



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 20-70-10, 20-70-30, Forms
<b>Regulation title</b>	2013 Periodic Review Absentee
<b>Action title</b>	2013 Periodic Review Absentee
<b>Final agency action date</b>	06/10/2014
<b>Document preparation date</b>	06/10/2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Board of Elections is amending its regulations on absentee voting to implement recommendations received during its periodic review of Chapter 70 of its regulations announced May 15, 2013, pursuant to 1 VAC 20-10-120. The proposed changes consist of updating referenced forms and moving provisions related to absent military and overseas voters to a new Chapter 45. The comment period for Chapter 70 opened on June 3, 2013, and closed June 24, 2013. The staff presented the comments received and proposed changes to the regulations to the Board at its meeting on December 2, 2013. The Board approved inviting comments on the proposed changes through the Town Hall for a comment period starting December 30, 2013, through January 14, 2013. No comments were received

### Statement of final agency action

Please 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.

The State Board Elections at its meeting on June 10, 2014, approved the amendments to Chapter 70 of its regulations titled 2013 Periodic Review Absentee.

**Family impact**

Assess the impact of this regulatory action on the institution of the family and family stability.

None.

**Periodic review**

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulations in Chapter 70 as amended meet the criteria set out in Executive Order 14 (2010). The regulations are necessary for administering elections, clearly written and easily understandable.

Commenter	Regulation	Comment	Agency Response
Diana Dutton, Prince William County Voter Registration and Elections	20-70-20	<p><b>Substantial Compliance for Absentee Ballot Envelope B</b></p> <p>B7 Material omission on Envelope B is the date of the voter's signature</p> <p>C8 The ballot should not be rendered invalid if the voter omitted the year in date of the signature</p> <p>C9 The ballot should not be rendered invalid if the voter provides <i>the incorrect date</i> on Envelope B. What is an incorrect date? Unless the date is way off, how can one</p>	Legislation would be needed to make envelope B requirements more uniform across absentee voters.

		<p>determine if it is incorrect? Not a measurable value.</p> <p>Is the date a material omission that would affect the determination of how the voter wished to cast his vote?</p> <p>Since the absentee ballot from a domestic voter is returned in Envelope B in an envelope with a return address label attached showing the voter's return address, why should he have to repeat this information? UOCAVA voters do not have to provide the same information. These two classes of voters are being treated differently.</p> <p>B9 By striking this language, is it meant that there would be no Envelope B required? Or is it meant that the ballot is contained in an Envelope B but the envelope is not sealed?</p> <p>The problems created by the information required on Envelope B cause many AB ballots from senior citizens to be rejected</p>	
<p>W.T. Latham</p>	<p>20-70-20</p>	<p><b>Comments on 1 VAC 20-70-20</b></p> <p>My suggested amendments for 1 VAC 20-70-20 are as follows:</p> <ol style="list-style-type: none"> <li>1. Delete the requirement in (B)(7) that the voter "provide the date on which he signed Envelope B." This is unnecessary and does not appear to be required by Va. Code 24.2-707. While the statement in 24.2-706 indicates that there is to be a line for the date in the Statement of</li> </ol>	<p>Legislation would be needed to make envelope B requirements more uniform across absentee voters.</p>

		<p>Voter, 24.2-707 does not require that the date be included by the voter, while it does require that the voter and the witness sign the Statement of Voter on Envelope B. The absence in 24.2-707 is telling. This part of the regulation has real-life consequences: in the June 2013 primary, one voter's ballot was rejected solely because she had not dated the Envelope B. The ballot was otherwise fine.</p> <p>Deleting paragraph (B)(9) and adding proposed (C)(10) are good changes! The issue with sealing the ballot is especially problematic for UOCAVA voters who received their ballots by email. It can also be an issue for non-UOCAVA voters, as we have no way of determining if the voter sealed Envelope B and, because of faulty glue, it subsequently became unsealed. The proposed changes are good because they comply with the election laws of Virginia, and they err on the side of the voter.</p>	
<p>J. Kirk Showalter, General Registrar City of Richmond</p>	<p>20-70-40</p>	<p>Please accept the following comments on the proposed regulation 1 VAC20-70 regarding absentee ballot pre-processing:</p> <p>Item 1: This statement requires the general registrar's staff to "follow all previously prescribed instructions for processing and verifying absentee ballots." This requirement is broad and vague. As written, this would require us to follow any related procedure adopted at any time during the past, even those since superceded in law.</p>	<p>No regulatory action appears needed at this time. SBE in the Handbook for General Registrars and Electoral Board Members Chapter 16, Addendum 4 provides guidance on early processing. SBE may provide additional guidance addressing some issues in more detail.</p>

