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Fast-Track Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-60-90
VAC Chapter title(s)	Material omissions from officer removal petitions and petition signature qualifications
Action title	Material omissions from officer removal petitions and petition signature qualifications
Date this document prepared	6/2/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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 is a new regulation that outlines what constitutes a material omission on a petition for the removal of an officer. The regulation allows general registrars to certify to the clerk of the court that the required number of signatures on a removal petition are met. Material omissions on a removal petition include things like the petition fails to identify the applicable jurisdiction in which the officer serves, and the petition does not have the specific reasons or grounds for removal on the form.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

SBE – The State Board of Elections
ELECT – Department 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 May 30, 2023 the State Board of Elections voted unanimously to adopt 1VAC20-60-90 Material omissions from officer removal petitions and petition signature qualifications

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, 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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Acts of Assembly Chapter(s) 663 and 664 passed during the 2023 Session of the General Assembly set out the procedures by which an elected officer, or officer who has been appointed to fill an elective office, may be removed from office. As it pertains to the State Board and general registrars, these bills require that (i) the general registrar review a petition for removal on a form prescribed by the State Board and determine its sufficiency; (ii) the general registrar certify the petition within 10 business days and promptly file such certification with the clerk of the circuit court; and (iii) the certification state the number of signatures required, the number of signatures on the petition, the number of valid signatures, along with any signatures found to be invalid and any material omissions from the petition. As a result, the State Board must adopt a regulation outlining what constitutes a material omission on a removal petition.

This regulation is expected to be noncontroversial because it is consistent with the requirements for material omissions on referendum petitions (1VAC20-60-20) and material omissions for candidate petitions (1VAC20-50-20).

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The State Board of Elections, through the Department of Elections, is the promulgating agency. This regulation is in response to Acts of Assembly Chapter(s) 663 and 664 passed during the 2023 Session of the General Assembly which require general registrars to indicate what the material omissions are on an officer removal petition. Additionally, pursuant to §24.2-103(A) of the Code of Virginia, the State Board of Elections “shall make rules and regulations and issue instructions and provide information consistent with

the election laws to the electoral boards and registrars to promote the proper administration of election laws.”

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

Upon receipt of a removal petition, the general registrar must review the petition and determine its sufficiency; must certify the petition within 10 business days and promptly file such certification with the clerk of the circuit court; and must state the number of signatures required, the number of signatures on the petition, the number of valid signatures, along with any signatures found to be invalid and any material omissions from the petition.

In order to ensure uniform standards are applied for the review of material omissions on petitions and ensure due process for officers that may be removed, the State Board of Elections must promulgate a regulation indicating material omissions on a petition for the removal of an officer.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

This regulation creates a new section, section 90, in the existing chapter 1VAC20-60 Election Administration. Material omissions on a removal petition include things like the petition fails to identify the applicable jurisdiction in which the officer serves and the petition does not have the specific reasons or grounds for removal on the form. Material omissions do not include things like the signer prints his name on the "Print" line and prints his name on the "Sign" line.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no known issues with this regulation. If this regulation were to not be promulgated there would not be consistent and uniform standards while certifying if the required number of petition signatures are met.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale

for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no known requirements that exceed or are applicable to federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

None

Localities Particularly Affected

All circuit courts in Virginia that receive a certification from the general registrar regarding the number of signatures on an officer removal petition, and all general registrars required to review an officer removal petition.

Other Entities Particularly Affected

All elected officials and all officials appointed to fill an elective office subject to a removal petition

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	None
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	None

<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	No economic benefits
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Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All circuit courts in Virginia that receive a certification from the general registrar regarding the number of signatures on an officer removal petition, all general registrars required to review an officer removal petition, and all elected officials and all officials appointed to fill an elective office subject to a removal petition are affected by the regulatory change.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Removal petitions are filed with the circuit courts, and the agency does not have an estimate for how many removal petitions are filed at this time as this information is not provided to ELECT or the SBE. However, any and all circuit courts, general registrars, and elected officials subject to removal petitions can be affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	Ensures uniformity and consistency when reviewing and certifying the number of signatures on a removal petition.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There were no alternatives to this regulation considered. This regulation is the least burdensome as it is consistent with other regulatory requirements regarding material omissions on other petitions. This consistency allows for efficient processing by general registrars as it sticks to traditional standards and only make changes specific to the function of the removal form.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulation does not impact small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Elections is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Ashley Coles
 by mail at 1100 Bank Street 1st Floor, Richmond Virginia 23219
 by phone at (804) 864-8933
 via email at Ashley.Coles@elections.virginia.gov
 or fax (804) 371-0194..

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
1VAC20-60-90	<p>Below are the requirements that differ from the other material omission regulations listed to the right of this text. The remaining requirements are consistent with existing statutory language.</p> <p>As it pertains to petitions for the removal of an officer material omissions include:</p>	<p>Similar regulations: 1VAC20-50-20 and 1VAC20-60-20</p>	<p>Uniform review of petition removal signatures which allows general registrars to process certifications efficiently and effectively as they are familiar with most of the regulatory requirements. These requirements are consistent with other regulatory chapters regarding material omission for other petitions</p>

	<p>1. The petition does not have the name, or some variation of the name, and the office of the officer to be removed on the front of the form;</p> <p>2. The petition fails to identify the applicable jurisdiction in which the officer serves; and</p> <p>3. The petition does not have the specific reasons or grounds for removal on the form.</p> <p>The following are not material omissions specific to a petition for the removal of an officer:</p> <p>1. The name of the officer to be removed and office title are omitted from the back of the petition; and</p> <p>2. The circulator has not provided his year of birth in the affidavit.</p>		

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage