



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Elections; Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-70
VAC Chapter title(s)	Absentee Voting
Date this document prepared	12/06/21

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**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"ELECT" means the Department of Elections

"SBE" means the State Board of Elections

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 or 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 SBE is granted the authority to promulgate regulations pursuant to §24.2-103 and Title 24.2 of the Code of Virginia. The SBE, through ELECT, shall supervise and coordinate the work of the county and

city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections. The SBE is instructed to 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.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

ELECT has determined that this regulation is the least burdensome alternative to meet the purposes set out by the statutes. The alternatives considered by SBE included:

1. Amend the regulation: This option was selected because issues were identified that require making changes to the regulation; the regulation required modification to meet updated provisions as a result of Acts of Assembly Chapter 235 passed during the 2021 Special Session.
2. Retain the regulation without amendment: This option was not selected as issues were identified that required making changes to the regulation.
3. Repeal the regulation. This option was not selected because the regulation is still needed to obtain uniformity in practices and proceedings and legality and purity in all elections.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Jeffrey Shapiro	In sum, Section F of [1VAC20-70-20] is unauthorized by the statute and, as a practical matter, fails to achieve the statutory goal of reliably determining the date on which an absent ballot is mailed. It should be revised to carefully conform to the dictates of the statute. Specifically, the Board may only authorize or direct a General Registrar to refer to the postmark, as defined in the statute, to determine the date of mailing.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.
Geoffrey Akey	In sum, Section F of [1VAC20-70-20] is unauthorized by the statute and, as a practical matter, fails to achieve the statutory goal of reliably determining the date on which an absent ballot is mailed. It should be revised to carefully	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

	conform to the dictates of the statute. Specifically, the Board may only authorize or direct a General Registrar to refer to the postmark, as defined in the statute, to determine the date of mailing.	
Geoffrey Akey	Add a paragraph to require voters to provide a copy of their photo ID every time they vote absentee.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.
Geoffrey Akey	Add a paragraph to (1) Require indefinitely confined voters to reapply each year to receive absentee ballots, rather than receive them automatically; and (2) Require voters who are indefinitely confined due to age or disability to show a photo ID in order to vote absentee.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.
Geoffrey Akey	Add a paragraph to (1) Require administrators of residential care facilities and retirement homes to notify residents' relatives of when special voting deputies will be on site for residents who plan to vote absentee; and (2) Make it a felony for a facility employee who attempt to influence a resident's vote.	The agency appreciates the commenter's feedback and participation in the periodic review of this regulation.

An informal advisory group was not formed for the purposes of assisting in any reviews of regulations from the SBE’s 2021 Periodic Review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of the public health, safety, and welfare, as it is needed to meet the statutory mandate to promulgate rules and regulations to ensure the uniform application of the law for absentee voting. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

ELECT recommends this regulation remain in effect with an amendment. Subsection (B)(7) of 1VAC20-70-20 required that if a voter’s witness did not sign Envelope B, that is always a material omission. Chapter 235 of the Acts of Assembly was passed during the 2021 Special Session and 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.” Accordingly, this provision must be modified.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

As discussed above, this regulation is authorized by statute. ELECT has determined this regulation is effective as amended and does not burden small businesses. There are no further known overlaps or conflicts with federal or state law.
