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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) | 1VAC20-45-40 |
| VAC Chapter title(s) | Absent Military and Overseas Voters |
| Action title | 2021 Periodic Review Chapter 45 Material omissions from Federal Write-In Absentee Ballots |
| Final agency action date | 11/15/2021 |
| Date this document prepared | 11/30/2021 |

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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*.

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.

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections (SBE) is required to conduct a periodic review of all regulations every four years. Additionally, 1VAC20-10-120 requires the SBE to conduct a periodic review of its regulations following each presidential election.

The Department of Elections recommends amendments to this regulation at the advice of the Office of the Attorney General and with consideration of public comment on this chapter during the periodic review.

Subsection (C)(2) of 1VAC20-45-40 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.

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). “Mandate” is defined as “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.”

A periodic review of regulations serves as the mandate and impetus for this action.

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.

At the November 15, 2021, State Board of Elections meeting, the Board approved amendments to 1VAC20-45-40 Material omissions from Federal Write-In Absentee Ballots as a result of the 2021 periodic review of regulations.