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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC20-90-40
VAC Chapter title(s)	Campaign Finance and Political Advertisements
Action title	Disclosure statement requirements; print media advertisements.
Date this document prepared	6/28/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The purpose of this new regulation is to guarantee that disclosure statements on certain political print media advertisements are displayed in a conspicuous manner and are proportionate to the size of the advertisement. The requirements in this proposed amendment are similar to federal print media advertisement requirements established by the Federal Election Commission under 11 CFR § 110.11.

The enforcement of this regulation is delayed until January 1, 2024.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

The State Board of Elections – The Board
The Virginia Department of Elections – ELECT
Federal Election Commission – FEC
Campaign Finance Disclosure Act - CFDA

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 Executive Order 14 (as amended, July 16, 2018), “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

House Bill 1238 from Virginia’s 2020 General Assembly Session instructs the State Board of Elections to promulgate regulations for the implementation of the bill’s provisions as it relates to print media requirements. This regulation shall be included in the provisions of law summarized by the Board under § 24.2-946 of the Code of Virginia.

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 Virginia Department of Elections is promulgating this regulation on behalf of the Board, which is authorized to “make rules and regulations and issue instructions ... to promote the proper administration of election laws” as per the Code of Virginia §24.2-103.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation sets standards for the disclosure statements on print advertisements sponsored by a candidate campaign committee or by a person or political committee other than the candidate campaign committee. Print advertisements from these parties must have disclosure statements that are clear and conspicuous.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory Action seeks to provide new provisions for disclosure statements that are clear and conspicuous in the Virginia Administrative Code.

For an advertisement that is 24x36 inches or smaller, 12 point font meets this requirement. The disclosure statement must be in a printed box set apart from the other contents of the communication. Further, the disclosure statement must have a reasonable degree of color contrast with the advertisement's background. Parties can meet this requirement by placing black print on a white background. Parties can also meet this requirement if the degree of contrast between a disclosure statement and an advertisement's background is no less than the contrast between the background and the largest text on the advertisement.

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.

No alternative action was considered because the Code of Virginia authorizes the State Board of Elections to promulgate regulations to promote the uniform application of election law throughout the Commonwealth, and because the Board unanimously approved the decision to submit this regulation verbatim.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The State Board 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, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.