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Emergency Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-90-40
VAC Chapter title(s)	Campaign Finance and Political Advertisements
Action title	Emergency Regulation: Disclosure statement requirements; print media advertisement
Date this document prepared	5/31/24

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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 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 require 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 consistent with federal print media advertisement requirements established under 11 CFR § 110.11.

Acronyms and Definitions

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

The State Board of Elections – SBE/Board
 The Virginia Department of Elections – ELECT
 Stand By Your Ad – SBYA

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Previously, §24.2-956.1(5) of the Code of Virginia required that a disclosure statement on print media be displayed in a conspicuous manner with at least 7-point font size. Acts of Assembly Chapter 557 of 2020 (HB 1238) amended this section to remove the specific font size requirement and simply require that the font size be proportionate to the size of the advertisement. Further, it directs the SBE to promulgate standards for complying with the requirements.

While the initial Board action occurred in 2021 and the language was published on Town Hall, there was a delay in the process after the “Notice of Intended Regulatory Action” stage; it is currently in the “Proposed” stage (Action 5752 / Stage 9529). However, the initial legislation mandated a delayed effective date, exempting all advertisements paid for or distributed prior to July 1, 2024 from the regulatory requirements.

As Action 5752 will not be in its final stage by July 1, an emergency regulation is required to comply with the intended date in Acts of Assembly Chapter 557 of 2020. Further, the SBE is delaying enforcement of the new standards until January 1, 2025, consistent with §24.2-956.1(5) of the Code of Virginia. This delay is permissible, as discretion is given to the SBE by § 24.2-955.3(D) in determining violations related to advertisement disclosures which is conducted through SBYA hearings. This mitigates any potential confusion that may arise concerning compliance with the regulation.

Ultimately, any committee that is reported as in violation of campaign finance disclosure requirements receives due process through a hearing with the SBE in which they are permitted to provide any supporting evidence, documentation, or testimony that can assist the Board with determining compliance and ensure no committee is incorrectly subjected to this regulation prior to January 1, 2025.

All appropriate agencies were informed of this emergency action prior to submitting.

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.

ELECT is promulgating this regulation on behalf of the SBE, 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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action seeks to provide new provisions in the Virginia Administrative Code establishing requirements for disclosure statements to ensure they are clear and conspicuous. These requirements include:

- The disclaimer must be a sufficient font size to be clearly readable by the recipient of the communication. For an advertisement that is 24x36 inches or smaller, twelve (12)-point font size meets this requirement.
- The disclosure statement must be contained in a printed box set apart from the other contents of the communication.
- 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.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Public

Disclosure statements on printed campaign materials will be more visible and will allow voters to see more clearly who has paid for the material. This regulation provides a clearer standard for the public from which to make a complaint.

Candidates for Public Offices

Disclosure statements will need to meet new requirements on printed campaign materials purchased on or after January 1, 2024. The promulgation of this regulation will give more guardrails and instructions to candidates and their campaigns regarding the requirements for printed campaign material disclosure statements.

General Registrars and Local Electoral Boards

Local election officials will have a clearer rule for disclosure statements on printed campaign materials. When a candidate or voter comes to the general registrar’s office to ask about disclosure statements, they will have a clear answer and be able to direct that person to a specific regulation with specific rules.

ELECT/SBE

ELECT will have a clearer standard for print media disclosure statements when assessing SBYA. The SBE will have a clearer standard for deciding whether candidate or campaign has violated the requirements of SBYA. The regulation may or may not increase the number of complaints received by the public.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

This regulatory action is identical to federal requirements and the SBE is statutorily required to promulgate a regulation. Therefore, there are no alternatives to promulgating the regulatory action and any current requirements fall below the federal regulation standards of 11 CFR § 110.11.

As indicated in the current Candidate Campaign Committee Summary of Laws and Policies, and §§ 24.2-956 and 24.2-956.1 of the Code of Virginia, the visual statement required on print media advertisements must be displayed in a conspicuous manner in a font size proportionate to the size of the advertisement. Advertisements with multiple folds, faces or pages must include the disclosure on at least one fold, face or page.

Print media advertisements appearing in an electronic format must be displayed in a minimum font size of seven point; however, if the advertisement lacks sufficient space for a disclosure statement of a minimum seven point font size, then the advertisement will meet the disclosure requirements if, by clicking on the advertisement, the viewer is taken to a landing page or a home page that displays the required disclosure statement. Committees will be considered to have complied with the law if the disclosure legend or statement conveys the required information.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
1VAC20-90-40	Disclosure statements for printed media advertisements must be clear and conspicuous, meaning easy to read and not easily overlooked; for advertisements 24 inches by 36 inches or smaller, 12-point font meets the requirement. Disclosure must be contained within a printed box and have a reasonable degree of color contrast. The disclosure does not need to be on the front except where advertisement only has front face, such as a billboard. An advertisement that would require a disclosure, if distributed separately, that is included in a package of materials, must contain the disclosure.	§24.2-103, §24.2-956, §24.2-956.1, 11 CFR § 110.11	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.