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Exempt Action: Final Regulation Agency Background Document

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| Agency name | Department of Elections |
| Virginia Administrative Code (VAC) Chapter citation(s) | 1VAC20-100 |
| VAC Chapter title(s) | Ranked Choice Voting |
| Action title | RCV Batch Elimination Amendments |
| Final agency action date | 7/2/2024 |
| Date this document prepared | 7/5/2024 (amended 7/29/2024) |

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 amends 1VAC20-100-10 and 1VAC-20-100-50 of the Administrative Code of Virginia. The proposed additions to the existing ranked choice voting (RCV) regulations will add the option for batch elimination of multiple candidates in a round of instant runoff (single winner) RCV races where it is mathematically impossible for the eliminated candidates to be elected.

Currently, the RCV regulations require the elimination of one candidate in each round of the RCV tabulation process. In races with many candidates, including independents and write-ins, this could lead to extended tabulation during the canvass. To address this issue, many jurisdictions utilize batch elimination of multiple candidates for whom it is mathematically impossible to be elected.

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."

§24.2-673.1 of the Code of Virginia provides county and city governing bodies the option to use ranked choice voting as the method of electing their members. §24.2-673.1(C) of the Code allows the State Board of Elections to "promulgate regulations for the proper and efficient administration of elections determined by ranked choice voting," and §24.2-103(A) of the Code states that the State Board of elections "shall 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."

In preparation for the November 2024 election, it was determined that clarification of existing ranked choice voting regulations ("RCV") were needed for the reasons stated in the "Brief Summary" above.

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 July 2, 2024, the State Board of Elections voted unanimously to approve the amendments to 1VAC20-100 regarding Ranked Choice Voting.