



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 20-40-50, 20-40-70, 20-40-80, Forms
<b>Regulation title</b>	2013 Periodic Review Voter Registration
<b>Action title</b>	2014 Periodic Review Voter Registration
<b>Final agency action date</b>	June 10, 2014
<b>Document preparation date</b>	June 10, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Board of Elections is proposing amendments to conclude the 2013 periodic review of its regulations on voter registration announced May 15, 2013, pursuant to 1 VAC 20-10-120. The comment period for Chapter 70 opened on June 3, 2013, and closed June 24, 2013. The staff presented comments received and proposed changes to the regulations to the Board at its meeting on December 2, 2013. The Board approved inviting comments on the proposed changes through the Town Hall for a comment period December 30, 2013, through January 13, 2014. No comments were received. The proposed changes include clarifying language related to application signature and determining residency, removing a requirement for the registrar to seek information not material to the application, updating referenced forms and moving provisions related to absent military and overseas voters to a new Chapter 45.

### Statement of final agency action

*Please 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.*

The State Board Elections at its meeting on June 10, 2014, approved the amendments to Chapter 40 of its regulations titled 2013 Periodic Review Voter Registration.

**Family impact**

Assess the impact of this regulatory action on the institution of the family and family stability.

None.

**Periodic review**

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulations in Chapter 40 as amended meet the criteria set out in Executive Order 14 (2010). The regulations are necessary for administering elections, clearly written and easily understandable.

Commenter	Regulation	Comment	Agency Response
Project Vote	20-40-20	<p>Comment to 1 VAC 20-40-20.Required intent for voter registration.</p> <p><i>Comment to Subsection B.4:</i></p> <ul style="list-style-type: none"> <li>• In this section, in order to add clarity, we would recommend adding “solely by fact of their registration” to the end of paragraph four as follows:</li> </ul> <p><i>4. A person who applies to register to vote in a precinct for the primary purpose of registering to vote or voting in that precinct has not established the intent to establish domicile there solely by fact of their registration.</i></p>	No regulation change appears needed at this time.
W.T. Latham	20-40-40	<p><b>Amending 1 VAC 20-40-40</b></p> <p>In 1 VAC 20-40-40(C), there is lack of clarity. One part of the paragraph says that the "general registrar shall request the information in writing on a form prescribed by the board and the applicant shall respond in writing." Later in the same paragraph, if the applicant does not provide the information by the last day to register, "and the general registrar is unable to determine the applicant's residency through any other means," then the registrar is to deny the application. There are at least a couple of issues created by the wording of paragraph (C):</p> <ul style="list-style-type: none"> <li>• What does "any other means" mean, and how does this mesh with the requirement that the applicant must respond in writing?</li> <li>• What happens when the application is received</li> </ul>	No regulation change appears needed at this time.

		so near the close of books that it is impossible, or at best impractical, for the registrar to mail a form to the applicant requesting information that would allow the application to be accepted?	
Project Vote	20-40-40	<p>Comment to 1 VAC 20-40-40. Review of application.</p> <p>The process and timeline for applicants to supplement voter registration applications should be revised to be more voter-friendly and to prevent penalizing applicants who file timely applications.</p> <p>First, there is no justification for applicants to be required to file a completely new application solely because of inadvertent missing information or potential discrepancies that could be clarified. In the event of missing information, applicants should be able to easily supplement their original applications, provide any such missing information, and correct any errors.</p> <p>Second, after submitting an initial form before the deadline, applicants should be able to provide missing information, clarify any discrepancies, and correct any errors after the deadline has passed up through Election Day, including at the polls. Instead of denying applications that require supplemental information, those applications should be held open pending receipt of the information. This would allow an applicant who submitted an application by the deadline to register to correct any perceived problems with the application including at the polls. These voters could be flagged at the polls and offered the opportunity to provide the information, and, if appropriate, complete the supplemental questionnaire. If applicants do so, they should be allowed to vote. Applications that have not been supplemented or corrected by the end of the next general election could then be denied.</p> <p>If for any reason a voter's eligibility cannot be confirmed immediately at the polls, for example, through showing the identification required by HAVA, at minimum voters should be able to cast a provisional ballot and those ballots should be counted as long as the initial voter registration application was submitted before the registration deadline.</p>	No regulation change appears needed at this time.
W.T. Latham	20-40-50	<p><b>Amending 1 VAC 20-40-50</b></p> <p>I recommend adding, after the question "Do you have a specific plan to move away from this county or city at a fixed date in the future?" the following question: "If so, when?"</p> <p>The purpose in adding this question would be to allow the voter to explain whether the departure is based on a future contingency (which would allow the application to be accepted). See 1 VAC 20-40-20(B)(2). The voter's additional information would allow the registrar to make a better-informed judgment about the applicant's "specific plan" to move away from the county or city.</p>	Amend regulation.