		<p>Item 2: The “principles of dual control and chain of custody” should be detailed so that all understand what is expected.</p> <p>Item 3: §24.2-709.1 of the Code of Virginia only require that officers of election be present if the sealed absentee ballot envelope is opened. Partial pre-processing (24.20709.1 (i)) does not require opening of the sealed ballot (vs. outer) envelope. The way that this section is written, however, election officers would have to be present for ALL steps of pre-processing. As such, it is suggested that this provision be re-written to clarify that it only applies if the pre-processing involves opening the sealed ballot envelope.</p> <p>Item 4: See comment under Item 3 regarding partial pre-processing. If only step (i) of pre-processing is done, is there a requirement that authorized representatives be allowed to view this step?</p>	
<p>W.T. Latham</p>	<p>20-70-30</p>	<p><b>Amending 1 VAC 20-70-30</b></p> <p>In 1 VAC 20-70-30(B), delete the last sentence. This sentence does not conform to Va. Code 24.2-702.1(B).</p> <p>Other requirements in the Code of Virginia are not listed in 20-70-30. It would be helpful if all of the requirements for processing FWABs, whether in the Code of Virginia or in the Administrative Code of Virginia, were listed in one place. The requirements from the Code that are not listed in 20-70-30 are as follows:</p> <ul style="list-style-type: none"> <li>• 702.1(B)(ii): Voter must provide his/her</li> </ul>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014 legislation.</p>

		<p>printed name. If it is the determination of the State Board of Elections that the absence of the printed name is not a material omission (and such a determination would make sense, as long as we could determine the name of the voter), this should be stated clearly in the Administrative Code.</p> <ul style="list-style-type: none"> <li>702.1(B)(iii): Voter must provide the county or city in which he or she is registered and offers to vote. This is explained as a nonmaterial omission later in 20-70-30---if it is left out and as long as the residence address provides information about the county/city--- but the requirements of 702.1 should be listed in paragraph (C) so that the section serves as a comprehensive guide to FWAB processing. The nonmateriality of omissions can then be explained in paragraph (D) of 20-70-30.</li> <li>702.1(B)(iv): Voter must provide the residence address at which he/she is, or desires to be, registered to vote.</li> </ul> <p>Finally, is the full name of the FWAB registration/absentee applicant required for voter registration?</p>	
<p>Diana Dutton, staff Prince William General Registrar</p>	<p>20-70-30</p>	<p><b>Material Omissions from Federal Write-In Absentee Ballots</b></p> <p>I submitted these comments last night; why are they not here?</p>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014</p>

		<p>B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline.  <b>However, Section 24.2-419 of the Code of Virginia extends the mail registration deadline to Election Day for a member of a uniformed service on active duty who is normally absent from the county or city of his residence and the spouse or dependent living with that person, so long as they are eligible to be registered.</b></p> <p>In the list of material omissions, add</p> <p>the voter's printed name (24.2-702.1 B ii)</p> <p>the voter's residence address at which he is registered to vote (24.2-702.1 B iv)</p> <p>C4 is not specific enough; it does not list the requirements in 24.2-702.1 B</p>	<p>legislation.</p>
<p>W. T. Latham</p>	<p>20-70-30</p>	<p><b>Amending 1 VAC 20-70-30</b></p> <p>The last sentence of paragraph (B) should be deleted, as it does not comply with Va. Code 24.2-702.1(B).</p>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014 legislation.</p>