, the candidate, at the time of filing nomination papers shall also file a declaration in which the candidate attests to the fact

that the name to appear on the ballot is the name by which the candidate is most commonly known throughout the district from which the candidate seeks election. Notwithstanding anything to the contrary, the election official may require the candidate to file a declaration, if there are questions as to whether a proposed name is in fact the commonly recognized equivalent of the candidate's legal name or if a proposed name was in fact the candidate's prior legal name.

(c) The ballot shall contain the names of the candidates in the format and order specified as follows:

(1) Last name in capital letters followed by a comma, followed by a blank space;
(2) First name in upper and lower case letters;
(3) Middle name in upper and lower case letters or initial or initials; preceded by a blank space; provided that each initial shall be followed by a period;
(4) Suffix such as "Jr." or "III" preceded by a blank space and a comma; and
(5) Nickname or Hawaiian equivalent if requested by the candidate in parenthesis preceded by a blank space.
(6) An example of a correct format is:

HAWAII, Jon T., Jr. (Keoni)

(d) Titles including titles that are part of nicknames, such as Doctor, Senator, Reverend, MD, or Major, shall not be printed on the ballot.

(e) Slogans shall not be printed on the ballot.

(f) The chief election officer shall be authorized to conform all names printed on the ballot to the format prescribed in subsection (c).

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 12-3)

§3-177-404 Nomination papers; candidate's name; office and district; political party affiliation or

nonpartisan designation. The candidate's name, office and district, and political party affiliation or nonpartisan designation shall be placed on the nomination paper by the chief election officer or the clerk prior to issuing the nomination paper to the candidate. The candidate's name, office and district, and political party affiliation or nonpartisan designation shall not be changed from that indicated on the nomination paper. If the candidate wishes to change the candidate's name, office and district, or political party affiliation or nonpartisan designation, the candidate may request the appropriate nomination paper from the chief election officer or the clerk and have it signed by the required number of registered voters. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 12-3) (Imp: HRS §12-3)

§3-177-405 Filing fee; payment of. In the case of federal, state, or county offices, payment of filing fees for nomination papers shall be made by cashier's check, certified check, money order, or cash. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§12-3, 12-6)

§§3-177-406 to 3-177-449 (Reserved)

SUBCHAPTER 10

BALLOTS

§3-177-450 Ballot definition. (a) The term "ballot" shall be broadly defined, so as to permit voters to vote, to mean the following:

(1) A written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on;

(2) A ballot used in an election by mail, including a ballot approved for electronic transmission. "Electronic transmission" refers the transmission of a blank or voted ballot by facsimile or electronic mail delivery, or the use of an online ballot delivery and return system, which may include the ability to mark the ballot.

(A) HTML or similar technology may be used to represent a ballot including all contests and questions that the voter may vote on that is used in electronic transmission. Any such representation will be considered a ballot for purposes of these rules;

(B) HTML or similar technology may be used to represent how a voter voted. The manner of the representation of how the voter voted shall be considered a ballot. This may be in the form of an electronic image, which may be in a PDF or similar format, that contains the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on, along with marks indicating how the voter vote. Additionally, the electronic system may generate a ballot summary, to represent how the voter voted, which may be

considered a ballot for purposes of these rules. The ballot summary, similar to a voter verifiable paper audit trail, is a complete record of the ballot selections that is verified by the voter, which may be in a PDF or similar format, before being transmitted back through the electronic transmission system;

(C) To the extent an electronic image associated with the electronic transmission system is printed and not electronically returned, but instead is returned by mail or in-person, it shall be considered a ballot for purposes of these rules; or

(D) A facsimile of a ballot which is sent as an attachment to an electronic mail message or as part of a facsimile transmission shall be considered a ballot. In either case, the return of a voted facsimile of the ballot shall also be considered a ballot for purposes of these rules.

(3) A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use.

(b) A "voter verifiable paper audit trail" means the paper record that constitutes a complete record of ballot selections that is verified by the voter. To the extent, the vote of a voter cannot be determined, in relation to an electronic voting system due to technical issues, the voter verifiable paper audit trail may be considered the equivalent of a ballot.

(c) A "defective ballot" means any ballot delivered to the counting center in accordance with HRS §11-152 that cannot be read by the vote counting system. This includes, but is not limited to, any

ballot summary associated with electronic transmission, any voter verifiable paper audit trail associated with an underlying electronic voting system that cannot report how the voter voted, and any other damaged ballot that cannot be read by the ballot reading device.

(d) "Duplicate ballot" means a ballot used solely for the purpose of reproducing a defective ballot for counting and tabulation. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 11-119, 11-152)

§3-177-451 Ballot design and arrangement; candidate vacancies. (a) The design and arrangement of the ballot shall meet the requirements of the voting system. The maximum number of candidates or ballot questions for which the voter is legally entitled to vote in any given case shall be clearly indicated.

(b) In case of death, withdrawal, or disqualification of any candidate after filing, the applicable provisions of HRS §§11-117 and 11-118 shall apply.

(c) If the applicable deadline after a vacancy occurs is a Saturday, then the chief election officer, or clerk in the case of a county office, shall be available to receive the applicable filing via electronic mail on that day. The circumstances of the deadline occurring on a Saturday will not serve as a basis to extend the deadline.

(d) The chief election officer or county clerk in county elections may waive any or all of the requirements in HRS §11-118 under the following special circumstance that it is determined that there is still sufficient time to insert an alternate's name without putting the administration of the election at undue risk. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-112, 11-117, 11-118, 11-119)

§3-177-452 Ballots for voter service

centers. To the extent marksense ballots are to be used at a voter service center, election officials will have the ability to print ballots in the county. This may be satisfied by the use of ballot on demand printers or any other means by which ballots may be delivered to a voter service center in a timely manner. Notwithstanding anything to the contrary, any type of ballot authorized by election officials may be used in the voter service center. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-112, 11-119)

§3-177-453 Accountability and security of ballots. (a) The chief election officer or designated representative shall maintain a complete count of marksense ballots. All ballots shall be safeguarded to prevent mishandling or misuse.

(b) The clerk shall maintain a complete and current count of all marksense ballots issued, spoiled, and received in their county. The accounting of marksense ballots by the clerk shall be recorded on forms prescribed by the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 11-152)

§3-177-454 Electronic voting systems; marking of marksense ballot. (a) After receiving the marksense ballot, the voter shall properly mark the ballot in the manner and color of ink, softness of pencil graphite, or other manner prescribed by the chief election officer as described in the instructions. The voter shall designate each choice by completely filling in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote.

(b) The chief election officer may authorize the use of a ballot marking device, to the extent the voter is able to review the marksense ballot before casting it.

(c) The voting position area will be designated

by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(d) Below is a non-exhaustive list of examples of marks and whether they may be considered proper, marginal, or improper. The treatment of marks, including the disposition of marginal marks, is addressed in HAR §3-177-752.

(1) Example of a proper mark



(2) Examples of marginal marks are:



(3) Examples of improper marks are:



[Eff 07/26/20; comp] (Auth: HRS §11-4, 16-22) (Imp: HRS §§11-109, 12-31, 16-42)

§§3-177-455 to 3-177-499 (Reserved)

SUBCHAPTER 11

VOTER SERVICE CENTER AND PLACE OF DEPOSIT - GENERALLY

§3-177-500 Voter service center; general operation and services. (a) Voter service centers shall be established at the office of the clerk and may be established at additional locations within a county as may be designated by the clerk to service the needs of a county's voters. The clerk shall make arrangements for the rental or erection of suitable shelter for the establishment of a voter service center whenever public buildings are not available and shall cause these voter service centers to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections.

(b) The office of the clerk refers to where the affairs of the clerk are transacted. The clerk may use different locations for different affairs of their office. As such, the clerk may designate a location to serve as the office of the clerk for purposes of the operation of a voter service center. This location may differ from the location normally associated with the clerk for other duties. For example, while the clerk may operate from one location for purposes of supporting their council or other duties, they may designate a location for the operation of the voter service center, so as to take into consideration the needs associated with the services to be provided (e.g. a larger facility for servicing the public, parking considerations, and other related matters).

(c) Voter service centers shall be open from the tenth business day preceding the day of the election during regular business hours until the time provided in HRS §11-131 on the date of the election and at the same times statewide. Likewise, it will provide the services specified under the definition of a "voter service center" in this rule.

(d) A "voter service center" means a location established to service all of the following purposes:

(1) Receive return envelopes for absentee ballots pursuant to chapter 15, HRS;
(2) Received returned identification envelopes in an election by mail;
(3) Provide voting machine services for persons with disabilities pursuant to the Help America Vote Act of 2002, P.L. 107-252, as amended, and any other federal or state law relating persons with disabilities;
(4) Provide any other voting services as provided by laws; and
(5) Any other purposes the chief election officer or clerk may deem necessary if a natural disaster or other exigent circumstance occurs before an election.

(e) Voting machine services may be provided to voters with or without disabilities. Voting machine services may involve any voting system or device or combination of systems or devices. The provision of a particular type of voting machine service at one voter service center will not require that the same type or types of voting machines services be provided at another voter services center. For example, a voter service center may decide to only utilize direct recording electronic voting devices that generate a voter verifiable paper audit trail, while another may choose to utilize a marksense ballot voting system and a direct recording electronic voting device that generate a voter verifiable paper audit trail, while finally another might utilize a ballot marking device. In the end, each of these is permissible, so long as the voter is provided services that would otherwise comply with Help America Vote Act of 2002, P.L. 107-252, as amended, and any other federal or state law relating persons with disabilities.

