



COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

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TO: Robert Brink, Chairman
State Board of Elections

Christopher E. Piper, Commissioner
Department of Elections

FROM: Heather Hays Lockerman
Senior Assistant Attorney General/Chief

A handwritten signature in black ink, appearing to read "Heather Hays Lockerman".

Date: 10/21/2020

Subject: Letter of Assurance for Amendment to Regulation 1VAC 20-60-50

I have reviewed the proposed amendment to regulation 1 VAC 20-60-50, regarding overfull optical scanner ballot containers. In my view as counsel to the State Board of Elections, it has the authority to promulgate this regulation pursuant to Virginia Code § 24.2-103. This regulatory action is exempt from the Administrative Process Act pursuant to Virginia Code § 2.2-4002(B)(8) as it relates to the conduct of elections. The proposed amendment does not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, or any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed amendment.



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 20-60-50
VAC Chapter title(s)	Election Administration
Action title	Secure Process for Overfull Optical Scan Machines at the General Registrar's Office
Final agency action date	10/02/2020
Date this document prepared	10/21/2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 amending 1VAC 20-60 addresses an issue raised to the Department of Elections by the General Registrar community. Registrars face special issues regarding overfull optical scan ballot containers at the general registrar's office, where voting is conducted for forty-five days rather than just Election Day itself and at satellite locations. Registrars have requested that the Department of Elections provide an alternative process for dealing with overfull optical scan ballot containers at the general registrar's office and satellite locations. This regulatory action provides an alternative process that will continue to keep the overflow ballots safe and secure.

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). "Mandate" is defined as "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."

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.

Action taken 10/02/2020. Decision by State Board of Elections. Regulation Title: Secure Process for Overfull Optical Scan Machines at the General Registrar's Office