		If this section of the Administrative Code is amended, then the letter would also need to be amended.	
W.T. Latham	20-40-60 and 20-40-40	<p><b>Harmonizing 1 VAC 20-40-60 and 1 VAC 20-40-40</b></p> <p>1 VAC 20-40-60(D) requires that the applicant's answers to the supplemental questions "must be in writing and must be returned before the last day to register as established in 24.2-416 of the Code of Virginia." 1 VAC 20-40-40(C) allows the registrar to use "any other means" to establish the applicant's residency.</p> <p>Accordingly, a couple of issues are presented:</p> <ul style="list-style-type: none"> <li>• 20-40-60(D) and 20-40-40(C) appear to be contradictory.</li> <li>• The requirement that the form should be returned before the last day to register should probably be worded such that the form should be returned before the close of books. I think that latter is what was intended, but that's not exactly what the words say.</li> </ul>	No regulation change appears needed at this time.
Project Vote	20-40-60	<p>Comment to 1 VAC 20-40-60. Review of supplemental questions.</p> <p><i>Comment to Subsection D:</i></p> <ul style="list-style-type: none"> <li>• Registrars should not deny applications due to missing information or information requiring clarification until the election has been completed.</li> </ul> <p>As recommended in our comments to 1 VAC 20-40-40 above, applicants should be able to provide the supplemental questionnaire after the deadline including at the polls and then vote, as long as the initial voter registration application was submitted by the registration deadline.</p>	No regulation change appears needed at this time.
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70</b></p> <p>1 VAC 20-40-70(A)(2) states that "[a]pplications for voter registration must be signed by the applicant or the name and address of the assistant entered on the signature line for an applicant with physical disability." On the application, however, the instructions are as follows: "If applicant is unable to sign due to a physical disability, write the name/address of person who assisted. (Required)." The line referred to in these instructions is not the signature line.</p> <p>I suggest changing the wording of 20-40-70(A)(2) to reflect that the instructions on the form must be followed. At this time, the person assisting the disabled voter is not being instructed to put anything on the signature line.</p>	Amend regulation to clarify.
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70 (Part 2)</b></p> <p>Additional recommended changes to 1 VAC 20-40-70:</p> <ul style="list-style-type: none"> <li>• Indent 20-40-70(D)(2) and 20-40-70(D)(3) and make them "a" and "b," respectively, under 1 VAC 20-40-70(D)(1).</li> <li>• In 20-40-70(E), registrars are required, "if practicable," to attempt to contact the applicant and obtain the missing information requested on an</li> </ul>	Amend regulation.

		<p>application for voter registration that is not material to determining eligibility to vote." First, this is not practicable. Second, the pieces of information listed in 20-40-70(B) as being nonmaterial are not necessarily beneficial to processing an application, and the Administrative Code should not place such an unnecessary burden on scarce registration and election resources</p>	
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70 (Part 3)</b></p> <p>I inadvertently left off my final recommendation for 1 VAC 20-40-70 in my previous post. Here it is: Delete the word "signed" in 20-40-70(F). This would allow the voter to update the information by email.</p>	No regulation change appears needed at this time.
Project Vote	20-40-70	<p>Comment to 1 VAC 20-40-70. Applications for voter registration; affirmation of United States citizenship</p> <p><i>Comment to Subsection D:</i></p> <ul style="list-style-type: none"> <li>• Applicants should be able to verbally authorize the registrar to add their middle name to an application.</li> </ul> <p><i>Comment to Subsection G:</i></p> <ul style="list-style-type: none"> <li>• Any systematic programs designed to remove noncitizens from the voter rolls could result in wrongful cancellation of the registrations of eligible voters: such systematic programs cannot be conducted within 90 days of a federal election. <i>See</i> 42 U.S.C. 1973gg-6(c)(2)(A). Further, any systematic program to remove the names of ineligible voters (including non-citizens) from the official lists of eligible voters must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), as amended, see 42 U.S.C. 1973gg-6(b).</li> <li>• Any “matching” programs done for the purpose of maintaining accurate and complete voter registration programs should match a sufficient number and selection of fields to maximize the accuracy of those programs. This is particularly important because a large number of individuals share a last name, first name, and birth date. <i>See, e.g.</i> Minutes of Virginia State Board of Elections Meeting, April 3, 2013, lines 118-132 (additional criteria of last four digits of Social Security number cut numbers of potential duplicate registrations nearly in half); <i>see also</i> Probability and the Birthday Paradox, <i>Scientific American</i> (March 29, 2012), <a href="http://www.scientificamerican.com/article.cfm?id=bring-sciencehome-probability-birthday-paradox">http://www.scientificamerican.com/article.cfm?id=bring-sciencehome-probability-birthday-paradox</a> (last visited June 23, 2013) (there is a 50-50 chance that 2 people will share the same birthday in a group of only 23 people). Inaccurate match programs endanger the votes of eligible citizens.</li> </ul>	No regulation change indicated at this time.

W.T. Latham	20-40-80	<b>Amending 1 VAC 20-40-80</b>  I suggest making 20-40-80 apply to the Federal Write-in Absentee Ballot (FWAB) as well as the Federal Post Card Application (FPCA). Such a change would make it clear that, while the ballot portion of an emailed or faxed FWAB could not be counted (because ballots cannot be emailed or faxed back to electoral boards), the registration portion of the FWAB could be accepted and processed as a voter registration.	Update Handbook for General Registrars and Electoral Board Members Chapter 11 to clarify that the registration portion of the FWAB still must be processed even if the ballot cannot be accepted.
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