(f) "Provide any other voting service as provided by law" as used in this rule concerning voter service centers refers to any service that explicitly by statute is defined as being provided at a voter service center. For example, HRS §11-15.2 provides that "a person who is eligible to vote but is not registered to vote may register by appearing in person

at any voter service center on or before election day." To the extent a service is not defined as occurring at a voter service center it may not be provided as part of the operation of the voter service center. For example, a voter service center may not issue replacement ballots, as it is not statutorily a service required to be provided at a voter service center. Instead, a separate statutory process addresses the issuances of replacement ballots. In such a situation, the voter service center officials would inform the voter of the specific location or procedures to obtain a replacement ballot, if the voter does not wish to utilize the voting machine services available at the voter service center.

(g) To the extent that a proposed or existing voter service center cannot comply with subsection (c) the clerk shall document the reasons for such a variation in its operation either in the hours or days of its operation or the services that it can provide. Upon a finding by the clerk that it is in the interest of the voters of a county to operate a proposed voter service center or to continue to operate an existing voter services center, it may do so, so long as appropriate notice to the public is provided of any variation in the hours or days of its operation or the services that it can provide. For example, if due to a lack of available personnel, shortage of facilities that can be used for ten business days, or similar reasons a modified schedule or modified services to be provided may be considered by the clerk.

(h) The hours of voting at voter service center shall be regular business hours as prescribed HRS §11-109 and by the clerk. However, on election day the hours of voting will be from 7:00 a.m. until 7:00 p.m. of that day. If at 7:00 p.m. on an election day, any voter is standing in line at a voter service center with the desire of entering and voting, but due to the voter service center being overcrowded has been unable to do so, the voter shall be allowed to vote. No voter shall be permitted to enter or join the line after the prescribed hours of voting specified in HRS §11-131. [Eff 07/26/20; comp] (Auth: HRS §11-

4) (Imp: HRS §§11-1, 11-15.2, 11-105, 11-109, 11-131, ch. 15)

§3-177-501 Voter service center; security and regulation of activities. (a) The clerk shall designate the voter service centers and shall assign personnel and issue operating instructions which provide for the security of all ballots and secrecy of the voted ballots.

(b) The clerk shall post in a conspicuous place, prior to the opening of the voter service center, a map designating an area around the voter service center for purposes of HRS §19-6.

(c) The clerk may designate the area of the voter service center to encompass an area up to the area prescribed in HRS §11-132.

(d) Admission within the voter service center shall be limited to the following:

(1) Election officials;

(2) Watchers, if any, pursuant to HRS §11-77;

(3) Candidates, provided that a candidate engaged in any activity that would otherwise attract attention including, but not limited to interviews and press conferences, shall do so outside the boundary set forth pursuant to this rule;

(4) Any voters engaged in voting, going to vote or returning from voting;

(5) Any person authorized to assist a voter; and

(6) Any person or nonvoter group authorized by the clerk to observe the election for educational purposes, provided that they conduct themselves so that the conduct of the person or group does not interfere with the election process; and

(7) A child for purposes of observing the voting process when accompanied by an adult who is voting, provided that this activity does not disrupt or interfere with normal voting procedures. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-77, 11-109,

11-132, 19-6)

§3-177-502 Voter service center; collection of voting materials. (a) The chief election officer, clerk, or designated representative may authorize the collection of voted ballots, vote data storage media, voter verifiable paper audit trails, and similar items before and after the closing of the voter service center on any day of operation.

(b) The voting materials from the voter service center shall be transported to the counting center or designated locations in secured containers in accordance with procedures established by the chief election officer, clerk, or designated representative.

(c) Other election materials will be sealed and returned in accordance with procedures established by the chief election officer, clerk, or designated representative. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-152, 11-154, 15-10)

§3-177-503 Voter service center; return of materials. (a) After the voter service center closes on election day, or any earlier day as determined by the clerk, the voter service center officials shall follow the procedures for closing the voter service center. The voter service center officials shall return all of the following materials to the designated supply collection center:

(1) Sealed ballot transport containers containing unissued ballot packets or ballots;
(2) Supply box; and
(3) Other election documents and materials as specified by the chief election officer or clerk.

(b) Procedures associated with the return of specific voter service center materials prior to election day may be established by the chief election officer, clerk, or designated representative. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp:

HRS §§11-109, 11-154)

§3-177-504 Voter service center; officials. The clerk may employ regular employees or temporary employees of their office as voter service center officials. Additionally, the clerk may employ election day officials, enter into personal services contracts, or use a temporary staffing agency for the employment of voter service center officials. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: §11-109)

§3-177-505 Voter service center; watchers. (a) Each qualified political party shall:

(1) Be entitled to appoint watchers to serve at each voter service center in which the candidates of such party are on the ballot so long as there is only one watcher of the political party present at a time; and

(2) Submit a list of watchers not later than 4:30 p.m. on the twentieth day before any election to the clerk.

(b) Each voter service center watcher shall:

(1) Receive identification from the clerk;

(2) Be permitted to observe the conduct of the election in the voter service center to which they are assigned.

(c) A designated voter service center watcher may relieve another voter service center watcher as long as there is not more than one represented at the voter service center at a time.

(d) The voter service center watcher shall not interfere with the orderly process of the election.

(e) Any violation of the election law shall be reported to the clerk. If the clerk fails to correct the violation, the voter service center watcher may appeal to the chief election officer. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-77)

§3-177-506 Places of deposit; generally. (a) The clerk may designate and provide for places of deposit to be open five business days before the election

until 7:00 p.m. on the day of the election; provided that the locations and apparatus for receiving voted ballots can be securely maintained during the period of use for each election, and as may be permitted by the operational hours.

(b) To the extent that places of deposit, due to a need to address security or operational hours, cannot be open uniformly across the county, the clerk shall document the reasons for such a variation in its operation. Upon a finding by the clerk that it is in the interest of the voters of a county to operate a proposed place of deposit or to continue to operate an existing place of deposit, the clerk may do so, so long as appropriate notice to the public is provided of any variation in operation of the place of deposit. For example, if due to a lack of available personnel, shortage of facilities that can be used for five business days, security matters, or similar reasons a modified schedule or modified services to be provided may be considered by the clerk.

(c) The clerk shall account for the security of the places of deposit and the ballots cast at such locations. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109)

§3-177-507 Voter service center and place of deposit; campaign activities. (a) No person at a voter service center, place of deposit, or its appurtenances shall be permitted to exhibit on his or her person, or distribute any communication which is in any way intended to directly or indirectly solicit, influence, or address any candidate contest or question on the ballot. An official shall request that any person in violation of this rule remove or cover any clothing, button, hat, armband or other campaign material that is being exhibited by the person. Any person who refuses to comply with the request of the official shall be required to leave the area prescribed in HRS §11-132.

(b) Except when a vehicle is used by a person traveling to or from a voter service center or place

of deposit for the purpose of voting, a vehicle parked within the area prescribed in HRS §11-132, may not exhibit any sign, bumper sticker, or other campaign material on said vehicle. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§3-177-508 Voter service center and place of deposit; non-campaign activities. The chief election officer or the clerk as designated by the chief election officer may establish procedures to ensure that non-electioneering activities, including exit polling, within the area prescribed in HRS §11-132, do not interfere in any way with the orderly conduct of elections. Such procedures may include:

(1) The prohibition of commercial activity, other than those which were pre-existing, involving advertising, solicitation or sales;
(2) Requiring prior notification, ten days before an election, and approval for any organized activity;
(3) Limiting the number and proximity of persons involved or places where the activity takes place;
(4) The prohibition of loudspeakers or other amplification devices;
(5) Requiring that the clerk be advised of the activity;
(6) The cessation or removal of any activity which interferes with the conduct of the election; and
(7) Prohibiting the solicitation or approaching of persons proceeding to or from a voter service center or place of deposit. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-132) (Imp: HRS §§11-132, 19-6)

§§3-177-509 to 3-177-549 (Reserved)

SUBCHAPTER 12

VOTER SERVICE CENTER – VOTING PROCEDURE

§3-177-550 Voter service center; verification of the identity of currently registered voters. (a) The voter may be required to fill out an application that will be used in conjunction with the statewide voter registration system. In the alternative, they may sign a poll book, record book, or similar means of documenting matters depending on how the voter service center is operated. In either case, the poll book, record book, application, or similar means of documenting matters shall include the ability for the voter to make a mark in the appropriate place if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The voter service center official shall print "witnessed by" next to the voter's mark and sign the voter service center official's name.

(b) To the extent the clerk utilizes an application as part of the voting process, the identity of a voter will be considered verified upon the acceptance and determination by an election official that the application is in proper order. The application additionally may serve to update a voter's registration record or permit an individual to register to vote for the first time.

(c) Any such application used for purposes of verification will require the voter to provide their name, date of birth, residence address, and mailing address. Additionally, the voter will provide their Hawaii Driver License Number, Hawaii State Identification number, or the last four digits of their Social Security Number, if they do not have a Hawaii Driver License or Hawaii State Identification Card. If the voter indicates they originally had none of these when they initially registered and instead were issued a unique identification number by election officials, then the applicant shall write that number on the application. The contents of the application

may additionally require any information that might otherwise be required for a first time registration or to update a current registration.

(d) Any such application used for verification purposes will not be initially considered in proper order if the individual's name, date of birth, or the identification number they provided (i.e. Hawaii Driver License Number, Hawaii State Identification Card Number, or Social Security Number) does not match the statewide voter registration. In the event of a non-match, the application will be treated initially as a new registration or provisional ballot application, to the extent it contains the necessary information. Otherwise, the applicant will be directed to fill out an application that can serve those purposes.

