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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-60-80
VAC Chapter title(s)	Election Administration
Action title	Amending 1VAC20-60-80 Request for a risk-limiting audit for a contested race within a jurisdiction
Final agency action date	March 7, 2023
Date this document prepared	March 9, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action amends the current Regulatory Action 1VAC2-60-80. The current regulatory action provides the process for a local electoral board to apply for a risk-limiting audit of a contested race within its own jurisdiction. The amendments provide clarification for this process as well as additional steps for applying for different risk-limiting audit methods and multiple contested races.

Section A has been added to the regulatory action to provide a clear definition of contested race in response to some confusion as to what contested races could be applied for by a local electoral board. Section B.2 provides the process for a local electoral board to apply for multiple contested races. Section B.3.b requires the local electoral board to choose a risk-limiting audit method by a majority vote and to apply the same risk-limiting audit method to all contested races applied for. Current Section d(2) is

removed to allow for the batch comparison method to be used for risk-limiting audits applied for under this regulatory action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Acts of Assembly Chapter 443, passed by the 2022 General Assembly, made changes to the Virginia risk-limiting audit process. Subsection §24.2-671.2(D) gives local electoral boards the option to request to conduct a risk-limiting audit for a contested race within that local electoral board's jurisdiction. The same subsection also directs that "[t]he State Board shall promulgate regulations for submitting such requests."

In response to public comments and discussions with the State Board of Elections members, the Department of Elections reviewed and researched the feasibility of the batch comparison method of risk-limiting audits for such requests. Once it was determined that such a method was feasible in the Commonwealth, the Department of Elections chose to propose amendments to the current regulation to the State Board of Elections.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 7, 2023, the State Board of Elections held a public meeting and voted unanimously to approve the proposed amendments to Regulatory Action 1VAC20-60-80, Request for risk-limiting audit for a contested race within a jurisdiction, and Form SBE-671.2(D).