



# COMMONWEALTH of VIRGINIA

Office of the Attorney General  
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## MEMORANDUM

**To:** Robert H. Brink  
Chairman, Virginia State Board of Elections

Christopher E. Piper  
Commissioner, Virginia Department of Elections

**From:** Carol L. Lewis  
Assistant Attorney General 

**Date:** December 13, 2021

**Subject:** Letter of Assurance for Periodic Review of Regulations – Absentee Voting [1 VAC 20-45-40]

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Pursuant to the Code of Virginia and Executive Order 14 (as amended July 16, 2018), a periodic review of a regulation every four years shall include an examination by the Office of the Attorney General to ensure statutory authority. In that regard, I have reviewed the State Board of Elections regulation referenced above. In my view, as counsel to the State Board of Elections and Department of Elections, this regulation may be promulgated pursuant to Title 24.2 *et seq.* of the Code of Virginia (Code).

The regulation does not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor does it appear to conflict with any federal law. Pursuant to Virginia Code

§ 2.2-4002(B)(8), the regulation is exempt from the provisions of Chapter 40 of Title 2.2 of the Code of Virginia, as it is an agency action relating to the “conduct of elections or eligibility to vote.”

Subsection (C)(2) of the regulation now conforms with Chapter 235 of the 2021 Special Session of the Acts of Assembly, which states, “[a] voter's failure to have a witness sign the absentee ballot return envelope for any election held during a declared state of emergency related to a communicable disease of public health threat **shall not be considered a material omission** and shall not render his ballot void.” (emphasis added).

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 regulations.