(e) A clerk may choose to verify a voter's identity, without the above application. As such, the voter may be asked for one of the following:

(1) The provision of a current and valid photo identification:
    (A) Hawaii State Driver License;
    (B) Hawaii State Identification Card;
    (C) Hawaii Student Identification Card;
    (D) U.S. Department of Defense Identification Card (including identification cards issued to dependents);
    (E) U.S. Passport or U.S. Passport Card; or
    (F) Driver License or State Photo Identity Card issued by a Department of Motor Vehicles (or equivalent) in another U.S. jurisdiction.
(2) The provision of a current utility bill, bank statement, government check, paycheck, or other government document showing name and address;
(3) An oral recitation of specific information in the voter's record to the satisfaction of clerk or their designee that the individual is who they claim to be (e.g. name, residence address, mailing address, date of

birth, last four digits of the Social Security Number, or any combination of information in the record);

(4) The provision in writing of the information noted in subsection (d)(3);

(5) The provision of a witness, who is a registered voter, who will vouch in writing for the identity of the voter; or

(6) The provision of evidence that the individual considers sufficient to establish their identity. The individual has the burden of proof in this situation to satisfy the clerk or their designee by the preponderance of the evidence that the individual is who they claim to be.

(f) To the extent everything is in order, the individual will be able to proceed to vote in the manner associated with the voter service center.

(g) In the event an individual is not issued a ballot, they will retain whatever right they may have to a provisional ballot and the corresponding procedures related to the disposition of such ballots.

(h) Nothing in this rule shall be construed as preventing the clerk from exercising their underlying authority to demand that an individual furnish substantiating evidence to allegations in their voter registration application or any application related to voter registration. This includes any application at a voter service center that could serve to register an individual or to update their registration. For example, a clerk may be satisfied as to the identity of an applicant but may question other aspects of the application, such as residence, and correspondingly demand substantiating evidence. Likewise, this rule does not foreclose the ability of another voter properly in the voter service center from challenging the voter on the grounds that the voter is not who they allege to be or that the voter is not entitled to vote. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21082, 52 USC §21083) (Imp: HRS §§11-4, 11-11, 11-15, 11-16, 11-18, 11-20, 11-21, 11-22, 11-23, 11-109, 52 USC §21082, 52 USC §21083)

§3-177-551 Voter service center; verification of the identity of applicants registering in-person to vote. (a) To the extent the clerk indicates that an individual has just been registered in-person at the voter service center, the registration process will be treated as having verified the identity of the voter.

(b) In the event an individual is not issued a ballot, they will retain whatever right they may have to a provisional ballot and the corresponding procedures related to the disposition of such ballots.

(c) Nothing in this rule shall be construed as preventing the clerk from exercising their underlying authority to demand that an individual furnish substantiating evidence to allegations in their voter registration application or any application related to voter registration. Likewise, this rule does not foreclose the ability of another voter properly in the voter service center from challenging the voter on the grounds that the voter is not who they allege to be or that the voter is not entitled to vote. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21082, 52 USC §21083) (Imp: HRS §§11-4, 11-11, 11-15, 11-16, 11-18, 11-20, 11-21, 11-22, 11-23, 11-109, 52 USC §21082, 52 USC §21083)

§3-177-552 Demonstration ballots. (a) For each election, there shall be provided as many demonstration ballots as the chief election officer, clerk, or designated representative deems appropriate.

(b) The demonstration ballots shall be designed to prevent tabulation by the computer programmed to count the ballots in the election.

(c) The demonstration ballots may not contain the names of candidates or ballot questions to be voted on in the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-2, 11-4, 11-109)

§3-177-553 Voter service center; marksense ballots; spoiled. (a) If a voter spoils a ballot in the process of voting, or receives a spoiled ballot,

the voter shall be issued another ballot, by the voter service center officials.

(b) Before issuing the new ballot, the voter service center official shall:

(1) Give the voter a utility envelope, ask the voter to place the spoiled ballot in the envelope, and seal the envelope;

(2) Write "spoiled" across the face of the envelope and sign the voter service center official's name;

(3) Deposit the utility envelope in the spoiled ballot envelope;

(4) Write in the poll book, record book, application, or similar means of documenting matters "spoiled ballot"; and

(5) Have the voter place the voter's initials next to the words "spoiled ballot."

(c) The voter service center officials shall, after the above procedures in subsection (b) are completed, give the voter a new ballot. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-109, 11-140)

§3-177-554 Provisional voting; general procedures. (a) If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the voter service center or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to a cast a provisional ballot as follows:

(1) An election official shall notify the individual that the individual may cast a provisional ballot in that election;

(2) The individual shall be permitted to cast a provisional ballot at that voter service center upon the execution of a written affirmation, by the individual before an

election official, stating that the individual is

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) The written affirmation shall be in a form prescribed by the chief election officer and shall contain substantially all the information required to register to vote under HRS §11-15 and shall document that the individual is requesting a provisional ballot.

(b) An election official shall transmit the provisional ballot to the county clerk for prompt verification.

(c) The adjudication of provisional ballots shall be as follows:

(1) If any part of the provisional ballot application form or affirmation statement is incomplete, not executed, or altered, the provisional ballot may be not be counted.

(2) If the clerk determines the individual is eligible under state law to vote in the district the individual wishes to vote in, the provisional ballot shall be counted in accordance with state law.

(3) If the clerk determines the individual is not eligible to vote in the district associated with the provisional ballot was cast, then the provisional ballot shall not be counted.

(d) The individual will be able to access for free a system by which the individual may discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

(e) The term "jurisdiction" for purposes of provisional voting refers to the specific voting precinct where an individual must be registered, in order to vote on the ballot designated for that precinct. It does not refer to a county, state, or

federal jurisdiction. As such, if an individual casts a provisional ballot in a precinct the individual is not properly registered in, no portion of the provisional ballot will be counted.

(f) The individual will have until the fifth business day after the election to provide the clerk with any document or information the individual may want the clerk to consider in determining the individual's eligibility under state law.

(g) All provisions of Help America Vote Act of 2002, as amended, regarding provisional voting in federal elections shall be followed. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21082) (Imp: HRS §§11-15, 11-20, 11-21, 11-24, 52 USC §21082)

§§3-177-555 to 3-177-599 (Reserved)

SUBCHAPTER 13

BALLOT PACKAGE PROCEDURES

§3-177-600 Ballot packages; contents; eligibility. (a) Unless the context indicates otherwise, a ballot package is used by any voter in an election by mail, unless the voter votes in-person at a voter service center by using a voting device (e.g. a voter directly using a voting system such as a direct recording electronic device or a marksense ballot counter).

(b) A ballot package, unless it is transmitted electronically, consists of the following:

(1) An official ballot;

(2) A return identification envelope with postage prepaid;

(3) A secrecy envelope or secrecy sleeve;

(4) The instructions provided for in HRS §11-104; and

(5) A statement to be subscribed to by the voter that affirms the fact that the voter is the person voting and that the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot did not assist the voter, as described in HRS §11-139, along with the instruction that the voter's ballot will be valid only if the affirmation statement is signed. The statement may appear on the return identification envelope or separately, depending on the means of transmission utilized or authorized by the clerk.

(c) A ballot package may be sent by electronic transmission. "Electronic transmission" refers to transmission by facsimile or electronic mail delivery, or the use of an online ballot and return system, which may include the ability to mark the ballot. An electronic ballot package additionally will include a waiver of secrecy under HRS §11-137. This waiver may

be combined with the affirmation statement. Additionally, instructions on how to return the ballot or ballot summary, depending on the type of electronic ballot system used, by electronic transmission or alternatively by mail, may be included.

(d) Ballot packages may generally be issued in the following contexts:

(1) To any registered voter who has not already voted and is legally eligible under state or federal law to receive a ballot;

(2) To any registered voter who has requested an absentee ballot;

(3) In response to a request for a replacement ballot by a voter; or

(4) Pursuant to a request by a voter covered under chapter 15D, HRS, or the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as amended, or any other applicable federal or state law.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-104, 11-107, 11-137, 11-139, 15-4, 15D-7)

§3-177-601 Ballot packages; timing of transmittal, generally. (a) To the extent practicable, the clerk shall mail a ballot package by non-forwardable mail to each registered voter in the county to enable voters to receive the ballot package approximately eighteen days before the election.

(b) In determining the initial mailing date of the ballot package, the clerk shall consider the mailing place of origin and the most recent postal service delivery standards. Public notice of the date or dates on which the initial ballot packages are to be mailed shall be given by the clerks before the ballot packages are made available to voters.

(c) The clerk shall continue mailing ballot packages to voters who update their voter registration address no later than fourteen days before the date of the election. However, the clerk may continue to mail ballots to those who have updated their voter

registration address after the fourteenth day, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline.

(d) The clerk shall not mail a ballot package to any voter in the county register who is an inactive voter or to a voter otherwise having an outdated or non-deliverable mailing address. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-103)

§3-177-602 Ballot packages; timing of transmittal, military and overseas voter requests. (a) Notwithstanding any law to the contrary, to the extent a valid military-overseas ballot application is made, pursuant to HRS §15D-7, and the request is received no later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, no later than the business day preceding the forty-fifth day, the clerk shall transmit a ballot package by that date.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's county, internet delivery.

(c) The clerk in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(d) If a ballot application from a covered voter arrives after the county begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit them to the voter no later than two business days or as soon as allowable after the application arrives. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §15D-7, 15D-9)

§3-177-603 Ballot packages; timing of transmittal, absentee requests. (a) Notwithstanding any law to the contrary, as it relates to ballot packages requested pursuant to HRS §15-4, any request received by the seventh day prior to an election seeking the mailing of a ballot package shall be processed and the ballot package mailed to the voter. Requests received on the last day specified in HRS §15-4 will result in a ballot package being mailed no later than twenty-four hours after receipt.

