

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The District of Columbia Board of Elections and Ethics hereby gives notice of emergency and proposed rulemaking action to adopt the following amendments to 3 DCMR Chapter 7, "Election Procedures."

The proposed amendments outline procedures to be followed in the event of the inoperability of either the optical scan or direct recording electronic (DRE) voting system on election day.

In order for these amendments to be in place prior to the January 13, 2004 Primary Election, it was necessary for the Board to adopt the following emergency amendments to the rules. The Board took such action at a special meeting which took place on Wednesday, December 17, 2004 at which time the proposed amendments became effective.

The emergency amendments to the rules will expire on April 15, 2004, one hundred and twenty (120) days after the emergency rulemaking takes place, or upon publication of the Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the D.C. Register.

*Section 713, "Vote Casting Procedures: Regular Ballot," shall be amended to read as follows:*

- 713.10 The designated polling official shall be responsible for the following:
- (a) Receiving the Voter Card;
  - (b) Twice announcing clearly and publicly the name, and in a primary election, the party on the Voter Card;
  - (c) Ascertaining whether the voter will vote using the optical scan voting equipment or the direct recording electronic (DRE) voting equipment;
  - (d) Issuing to voters selecting the optical scan voting equipment the ballots to which they are entitled, and issuing to voters selecting the DRE voting equipment the electronic voter cards to which they are entitled; and
  - (e) Depositing the Voter Card in a container provided for that purpose.

- 713.11 In the event that a voter chooses to use the Board's optical scan voting machines, the voter will complete his or her ballot and submit such ballot according to instructions which will be provided at the polling place.
- 713.12 In the event that the optical scan machine becomes inoperable for any reason during the election process, voters will place voted ballots into the auxiliary bin ballot slot of the ballot box. All ballots deposited in this auxiliary slot will be tabulated at the close of polls, either at the polling place if the machine regains operability, or at the Board's counting center, if not.
- 713.13 In the event that a voter chooses to use the Board's direct recording electronic (DRE) voting equipment, the voter will be given an electronic voting card for the purpose of voting and will complete his or her ballot according to instructions which will be provided at the polling place.
- 713.14 In the event that the DRE voting equipment becomes inoperable for any reason during the election process voters will be directed to use the optical scan voting equipment and submit their ballots in the manner prescribed in subsection 713.11 or, if applicable, 713.12.
- 713.15 Any repairs conducted on either the optical scan voting equipment or DRE equipment will be performed in the presence and view of:
- (a) an election official who shall note in writing all repair activity, and;
  - (b) designated poll watchers who will be provided with any available information pertaining to system activity.

*Section 723, "Closing The Polls," shall be amended to read as follows:*

- 723.1 Immediately after the last voter has voted, the Precinct Captain or his or her designee(s), shall in the presence and view of designated poll watchers:

Members of the public are invited to submit comments in writing to the General Counsel of the Board of Elections and Ethics, Suite 270N, One Judiciary Square, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. Comments should be received no later than thirty (30) days from the publication of this Notice.

Copies of these rules may be obtained by request from the above address Monday through Friday between the hours of 8:30a.m. and 4:00p.m.