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Exempt Action Final Regulation Agency Background Document

Agency name	State Board of Elections
Virginia Administrative Code (VAC) citation(s)	1 VAC20-80
Regulation title(s)	Recounts and Contested Elections
Action title	Periodic Review of Chapter 80 Recounts and Contested Elections
Final agency action date	06/28/2016
Date this document prepared	07/05/2016

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) or an agency's basic statute, the agency is not required, however, 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

On May 15, 2013, the previous membership of the State Board of Elections announced a periodic review of all of its regulations pursuant to Regulation 20-10-120 calling for a review of all regulations after each presidential election. The objectives of this periodic review was similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance.

The original comment period for Chapter 80 opened June 3, 2013, and closed June 24, 2013. During this time period, only one comment from one commenter was received. The one comment asked that the term “paper ballot” be used properly in regulation 1VAC 20-80-20.

However, this comment, nor any suggestions from the agency, was ever officially provided to the State Board of Elections for adoption.

The previous Board did not take up the matter again before the expiration of its term and the current Board was left to complete the process. Due to the extended period of inaction on this item, the underlying standards upon which previous analyses were based have changed. It is for this reason that additional edits have been made that were not derived from the public comments received in the initial proposal stage.

The definitions of “paper ballot,” “printed ballot,” and “ballot scanner machine” were codified in Virginia Code § 24.2-101 during the 2014 session of the General Assembly. The revised proposal of the regulation reflects usage consistent with statute. In the intervening period since the Department of Elections was established as a separate entity from the State Board of Elections. The Department of Elections is headed by its Commissioner. Edits in the revised proposal reflect this organizational change. In their March 15, 2016 meeting the Board approved a 21 day comment period for the revised proposal which ended on April 25, 2016.

The Board received 4 comments during the revised proposed comment period. An additional comment on the revised proposed regulation for 1VAC20-60 referred to the proposal for 1VAC20-80 and has been included, in relevant part, in the comments for Chapter 80 prepared for the Board today. Based on those comments a few minor edits for clarification have been made. The substance of the regulation before the Board today remains largely the same as that in the revised proposed regulation.

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 of Elections, at its June 28, 2016 meeting, approved final revisions to its regulations in Chapter 80 Recounts and Contested Elections, as a result of a periodic review process begun in 2013.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

NA

Periodic review/small business impact review report of findings

This section may be used to report the results of a periodic review/small business impact review. Otherwise, delete this section.

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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response
David Bjerke, City of Falls Church Office of Voter Registration & Elections	I favor these proposed changes. As a General Registrar of Voters and Director of Elections for the City of Falls Church, I am in favor of these proposed changes. Sincerely, Dave Bjerke	Finalized regulation
Philip Schetrompf	Proposed changes are acceptable The proposed changes appear to be sensible and I support them.	Finalized regulation
G S Riddlemoser, Director of Elections & General Registrar, Stafford County	concur I concur that this is adequate and appropriate for the task at hand	Finalized regulation
Therese Martin	define election materials Section C.1. requires that "other election materials" be secured in sealed boxes. This is a pretty broad statement unless "other election materials" is defined elsewhere, which should then be noted here. Those responsible for carrying out the provision may have differing notions of what these materials are.	Language clarified in final regulation

<p>Jody D. Brown</p>	<p>D3 is different from 24.2-802 C although I suspect the intend was not to change it. In 24 2-802 C, "each candidate or petitioner and governing body or chief executive officer", recommends to the Court "an equal number of the officers of election to be recount officials." The proposed D3 contains the sentence, "Such list shall note recommended recount officials who the court may appoint if the officials and alternates recommended by the parties to the recount are not of sufficient number to conduct the recount within a reasonable period." The D3 language seems to me ambiguous about whether the parties could recommend recount officials to the Court who had not been election officials in the election. If my reading is a possible interpretation, then I think we could have chaos trying to incorporate people who have had no training as officers of elections.</p> <p>Section E seems to take away from the Court the possibility of asking for information directly from the localities. This assertion of control over the Court is easily remedied by adding a phrase to the last sentence in E. The electoral board of each county or city in which the recount is to be held shall provide the requested information to the Secretary Commissioner of the State Board Department of Elections or directly to the Court if so requested.</p> <p>Finally, in G, in every other location in this revision paper ballot is changed to printed ballot. I'm not entirely sure why printed is better than paper, but if it is, shouldn't it be changed here?</p>	
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The final revised regulation of Chapter 80 meets the criteria set out in Executive Order 17 (2014). The regulations are necessary for administering elections, clearly written, and easily understandable. The regulation continues to be necessary to clarify administrative responsibilities and processes under current law. The revised proposed regulation received mostly positive comments for adoption, with one comment suggesting a clarification. The final revision incorporates the suggested clarification. The changes to the regulation were made to bring it into conformance with current state law.