(b) The clerk may continue to mail ballots to those whose requests have been received after the seventh day prior to an election, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§15-4, 15-5)

§3-177-604 Ballot packages; timing of transmittal, replacement requests to be transmitted by mail. (a) Notwithstanding any law to the contrary, as it relates to replacement ballot package requested pursuant to HRS §11-105, any request received by the seventh day prior to an election seeking the mailing of a ballot package shall be processed and the ballot package mailed to the voter. Requests received on the last day specified in HRS §15-4 will result in a ballot package being mailed no later than twenty-four hours after receipt.

(b) The clerk may continue to mail ballots to those whose requests have been received after the seventh day prior to an election, if the clerk believes there is sufficient time for the voter to return the ballot by the applicable deadline. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-105, 11-140, 15-4)

§3-177-605 Ballot packages; timing of transmittal, in-person pick up. Notwithstanding any law to the contrary, a voter may request that the

clerk make the ballot package available for pick up by them or through an intermediary other than the voter's employer or agent of the employer, agent of the voter's labor union, or any candidate listed on the ballot. However, the clerk may limit the processing of such requests to no earlier than the fifth day prior to an election. Additionally, the clerk will determine where the ballot package will be made available for pickup. A single location may be determined by the clerk for such purposes (e.g. the issuance of ballot packages may not occur at a voter service center but instead at a location determined by the clerk). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-105, 11-140, 15-4, 15-5, 15D-9)

§3-177-606 Ballot packages; timing of transmittal, replacement requests to be transmitted by electronic transmission. (a) If a ballot package is not received by a voter by the fifth day before the date of the election or a voter otherwise requires a replacement ballot within five days of an election, the voter may request that a ballot be forwarded by electronic transmission; provided that a voter with special needs may request that a ballot be forwarded by electronic transmission at any time.

(b) "Voter with special needs" for purpose of this rule includes an individual with a disability. The term "disability" refers to a physical or mental impairment that substantially limits one or more major life activities of an individual. "Major life activities" include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. A "voter with special needs" may also include any voter that the clerk determines would otherwise not be able to return their ballot by the day of the election, if the ballot were to be transmitted at its originally scheduled time (e.g. a voter who will be traveling to a place without timely mail service who requests that they be mailed their ballot prior to their trip, so they can

vote before they leave). [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-107, 11-140, 15-5)

§3-177-607 Ballot packages; replacement and absentee requests, form. (a) To the extent a voter requires a ballot package beyond the one initially authorized by HRS §11-102 to be mailed to them, an application may be required.

(b) Election officials may use different applications for different situations and the applications shall be in a form prescribed and approved by the chief election officer or clerk.

(c) The applications may include information to permit the verification of the identity of the applicant, such as applicant's name, date of birth, and one of the following:

(1) Hawaii State Driver License Number;

(2) Hawaii State Identification Number; or

(3) Last Four Digits of the Social Security Number.

(d) Depending on the type of application request, other information relevant to the request may be requested (e.g. mailing address, temporary mailing address, electronic mail address, name of designee picking up a ballot for the voter, evidence of statutory eligibility for the presidential ballot, or affirmation indicating compliance with the criteria for the request).

(e) The clerk may initially accept an oral request for a ballot package in an emergency situation to expedite the transmission of the ballot package but they may still require the voter to complete and return a signed application before accepting the ballot.

(f) Notwithstanding anything to the contrary, in special cases the clerk may waive any of the foregoing requirements related to the submission of an application (e.g. the clerk may determine under the totality of the circumstances that it is sufficient to make a notation of the oral request in the voter's record, issue the ballot package, and review signature on the return identification envelope, when it is

returned). The following constitutes a non-exhaustive list of special cases:

(1) Any voter who has confidential voter registration status pursuant to HRS § 11-14.5 or the provisions of chapter 801G, HRS;

(2) Under any circumstances the clerk determines may unduly interfere with the ability of a voter to vote; or

(3) Under any circumstances the clerk determines to constitute an emergency.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-105, 11-107, 11-14.5, 15-4, ch. 801G)

§§3-177-608 to 3-177-649 (Reserved)

SUBCHAPTER 14

RETURN IDENTIFICATION ENVELOPE PROCEDURES

§3-177-650 Return and receipt of return identification envelopes; manner, location, and time of receipt. (a) Return identification envelopes may be returned in person or by mail. To the extent a ballot package was electronically transmitted to a voter, the voter will also have the option of returning the electronic equivalent of the return identification envelope by electronic transmission. In such a situation, the voter will be required to return at a minimum the ballot or ballot summary, depending on the type of electronic ballot system used, the waiver of secrecy under HRS §11-137, and applicable affirmation statement. The waiver may be combined with the affirmation statement.

(b) Any statutory reference to the return of ballots or return identification envelopes by mail shall not be interpreted to preclude those items being delivered in-person by a voter or their agent.

(c) Any statutory reference to the receipt of ballots or return identification envelopes by the "clerk" or "office of the clerk" shall be interpreted consistently to reflect that appropriate receipt shall have occurred if the clerk, their staff, or others delegated authority by the clerk take custody of return identification envelopes from anyone at any location, including the U.S. Postal Service post office, no later than the applicable deadline provided for in statute.

(d) The following constitutes a non-exhaustive list of locations where identification envelopes (i.e. ballots) may be received:

(1) Voter Service Centers;

(2) Places of Deposit;

(3) Any location designated by the clerk for the receipt of return identification envelopes (e.g. the clerk may have locations that cannot support a voter service center, but

could still reasonably accommodate the receipt of return identification envelopes, so long as they are received than the applicable deadline provided for in statute); or

(4) Any location where the clerk, their staff, or others delegated authority by the clerk take custody of return identification envelopes (e.g. the clerk may make arrangements to pick up return identification envelopes at a U.S. Postal Service post office, so long as they are received by the applicable deadline provided for in statute).

(e) To the extent a voter is standing in line at the applicable deadline provided in statute at a place of deposit or at a voter service center with the intent of returning their return identification envelope, they shall be allowed to vote. Likewise, a person or a mail carrier delivering return identification envelopes on behalf of voters, to the extent they are standing in line at a place of deposit or at a voter service center, with the intent of delivering said return identification envelopes they will be permitted to deliver them and they will be considered to have met the applicable deadline. The term "mail carrier" includes the U.S. Postal Service and any private delivery service.

(f) Once a return identification envelope is received, the voter's ballot shall be deemed cast and may not be recast in the election.

(g) Election officials shall secure the return identification envelopes and deliver them to any location that is established to validate signatures or otherwise process the envelopes or their contents. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-102, 11-104, 11-105, 11-107, 11-109, 11-137, 15-4)

§3-177-651 Return identification envelopes; general preparing of ballots for counting. (a) Upon

receipt of the return identification envelope, the clerk may prepare the ballots for counting. Before opening return identification envelopes and counting the ballots, the return identification envelopes shall be checked for the following:

(1) Signature on the affirmation statement;

(2) Whether the signature corresponds with a reference signature image using the provisions of HAR §3-177-652; and

(3) Whether there is a condition that would not allow the counting of the contents of the return identification envelope (e.g. the voter has already voted, or otherwise returned a return identification envelope that has been validated).

(b) If any requirement listed in subsection (a) is not met or if the return identification envelope appears to be tampered with, the clerk shall mark across the face of the envelope "invalid" and it shall be kept in the custody of the clerk and disposed of as prescribed for ballots in HRS §11-154, unless it is subsequently determined to be valid. To the extent a return identification envelope is deemed invalid, the provisions of HAR §3-177-654 relating to the correction of deficient return identification envelopes may apply.

(c) Notwithstanding anything to the contrary, if a return identification envelope is initially determined to be valid and it is subsequently found that the return identification envelope is empty or otherwise the contents cannot be counted, it may be invalidated (e.g. the return identification envelope typically has a hole that permits one to confirm that there is an enclosed secret ballot envelope, sleeve, or ballot).

(d) The return identification envelope of any voter who was eligible to vote at the time the ballot was cast shall not be deemed invalid solely because the voter became ineligible to vote after casting the ballot (e.g. subsequent death or other basis of ineligibility will not invalidate ballot). For the purposes of this subsection, "cast" means that the

voter has:

(1) Deposited the return identification envelope in the mail;

(2) Delivered the return identification envelope to the clerk; or

(3) Completed voting in person at a voter service center.

However, a ballot will not be considered for counting if it was not received by the applicable statutory deadline on the day of the election.

(e) All return identification envelopes complying with subsection (a) shall be deemed valid and secured by election officials for subsequent processing and counting. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-106, 11-107, 11-108, 11-154, 15-3.5, 15-9, 15D-10, 15D-10.5)

§3-177-652 Return identification envelopes; signature validation. (a) The clerk will initially compare the signature on a return identification envelope with the reference signature or reference signatures of the voter. The clerk may authorize the use of a signature device, as defined in HAR §3-177-653, to compare signatures. A signature considered matched by a signature device will be considered valid and not require further verification.

(b) A "reference signature" is any signature provided in connection with the administration of elections or any signature provided to election officials from a governmental entity obtained in the ordinary course of business (e.g. voter signatures on any election issued form or application, correspondence with election officials, signature capture cards sent to and returned by voters, signatures from the Department of Transportation or county licensing examiners, or signatures from any governmental entity shared with election officials).

