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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-100
VAC Chapter title(s)	Ranked Choice Voting
Action title	Amendments to RCV
Final agency action date	5/30/2023
Date this document prepared	6/2/2023

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.

The proposed amendments create new definitions and amend existing definitions to the ranked choice voting regulations (1VAC20-100-10 through 1VAC20-100-80). The amendments include a distinction between tabulation on the voting system in the first-choice ranking tabulation round and tabulation on software for the ranked choice voting rounds, clarification of the determination of election thresholds for candidates to win, and the addition and amendment of terms related to ballot treatment in tabulation.

The proposed amendments to 1VAC20-100-40 clarify the treatment of ballots during tabulation in the case of ranked choice overvotes and skipped rankings to account for differences between the first-choice ranking tabulation round and the ranked choice voting tabulation rounds.

The amendments to 1VAC20-100-50 amend the tabulation process to conform to the established processes for ranked choice voting, particularly in relation to the voting systems and ranked choice voting

tabulation software. The amendments include creation of a first-choice ranking tabulation round where only first-choice rankings are tabulated and a candidate has an opportunity to win based upon first-choice rankings by reaching the “maximum possible threshold” without proceeding to the ranked choice voting tabulation rounds. The maximum possible threshold is created for the first-choice ranking tabulation round to ensure that ballots without valid first-choice rankings, but valid subsequent rankings, will be included in the threshold to win. The amendments also provide that software may be used for tabulation of the ranked choice voting rounds, subject to approval by the Department of Elections.

The amendments to 1VAC20-100-70 provide greater detail about the reporting of results and preservation of records related to ranked choice voting elections. The amendments require reporting of first-choice ranking tabulation results by precinct, reporting of ranked choice voting round results, and the retaining of a record of votes cast for public inspection and copying. Further, the amendments require the Department of Elections to develop guidance for compliance with the reporting requirements.

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.”

§24.2-673.1 of the Code of Virginia became effective on July 1, 2021, providing county and city governing bodies the option to use ranked choice voting as the method of electing their members. §24.2-673.1(D) of the Code allows the State Board of Elections to “promulgate regulations for the proper and efficient administration of elections determined by ranked choice voting,” and §24.2-103(A) of the Code states that 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.” In furtherance of those provisions, the State Board of Elections promulgated ranked choice voting regulations (1VAC20-100-10 through 1VAC20-100-80) in 2021.

In preparation for the first ranked choice voting contest to be held in Virginia (the 2023 June Primary Election for the Arlington County Board of Supervisors), it was determined that amendments to the ranked choice voting regulations were required for consistency with established ranked choice voting practices and the technological capabilities of the voting systems and available ranked choice tabulation software, and to ensure best practices are utilized.

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 approve the amendments to 1VAC20-100 regarding Ranked Choice Voting