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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-60-80
VAC Chapter title(s)	Election Administration
Action title	Request for a risk-limiting audit for a contested race within a jurisdiction
Final agency action date	August 16, 2022
Date this document prepared	September 5, 2022

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.

This regulatory action establishes the process through which a local electoral board may request a risk-limiting audit of a contested race in its jurisdiction. The regulatory action specifies that an electoral board must cast a majority vote at a public meeting to request an audit for a particular contested race. Further, an electoral board must sign and complete the new Form SBE 671.2(D) and identify the race(s) subject to the requested audit.

Under this action, the State Board of Elections will grant an audit request if the form is properly completed, all statutory requirements are met, and the request is submitted prior to the State Board meeting that determines all the contested races for that election that will receive a risk-limiting audit. Finally, the regulatory action specifies that, as needed, the State Board will grant a two-week extension to

the electoral board's certification deadline under § 24.2-671 to accommodate the conduct of the risk-limiting audit.

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."

Acts of Assembly Chapter 443, passed by the 2022 General Assembly, makes changes to Virginia's risk-limiting audit process. Subsection § 24.2-671.2(D) gives local electoral boards the option to request to conduct a risk-limiting audit for a contested race within that local electoral board's jurisdiction. Subsection § 24.2-671.2(D) also directs that "[t]he State Board shall promulgate regulations for submitting such requests."

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 August 16, 2022 the State Board of Elections held a public meeting voted unanimously to approve proposed Form SBE 671.2 (D) and Regulatory Action 1VAC20-60-80, Request for a risk-limiting audit for a contested race within a jurisdiction.