(c) Any signature not initially validated by the signature device or that was not submitted to a signature device will be visually compared by the election official.

(1) As a return identification envelope was issued and transmitted to the voter, the return of the return identification envelope or electronic equivalent will be rebuttably presumed to be from the voter and any signature contained therein as that of the voter;
(2) A voter is permitted to use a variation of their name, to the extent it can be recognized as such by the reviewing election official;
(3) The election official will review the general appearance of the signatures taking into account the above noted rebuttable presumption, permitted name variations, and the following:
    (A) type of writing (e.g. cursive versus print);
    (B) speed of writing (e.g. harmonious versus slow and deliberate);
    (C) overall spacing;
    (D) overall size and proportions;
    (E) position of the signature (e.g. slanted versus straight); and
    (F) spelling and punctuation.
(4) The election official will consider whether any apparent differences can be reasonably explained, by the facts and circumstances surrounding the signatures. The election official may consider, but not be limited to, the following considerations:
    (A) When the signatures were made in comparison to each (e.g. a significant period of time has transpired between signatures);
    (B) The age of the writer at the time of the signatures;
    (C) How the signatures were made (e.g. driver license offices may use an electronic signature pad to record signatures, including those used for voter registration, while an envelope

may be signed in ink); or

(D) Whether household members signed and returned each other's return identification envelope by accident, in which case, if the signatures match each of the correct voter's signature reference image and the voters have not otherwise voted, such that the counting of the impacted ballots would not result in a voter having voted a ballot not associated with their residence or containing questions or contests they are not eligible to vote on, the impacted return identification envelopes may be considered valid.

(d) A voter may make a mark in place of a signature on the affirmation statement on the return identification envelope so long as there is a witness' signature and address on the affirmation statement. In such a situation, the return identification envelope will be considered valid. If no witness' signature and address appear on the affirmation statement, then the return identification envelope will be deemed invalid. However, if a voter is physically unable to sign or to make a mark, they may use the provisions of HRS §456-19 to have a notary sign on their behalf, and the return identification envelope will be considered valid. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-15, 11-16, 11-106, 11-107, 11-108, 15-9, 15D-10, 456-19)

§3-177-653 Return identification envelopes; signature device. (a) A "signature device" refers to a device that either captures images or uses imported images which it analyzes and compares to existing signature reference images. A signature device can be incorporated into any automated ballot sorting system or similar system or it may be a stand-alone device.

(b) The clerk may conduct audits relating to the signature device and may discontinue the use of the device at any time, without regard to the results of

any auditing. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-106, 11-107, 11-108, 15-9, 15D-10)

§3-177-654 Return identification envelopes; notification and correction of deficiencies. (a) Any return identification envelope initially identified as invalid will be considered a deficient return identification envelope for purposes of HRS §11-106, if the voter has not already voted. The clerk shall make an attempt to notify the voter by first class mail, telephone, or electronic mail to inform the voter of the procedure to correct the deficiency. The voter shall have five business days after the date of the election to cure the deficiency. The counting of ballots and disclosure of subsequent election results may continue during the time period permitted to cure a deficiency. The clerk's inability to contact voters shall not be grounds for a contest for cause under HRS §11-172.

(b) A deficient return identification envelope may be corrected and treated as valid in any manner that satisfies the clerk due to one of the following:

(1) the signatory to the return identification envelope is the voter who was assigned the return identification envelope; or

(2) the basis of the deficiency has been properly addressed and removed.

(c) The manner of correction may include, but not be limited to the following:

(1) The returning of a signed form including the voter's name and date of birth, in addition to the voter's Hawaii State Driver License number, Hawaii State Identification Card number, or the last four digits of their Social Security Number, indicating that the voter signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope. The form may be returned in any manner

authorized by the clerk, including electronic transmission;

(2) The use of an online voter registration system or similar state or county system that permits a voter to log in through the submission of their name and date of birth, along with their Hawaii State Driver License number, Hawaii State Identification Card number, and allows the voter to indicate they signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope;

(3) Any other program or service used by the state or county, including through a third party, that permits a voter to indicate that they signed the original return identification envelope or otherwise addressing the deficiency associated with their return identification envelope; or

(4) The clerk, at their discretion, repeating the prior signature validation process or aspects of it, in conjunction with any updates to the signature reference images to the statewide voter registration system.

(c) For purposes of this rule, a voter as part of the correcting of a deficiency may not mark a new ballot after the applicable statutory deadline on election day. Instead, only the original deficient return identification envelope may be considered cured and now valid (i.e. a voter after the results of an election are known cannot change who they voted for, as they can only ensure that their original ballot received by the applicable statutory deadline on election day is considered valid).

(d) A voter who has been informed prior to the applicable statutory deadline on election day for voting that their return identification envelope is deficient will not be prevented from requesting a replacement return identification ballot or otherwise voting at a voter service center by the applicable statutory deadline on election day, so long as

ultimately only one ballot is counted (e.g. a voter whose signature was found not to match may decide to simply vote in person at a voter service center and not have their prior return identification envelope counted). Otherwise, such a voter may correct the originally deficient return identification envelope within five business days of the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§ 11-106, 11-172)

§§3-177-655 to 3-177-699 (Reserved)

SUBCHAPTER 15

VOTING SYSTEMS

§3-177-700 Voting system requirements. (a) In addition to, and not in lieu of, any other election processes contained in Title 2 of the Hawaii Revised Statutes, the chief election officer, or the clerk in the case of a county only election, may use a voting system or voting systems that comply with one, or a combination of the following:

(1) The federal voting system standards as printed in the Federal Election Commission publication: Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Voting Systems (1990);

(2) The federal voting system standards as printed in the Federal Election Commission publication: Voting System Standards, Volumes I & II (April 2002);

(3) The federal voluntary voting system guidelines as printed in the United States Election Assistance Commission publication: 2005 Voluntary Voting System Guidelines Version 1.0, Volumes I & II (2005), and subsequently published in the Federal Register, Vol. 71, No. 70 (April 12, 2006);

(4) The Voluntary Voting System Guidelines 1.1 adopted by the United States Election Assistance Commission on March 31, 2015;

(5) Any subsequent iteration of the Voluntary Voting System Guidelines adopted by the United States Election Assistance Commission, its designee, or as provided for in the Help America Vote Act of 2002, as amended; or

(6) Any federal guidelines, manuals, forms, policies, or opinions issued by the United States Election Assistance Commission.

(b) To the extent a voting system uses COTS or MOTS and was originally compliant with this rule, the

subsequent use of a more current version of the original COTS or MOTS or the use of another brand of COTS or MOTS will not undermine the original finding of compliance and no subsequent certification or compliance process will be required.

(1) "COTS" for purposes of these rules is understood to be the following: "Software, firmware, device or component that is used in the United States by many different people or organizations for many different applications other than certified voting systems and that is incorporated into the voting system with no manufacturer- or application-specific modification;"

(2) Similarly, for purposes of these rules "Modified COTS (or MOTS – Modified Off-the-Shelf) refers to an off-the-shelf product that is customized by a commercial vendor to respond to specific requirements of the election community;" and

(3) These definitions are from the United States Election Assistance Commission, *Considerations for Implementing Voting Systems with COTS Products,* Posted March 21, 2017 at https://www.eac.gov/documents/2017/03/21/considerations-for-implementing-voting-systems-with-cots-products/.

[Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2, 16-11, 16-12, 16-22, 16-41, 16-42, 52 USC §20961, 52 USC §20962, 52 USC §20971)

§3-177-701 Approval of all voting equipment, materials, and procedures. The chief election officer or designated representative shall approve all necessary forms, supplies, and procedures used in the operation of any voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-4, 16-1, 16-2)

§3-177-702 County elections; assistance. In county elections, the clerk may request the assistance of the chief election officer and staff in administering and using the voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-4)

§3-177-703 Elections services; provision and charges. The chief election officer may provide election related services and equipment to government and private non-profit organizations to assist with the conduct of elections or surveys subject to the following conditions:

(1) A request is made on a form provided by the chief election officer;

(2) The provision of such election services or equipment does not interfere with the preparation for, or conducting of any primary, special primary, general, special general election, or special election;

(3) The services or equipment are not used in connection with any activity or message intended to influence the outcome of any contest or question in any primary, special primary, general, special general election, or special election;

(4) The requesting party directly assumes all costs associated with the conduct of the election or survey other than those associated with the personnel and equipment of the chief election officer; and

(5) The requesting party agrees to reimburse the chief election officer for an amount not to exceed the actual costs associated with the personnel and equipment used, provided that this requirement may be waived in writing by the chief election officer for government offices or agencies. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §16-3)

§3-177-704 Testing the vote counting system; electronic voting systems. (a) Prior to election day, the vote counting system prepared for counting and tabulating the votes shall be tested in the presence of the following persons:

(1) The chief election officer, clerk, or designated representative;

(2) Official observers; and

(3) Other authorized interested persons, as space permits.

(b) The test may include a predetermined number of votes for each candidate and for and against each question and a predetermined number of excess or "over" votes and blank votes for each candidate or question.

(1) Each official observer and other authorized persons may prepare test ballots for the test of the vote counting system;

(2) The vote counting system shall not be approved unless it produces the exact count of all votes, rejects all improper votes, and meets all other test criteria;

(3) After the test has been satisfactorily conducted, all test ballots, test results, and the vote counting system shall be secured and shall not be subsequently open except in the presence of not less than two official observers who are of different political party or organizational affiliations. Notwithstanding this, voting equipment that has been initially secured under this rule for subsequent delivery to another location, such as a voter service center, counting center, or similar location, may be opened by the election officials present at that subsequent location;

(4) Official observers shall sign a certification that the vote counting system was tested, found accurate, and approved.

