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## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Elections
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	1 VAC 20-90-40
<b>VAC Chapter title(s)</b>	Campaign Finance and Political Advertisements
<b>Action title</b>	Disclosure statement requirements; print media advertisement
<b>Date this document prepared</b>	1/20/2025

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 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.*

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 Virginia Department of Elections – ELECT  
Stand By Your Ad – SBYA

### 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.*

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On January 15, 2025, the State Board of Elections unanimously voted to approve “1VAC20-90-40 Disclosure statement requirements; print media advertisements” and move the regulation to the final state.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to the language and requirements in this regulation since initially proposed. However, an emergency regulation containing identical language to this regulation was promulgated on 6/28/2024 with an enforcement date of January 1, 2025, and will expire on 12/27/2025. The emergency regulation was promulgated to ensure compliance with the intended effective date of the regulation in Acts of Assembly Chapter 557 of 2020.

### 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 and 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.*

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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.” Additionally, Acts of Assembly Chapter 557 of 2020 required the SBE to promulgate standards regarding disclosure statements for print media advertisements.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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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.

This regulation is statutorily required and has no impact on public health and safety. It can improve public welfare by having clear and consistent standards for campaign finance disclosures in which all members of the public receive transparent and conspicuous information regarding the general source of funding for campaign advertisements.

## 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.*

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This regulatory action provides 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.*

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### *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, 2025. 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.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

The proposed regulation matches the language of 11 CFR §110.11(c)(2). Thus, the regulation is not more restrictive than federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

*Other State Agencies Particularly Affected*

Other state agencies will not be impacted by this regulatory change.

*Localities Particularly Affected*

As this would be a statewide regulation, no particular locality would be particularly affected.

*Other Entities Particularly Affected*

Candidates and their campaigns will be particularly affected by this regulation. They will need to ensure that when they produce print media that they have the appropriate disclosure statement. Currently, the minimum font size is 7 point or otherwise proportional to the printed media. This regulation would increase it to 12-point font with color contrast. Further, it would require the disclosure statement to be contained within a printed box.

Seven Point | Twelve Point

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage and provide the agency’s response. Include all comments submitted: including those*

received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Campaign Legal Center	<ol style="list-style-type: none"> <li>1. Require sponsors of digital advertisements to establish that particular ads could not include complete disclosure statements; and</li> <li>2. Specify that viewers of digital advertisements must be able to access the disclosure statement in one step.</li> </ol>	<p>As it pertains to comment #1 regarding disclosures occurring on a separate landing page where there is insufficient space on the advertisement, establishing compliance with the disclosure requirements is statutorily mandated. As part of the Stand By Your Ad process the State Board may review any complaints regarding this in the event a proper complaint is filed for an electronic format print media advertisement that does not have the required disclosure. In such a case, the respondent would be required to establish compliance to avoid a penalty. Therefore, the additional language proposed for the regulation is not required. As it pertains to comment #2, the proposal exceeds the directives to the State Board in 24.2-956(4) and 24.2-956.1(5) and there are separate, more specific disclosure statement requirements related to print media appearing in electronic format in 24.2-956(5) and 24.2-956.1(6). The purpose of the directives to the SBE in 956(4) and 956.1(5) is to give guidelines about the size of font for disclosures under those subsections.</p>

**Detail of Changes Made Since the Previous Stage**

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
NA	1VAC20-90-40	NA; Same as previous stage	NA; Same as previous stage	NA; Same as previous stage

**Detail of All Changes Proposed in this Regulatory Action**

List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
NA	1VAC20-90-40	<p>New Requirement: 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.</p>	<p>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.</p>