(c) In the event of a vote counting system malfunction, the test shall be rerun upon completion

of the maintenance or corrective work. There shall be no further processing until the test indicates that the vote counting system is working properly. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-42, 16-43, 16-45)

§3-177-705 Experimental voting systems; rules and procedures. In an election where the chief election officer experiments with voting systems of a different kind, all rules which can be reasonably applied to that system shall be followed. Temporary procedures shall be used as required for the experimental voting systems only. Nothing herein is to be used to diminish, take away or otherwise impair the rights of the voter. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §16-1)

§3-177-706 Electronic voting systems; generally. An "electronic voting system" means any method of recording, counting, and tabulating votes via automatic tabulating equipment. For purposes of these rules, an electronic voting system includes, but is not limited to, the "marksense ballot voting system" and the "direct recording electronic voting system." To the extent an electronic voting system is not a "marksense ballot voting system" or a "direct recording electronic voting system," all rules associated with those systems which can be reasonably applied to the new system shall be followed. Temporary procedures shall be used as required if the rules associated with the "marksense ballot voting system" or a "direct recording electronic voting system" cannot be reasonably applied to the new system and followed. Nothing herein is to be used to diminish, take away or otherwise impair the rights of the voter. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-1, 16-41, 16-42)

§3-177-707 Electronic voting systems; marksense

voting system. A "marksense voting system" means an automatic tabulation system using ballots and optical scanning or similar technology equipment. The voter manually records votes by marking the appropriate voting position on the ballot, with a prescribed marking device, in the manner instructed by the chief election officer. The marks on the ballots are subsequently read by the optical scan or similar technology device, in conformance with the specifications of the voting system selected by the chief election officer. As used in these rules, a "marksense voting system" is considered to be a "mechanical tabulation system," which may be used in any context requiring or permitting the use of a mechanical tabulation system. A "mechanical tabulation system" means an automatic tabulation system, including a marksense ballot voting system. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§16-1, 16-41, 16-42)

§§3-177-708 to 3-177-749 (Reserved)

SUBCHAPTER 16

VOTE DISPOSITION

§3-177-750 Electronic voting systems; documentation of overages and underages; records. The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party or official observers. If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. Any overages or underages in any district shall be documented. The list of any such overages or underages shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections. After all ballots have been tabulated, they shall be sealed in containers. [Eff 07/26/20; comp] (Auth: HRS§§11-4, 11-154)(Imp: HRS §§11-153, 11-154, 11-155)

§3-177-751 Electronic voting systems; centralized and decentralized counting. (a) Centralized counting involves the receipt of ballots which are counted at a counting center designated by the chief election officer.

(b) Decentralized counting involves ballots which are counted at the voter service center by the voting device or voting devices associated with the voter service center, including marksense voting devices, direct recording electronic voting devices, or similar technology.

(c) A "counting center" means the facilities and surrounding premises designated by the chief election officer or the clerk where ballots or other electronic voting system votes are processed, counted, and tabulated.

(d) The chief election officer may use centralized counting, decentralized counting, or a combination thereof. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§16-2, 16-41 through 16-

47)

§3-177-752 Electronic voting systems; marksense voting system; disposition of marks. (a) As noted in HAR §3-177-454, the voter shall properly mark the ballot in the manner and color of ink, softness of pencil graphite, or other manner as described by the instructions prescribed by the chief election officer.

(b) A mark made in the manner indicated in subsection (a) shall be considered a "proper mark" and counted by a properly functioning voting system as a vote.

(c) A mark made outside of the voting position will be considered an "improper mark" and will not be counted by a properly functioning voting system as a vote.

(d) A "marginal mark" involves a mark in the voting position area in which the voter may have used an improper marking device or did not completely fill in the voting position area as instructed. As indicated by its name, such marks are marginal. The disposition of a marginal mark as to whether it will be counted as a vote will be based on whether a properly functioning voting system has read the mark as a vote. A marginal mark will be read by the voting system as a vote under two circumstances:

(1) The vote counting system has been tested pursuant to HAR §3-177-704 and it has determined that the mark has met the threshold of the system for a vote; or

(2) The voting system in using an algorithm or similar process to eliminate false overvotes caused by pen rests, dirt, or other small marks on the ballot, determines that the mark is in fact a vote.

(A) The use of such an algorithm will be determined by the chief election officer prior to the election and the official observers will be able to test the vote counting system to ensure it is working properly; and

(B) The chief election officer may authorize such an algorithm to be used in conjunction with the processing of ballots at the counting center or at a voter service center. However, the chief election officer may elect to only authorize it in certain settings. For example, situations in which the voter does not have the benefit of an in-person voting system to inform them of a possible voting error on the ballot that they could address before the ballot is cast. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 52 USC §21081) (Imp: HRS §§11-104, 11-108, 16-2, 16-41 through 16-47, 52 USC 21081)

§3-177-753 Electronic voting systems, transmission, receipt, and tabulation of votes. (a) The transmission or receipt of vote data, including but not limited to votes, vote tabulation, or similar information, shall be permitted between locations authorized by the chief election officer or clerk in the case of county elections. Election results, accumulated from said transmissions, may be distributed to the general public while awaiting receipt of the ballots, vote data storage media, or other materials associated with the transmissions and the completion of any procedures intended to verify the proper transmission and accumulation of data.

(b) "Vote data storage media" is the means of storing vote data such as a PCMCIA card or other device that may be secured in the voting equipment or any part of the overall voting system.

(c) The following requirements shall be employed when transmitting election data electronically:

(1) The voting system shall be self-contained and not connected to any network infrastructure that is not under the direct control of the office of elections or the clerk in the case of county elections;

(2) The transmission and accumulation of election results shall be subject to a testing and verification prior to the election;

(3) The electronic transmission of official election vote data shall occur via virtual private network or other secured network. Where possible and to the extent that the voting system design permits, data transfers between system components should incorporate the use of digital signatures or encryption to authenticate the data for the particular election.

(4) Accumulated election results shall be considered uncertified unless it can be independently verified prior to transmission and following receipt and until certified by the chief election officer. Independent verification may be accomplished via manual inspection of election results prior to and following electronic transmission or by employing the use of a cryptographic hashing algorithm on randomly selected data files prior to and after transmission.

(c) Any election results transmitted by modem shall be considered "uncertified" unless transmitted via a virtual private network or until compiled directly from the source media.

(d) In elections where voting results are tabulated at multiple locations and accumulated at a central location, election results tabulated and produced at the distributed counting center locations shall be considered the source of election results for verification purposes. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-104, 11-108, 16-2, 16-41 through 16-47)

§3-177-754 Electronic voting systems; marksense ballot voting system results. Uncertified results from a marksense ballot voting system may be distributed to the general public, while awaiting the completion of

any audit under HAR §3-177-762, and any other procedures required by law. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-755 Electronic voting systems; direct recording electronic voting system results. The chief election officer, clerk, or designees may distribute electronic tallies created directly from a direct recording electronic voting device, while the requirements of HRS §16-42(b) are being met. In the event the chief election officer, clerk, or designee determines that the electronic tallies from a direct recording electronic voting device are not reliable, the chief election officer, clerk, or designee shall promptly notify the official observers and count the voter verifiable paper audit trails by hand or a mechanical tabulation system. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-756 Electronic voting systems; inspection, audit, and experimental testing. Prior to election day, the chief election officer, county clerk, or designees shall test the electronic voting system. If, as a result of the initial testing, the chief election officer determines additional inspection, auditing or testing is required, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or retesting needed to ensure that the voting system is working properly. If, after election day, the post-election, pre-certification audit indicates misreporting within the system, the chief election officer shall notify the official observers so that they can witness the additional inspection, auditing or retesting performed to ascertain the nature of the problem. [Eff 07/26/20; comp] (Auth: HRS §§11-4)(Imp: HRS §§11-108, 16-2, 16-41 through 16-47)

§3-177-757 Electronic voting system; counting center procedures. (a) The handling of ballots, vote data storage media, and voter verifiable paper audit trails shall occur only in the presence of representatives who are not of the same political party or official observers, except in cases where technical knowledge and skill is required when authorized by the chief election officer, clerk, or designated representative.

(b) The official observers shall observe the processes within the counting center and shall report any changes or deviations from the rules or procedures to the chief election officer, clerk in county elections, or designated representative. The observers shall also participate in all certifications that may be required by the chief election officer, clerk, or designated representative.

(c) No person shall be permitted into the counting center without the authorization of the chief election officer, clerk in county elections, or designated representative.

(d) There shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a ballot question prior to the closing of the polls as specified in HRS §11-131.

(e) If a system becomes inoperative, the chief election officer, clerk, or designated representatives shall evaluate and determine the extent of the malfunction. Provisions for backup procedures shall be available and may be put into effect. All tests and operational procedures stated in these rules shall apply to any standby equipment used.

(f) After all ballots are counted, the election database and vote data storage media, test ballots and results, the election results, and the voted ballots shall be sealed in containers or cabinets.

(g) Subsequent audits may be conducted by the chief election officer, clerk, or designated representative in accordance with established procedures.

(h) A written record shall be maintained of each

opening and sealing of these storage containers or cabinets. The record shall include all of the following:

(1) Date and time;

(2) Name of each person requesting opening and reasons for opening;

(3) Seal numbers; and

(4) Signatures of two or more witnesses attesting to the opening and closing of these containers or cabinets and certifying that ballots were handled in their presence at all times.

(i) The containers or cabinets shall be sealed and stored for twenty-two months in accordance with federal law. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-131, 11-154, 16-44) (Imp: HRS §§11-108, 11-154, 16-2, 16-41 through 16-47)

§3-177-758 Electronic voting system centralized counting; receipt at counting center. Counting center officials shall receive and sign for the containers from the voter service centers and the valid return envelopes for processing. The containers shall be unsealed and opened in accordance with established procedures and in the presence of not less than two representatives who are not of the same political party or official observers. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 11-154, 15-9, 15-10, 16-2, 16-41 through 16-47)

§3-177-759 Electronic voting system counting; duplication procedure. (a) Counting center officials shall record and reconcile the number of defective ballots before and after the ballot is duplicated.

(b) Counting center officials, in the presence of representatives who are not of the same political party or official observers, shall prepare a duplicate ballot to replace each defective ballot. To the extent a defective ballot is the result of the wrong ballot type having been used for a particular

district, counting center officials shall ensure that all votes cast in contests for which the voters in that district are entitled to vote are properly duplicated onto the duplicate ballot associated with the correct ballot type for counting. All of the votes in contests for which the voters in that district are not entitled to vote will not be counted and as such will not be duplicated onto a duplicate ballot. Unvoted ballots for duplication and voting devices shall be authorized in the counting center for this purpose.

(c) Counting center officials shall prepare a reconciliation of the number of duplicated ballots used to replace the defective ballots. The defective ballots shall be invalid and stored in accordance with subsection (f).

(d) Duplicated ballots shall be returned to the appropriate originating counting center officials for final verification.

(e) All valid ballots shall be read and counted by the vote counting system. If, during the scanning of the ballots additional defective ballots are rejected, the defective ballots shall be processed in accordance with subsections (a) through (d).

(f) After the duplicated ballots are counted, the counted ballots and the invalid ballots shall be logged and sealed. The ballots shall be stored in containers or cabinets which shall be sealed. The storage of the ballots and sealing of the cabinets shall be done in the presence of not less than two representatives who are not of the same political party or official observers. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 16-46, 52 USC §21081) (Imp: HRS §§11-108, 11-154, 16-2, 16-41 through 16-46, 52 USC §21081)

§3-177-760 Electronic voting system decentralized counting; receipt at counting center.

(a) Counting center officials shall receive and sign for the sealed containers of voted ballots that have already been counted by the precinct counters,

sealed containers of voted ballots that have not been counted by the precinct counters, if any, and any other sealed container from each voter service center.

(b) Counting center officials shall track and log sealed containers of ballots, voter verifiable paper audit trails, vote data storage media, and other election related materials, such as zero reports, as they are processed at the counting center and received from the voter service centers in the presence of not less than two representatives not of the same political party or official observers.

[Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 16-2, 16-41 through 16-45)

§3-177-761 Electronic voting system; handling of vote data storage media. Election officials shall process the vote data storage media as follows:

(1) Receipt of vote data storage media and zero reports shall be logged; and

(2) The vote data storage media is readied for processing:

(A) The location or voting equipment that the vote data storage media came from shall be logged; and

(B) Any identifying information, such as a serial number, associated with the vote data storage media shall be logged.

[Eff 07/26/20; comp] (Auth: HRS §§11-4, 11-154) (Imp: HRS §§11-108, 15-10, 16-2, 16-41 through 16-45)

§3-177-762 Electronic voting system; auditing.

(a) The chief election officer or the clerk shall conduct an audit of a random sample of not less than ten per cent of the precincts employing the electronic voting system, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts.

(1) The manual audit may be conducted by

election officials or by counting center officials;

(2) Except for designated election officials, counting center officials, or official observers, no person shall be permitted to witness the audit without the authorization of the chief election officer, clerk, or designated representative. The area in which the audit is conducted shall be kept secure;

(3) Observers may request to conduct a manual audit;

(4) Whenever ballots are removed from storage, the handling of the ballots shall be witnessed by not less than two representatives who are not of the same political party or official observers;

(5) Election officials and counting center officials shall certify the conduct of and results of the manual audit; and

(6) The manual audit shall not be considered a recount pursuant to the election contest provisions of the law.

(b) In the event discrepancies are found in the audit, the chief election officer may authorize an expanded audit to determine the extent of misreporting within the system.

(1) The chief election officer may use official observers, election day officials, county or state election employees, or other designated individuals as part of the expanded audit.

(2) The chief election officer will determine when the expanded audit is concluded.

(3) The results of the expanded audit will be filed with the office of elections.

(c) In lieu of relying on the initial results from an electronic voting system, the chief election officer may count ballots or voter verifiable paper audit trails by hand or with a mechanical tabulation system, or a combination thereof.

(1) Any counting of ballots or voter verifiable

paper audit trails, through the use of a mechanical tabulation system, will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) As the marksense ballot voting system, is a mechanical tabulation system, and the ballots were intended to be read by the devices associated with that system, the chief election officer, will to the extent possible, use those voting devices of the system that did not experience misreporting problems; and

(B) In the event there are inadequate voting equipment that did not experience misreporting problems, the chief election officer, in consultation with the official observers, may use voting equipment that have been repaired to the satisfaction of the chief election officer.

(2) Any counting by hand of ballots or voter verifiable paper audit trails will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with.

(A) Ballots that were marked for use by a marksense ballot voting system, will be counted in accordance with those rules associated with that system to the extent reasonably possible. Any hand count of marksense ballots will not use any statute or rules associated with the paper ballot voting system, as those marking instructions and vote disposition rules are uniquely different from those statutes and rules associated with other voting systems; and

(B) Voter verifiable paper audit trails from a direct recording electronic device voting system will be counted in accordance with the ballot selections indicated on them.

(d) The chief election will, to the extent possible, resolve any misreporting problem, prior to the end of the contest period stated in HRS §11-173.5, in the case of a primary, or special primary election, or HRS §11-174.5, in the case of a general, special general, or special election. Any resolution of a misreporting problem shall be documented and filed with the office of elections.

(e) "Precinct" for purposes of this rule, consistent with HAR §3-177-57, refers to the ballot type that corresponds to the manner in which results are reported (i.e. if results are reported by state representative district-precinct, such as DP 17-01, then the ballot type associated with DP 17-01 is the applicable precinct for auditing purposes).

[Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21081) (Imp: HRS §§11-4, 11-108, 11-153, 16-2, 16-41, 16-42, 52 USC §21081)

§3-177-763 Electronic voting system; recount.

(a) No person shall be permitted in the counting center without the written authorization of the chief election officer or clerk for purposes of the recount.

(b) The "counting center" means the facilities and surrounding premises designated by the chief election officer or the clerk in county elections where electronic voting system ballots are processed, counted, and tabulated.

(c) The office of elections or the clerk in the case of county elections shall notify candidates affected by a recount, of the date and time the recount will begin. The candidate or their designated representative may attend and witness the recount. The candidate or their representative will be provided with identification, which they must wear when present in the counting center for the recount.

(d) An attempt will be made to contact candidates affected by the recount to inform them of the time and place of the recount. Contact may be attempted through using the telephone number or electronic mail address provided to election officials as part of the candidate's application for their nomination paper. Election officials are not responsible for the non-receipt of such notice by the candidate.

(e) Given the need to conclude any recount within seventy-two hours of the closing of polls on election day, any notice may be provided on Saturdays, Sundays, or holidays. Such a notice will not serve to extend the initiation or conclusion of the recount.

(f) As the ballot typically contain various contest beyond the contest that triggered the recount, the system may read all marks on the ballot, when the ballots are scanned. This may result in the system generating not only new results for the contest in question but also other contests on the impacted ballots. However, any results for those other contests will not be considered official and will not change the previous official results in those contests.

(g) Any counting of ballots or voter verifiable paper audit trails will conform to the marking and vote disposition rules relating to the voting system that the ballot or voter verifiable paper audit trails were associated with. As the marksense ballot voting system, is a mechanical tabulation system, and the ballots were intended to be read by the devices associated with that system, the election officials, will to the extent possible, use voting devices associated with the system.

(h) The results of the recount will be subject to auditing under HAR §3-177-762.

(i) After the conclusion of any audit of the recount, the results of the recount for the contest that triggered the recount will be publicly announced.

(j) The recount will include only those ballots that were a part of the initial tabulation, which HRS §11-108(b) required to be completed no later than 6:00

a.m. on the day following an election day.

(k) Ballots whose validity had not been initially determined and as such were not included in the initial tabulation, will be counted separately after being validated. This includes, but is not limited to, any ballots that were initially deficient but were subsequently corrected by voters, pursuant to HRS §11-106. The counting of these ballots will result in updated election results. However, the updated election results may not serve as a basis for the triggering of another recount. As these ballots are not a part of the initial tabulation subject to recount, the provisions related to a recount shall not apply to the counting of them. However, the date and time of the counting of these ballots will be provided to the official observers, pursuant to HRS §16-45. [Eff 07/26/20; comp] (Auth: HRS §11-4, 52 USC §21081) (Imp: HRS §§11-108, 11-158, 16-2, 16-41 through 16-45, 52 USC §21081)

§3-177-764 Challenged voter's ballot; disposition of at counting center. (a) As it relates to a challenged voter's ballot, it will only be counted if the clerk informs the counting center manager that the resolution of the challenge is for the challenged voter's ballot to be counted. The resolution of the challenge may occur through the expiration of the deadline to appeal a decision of the board of registration saying the ballot should be counted, the waiving of any right of appeal prior to the deadline, or a ruling by the intermediate court of appeals to count the ballot.

(b) If the challenged voter's ballot is to be counted, counting center officials shall prepare the ballot for processing. The ballot shall be counted using procedures established by the chief election officer. In all cases, the secrecy of the ballot must be preserved. If the secrecy of the ballot cannot be preserved, the challenged ballot shall not be processed except to break a tie vote, as ordered by the appellate court. It shall be disposed of as

provided by law. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-25, 11-54)

§3-177-765 Election results; certification of. The chief election officer or clerk, as the case may require, shall prepare a certified statement of the results of votes cast for the election. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-155, 11-156)

§3-177-766 Certificate of election and certificate of results, form. (a) The chief election officer or clerk shall deliver certificates of election to the persons elected as determined under HRS §11-155. The chief election officer or clerk in county elections shall issue certificates of results where a question has been voted upon.

(b) Certificates of election shall be delivered only after the:

(1) Filing of reports in accordance with HRS §§11-331 and 11-333; and

(2) Payment of any fine assessed by the campaign spending commission,

by the person elected in accordance with Part XIII of Chapter 11, Hawaii Revised Statutes and after the expiration of time for bringing an election contest.

(c) The certificate of election shall be substantially in the form found in HRS §11-156.

(d) If there is an election contest these certificates shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §11-156)

§3-177-767 Processing of voted ballots at the counting center; return identification envelopes; centralized counting. (a) Valid return identification envelopes, including validated mail ballot packages returned by electronic transmission, shall be

transported to the counting center or designated location in secured containers in accordance with procedures established by the chief election officer.

(b) Opening and processing of valid return envelopes for tabulation may begin no sooner than the tenth day before the election. In the presence of official observers, counting center officials may open the return identification envelopes and count the ballots; provided that any tabulation of the number of votes cast for a candidate or question appearing on the ballot, including a counting center printout or other disclosure, shall be kept confidential and shall not be disclosed to the public until after 7:00 p.m. on the date of the election or after the last person in line at a voter service center desiring to vote at 7:00 p.m. on the date of the election has voted, as provided in HRS §11-131, whichever is later.

(c) Valid return identification envelopes shall be opened and processed in accordance with procedures established by the chief election officer.

(d) Upon opening the return identification envelopes, counting center officials shall indicate that a ballot is invalid for the following reasons:

(1) More than one secret ballot envelope or secret ballot sleeve containing a ballot;

(2) Secret ballot envelopes or secret ballot sleeves containing more than one ballot, provided that in an election which requires more than one ballot card or sheet, ballots constituting a paired ballot shall be valid (i.e. if an election contains more candidates and/or ballot questions that can fit on one ballot card);

(3) The ballot returned is defective and cannot be duplicated;

(4) The ballot returned is for the wrong election; or

(5) No ballot has actually been returned in the secret ballot envelope or secret ballot sleeve.

(e) Invalidated ballots shall be noted as being "invalid," placed in an invalid ballot box or

otherwise securely segregated. Any reconciliation form shall be adjusted to reflect any invalidating conditions.

(f) The counting of ballots and certification of results shall occur in accordance with Subchapter 16 to Chapter 3-177, Hawaii Administrative Rules. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-108, 15-9)

§3-177-768 Processing of uncounted voted ballots from voter service centers. Voter service center officials shall identify and pack any uncounted voted ballots at the voter service center in a secure container to transfer to the counting center to be counted. Election officials shall process uncounted voted ballots that were unable to be counted at a voter service center as follows:

(1) The location and container number shall be logged; and

(2) The uncounted voted ballots shall be readied for counting. [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-109, 16-2, 16-41 through 16-46)

§3-177-769 Reconciliation of voted ballots. (a) The clerk shall prepare a reconciliation of voted mail and voter service center ballots recorded on a form prescribed by the chief election officer. The form shall summarize the following totals by precinct:

(1) Walk-in voter service center ballots;

(2) Valid mail return identification envelopes; and

(3) Invalidated mail ballots.

(b) If there are more ballots than documented usage indicates, this shall be an overage and if fewer ballots, it shall be an underage. [Eff 07/26/20; comp] (Auth: HRS §§11-4) (Imp: HRS §§11-153, 11-155)

§§3-177-770 to 3-177-799 (Reserved).

SUBCHAPTER 17
PAPER BALLOT VOTING SYSTEM

§3-177-800 Paper ballot voting system; voting procedure at the voter service center. (a) The "paper ballot voting system" means the method of recording votes which are counted manually in accordance with HRS §§16-21 to 16-29. Neither the paper ballot voting system or paper ballot voting system procedures apply to ballots that were originally meant for any other voting system, such as the marksense voting system (e.g. marksense ballots cannot be marked or counted under the rules associated with this subchapter).

(b) If a paper ballot voting system is to be used, a demonstration of the proper method to use in marking a paper ballot, shall be available to all voters at the voter service center. A card of instruction detailing the method of marking ballots and voting shall be posted outside the voter service center and in each voting booth.

(c) The voter may be asked to verify their identity.

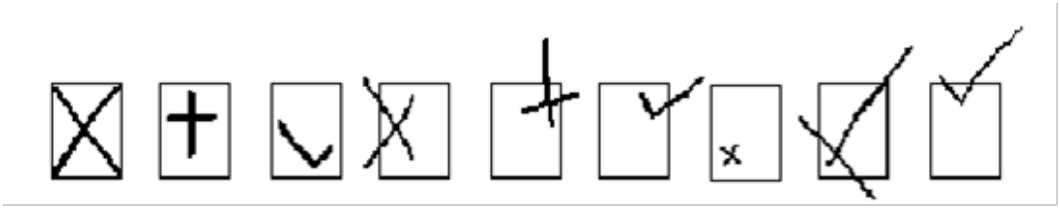
(d) The voter may be required to fill out an application that will be used in conjunction with the statewide voter registration system. In the alternative, they may sign a poll book, depending on how the voter service center is operated. In either case, the poll book or application shall include the ability for the voter to make a mark in the appropriate place if the voter is unable to write for reasons of illiteracy, blindness, or other physical disability. The voter service center official shall print "witnessed by" next to the voter's mark and sign the voter service center official's name.

(e) Before issuing a ballot to a voter, the voter service center official shall fold the ballot in the manner prescribed by the chief election officer or clerk so as to conceal the contents.

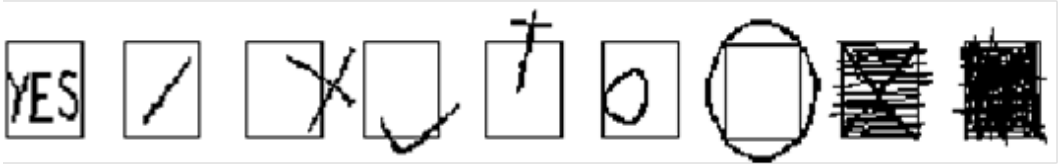
(f) Upon receiving the folded ballot, the voter shall proceed into the voting booth and shall mark the

ballot in the manner and color of ink or grade of softness of pencil graphite prescribed by the chief election officer as described in the card of instruction. Within the voting booth the voter shall designate each choice by marking an "X", "+", or "%" in the voting position area next to the name of the candidate for whom the voter desires to vote or the question on the ballot for which the voter desires to vote. The voting position area will be designated by the chief election officer on the ballot. The voting position area may include, but not be limited to circles, squares, rectangles, or other shapes. In addition, the chief election officer will determine whether the voting position area is on the right or left hand side of a candidate's name or the ballot question.

(1) Examples of proper marks are:



(2) Examples of improper marks are:



(g) The voter shall then refold the ballot using the same folds as when handed to the voter by the voter service center official and shall give the folded ballot to the voter service center official at the ballot box. The official shall not open or unfold the ballot, but shall ensure that the correct number of ballots are deposited in the ballot box.

(h) The voter service center official at the ballot box shall give the voter a receipt.

(i) Voter assistance shall be provided at the voter service center. [Eff 07/26/20; comp] (Auth: HRS §§11-4, 16-22) (Imp: HRS §§11-109, 11-139, 12-31, 16-22, 16-23)

§3-177-801 Paper ballot voting system; counting ballots. (a) All counting shall be conducted by the election officials in accordance with HRS §16-25.

(b) Insofar as the limits of the room in which the voting takes place reasonably allow, no person shall be prevented from attending the counting of the ballots on election day, unless it is necessary to restrict access to preserve the peace.

(c) All tallying shall be done on the official tally sheet, and no one but an election official shall be permitted to assist in calling, tallying, or performing any other work involved in counting the votes cast. The election officials shall also tally the number of:

(1) Questionable ballots, as defined in HRS §16-26, which shall be placed in an envelope provided for that purpose; and

(2) Totally blank ballots.

(d) When tallying is completed, an election official, in the presence of at least one other election official not of the same political party, shall circle the last block containing the last tally mark with a red pen.

(1) Immediately to the right of the circled block, an election official shall record the total number of tally marks including those in that block, and the election official and the other election officials shall affix their initials.

(2) The total count shown on the tally sheet shall be recorded on the results of votes cast form.

(3) The election officials shall then complete and sign the certification on the tally sheet and the results of votes cast form.

(e) When the election officials have ascertained

the number of votes given for each candidate and ballot question, they shall make public declaration of the whole number of votes cast, the names of the persons voted for, the ballot questions, and the number of votes for each person and ballot question." [Eff 07/26/20; comp] (Auth: HRS §11-4) (Imp: HRS §§11-152, 11-153, 11-154, 16-24 through 16-29)

2. New material except source notes and other notes, is underscored.

3. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

4. These amendments to and compilation of chapter 3-177, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I hereby certify that the foregoing are copies of the rules drafted in Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

_____
SCOTT T. NAGO
Chief Election Officer