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Exempt Action: Proposed Regulation Agency Background Document

Agency name	The Virginia Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1VAC20-70-40
VAC Chapter title(s)	Alternative processing procedures for absentee ballots returned before election day
Action title	Alternative processing procedures for absentee ballots returned before election day.
Date this document prepared	August 20, 2026

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.

The existing regulation, 1VAC20-70-40, establishes alternative procedures for processing absentee ballots returned before Election Day. The regulation currently requires each locality to hold a mandatory pre-processing meeting on the seventh day immediately preceding the election and imposes additional pre-processing requirements before Election Day. The regulation was adopted following amendments to § 24.2-709.1 of the Code of Virginia requiring mandatory pre-processing of absentee ballots beginning on the seventh day immediately preceding an election.

The proposed amendments establish a threshold for when a locality must hold the additional Friday or Saturday pre-processing meeting. That meeting would be required only when, at the conclusion of the seventh-day pre-processing meeting, the number of returned mail absentee ballots awaiting pre-processing is at least 10% of the locality's returned mail absentee ballots and at least 100 ballots. The amendments also revise the circumstances requiring a Monday pre-processing meeting based on

whether outstanding ballots remain after application of the new threshold. Finally, the action makes non-substantive language updates to the introductory paragraph and the provision governing the final pre-processing meeting.

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."

Section 24.2-709.1 of the Code of Virginia requires mandatory pre-processing of absentee ballots beginning on the seventh day immediately preceding an election but does not specify the particular dates or times on which localities must conduct pre-processing. The State Board of Elections adopted 1VAC20-70-40 to implement and clarify those requirements. The State Board's regulatory authority for this regulation is provided by § 24.2-103 of the Code of Virginia.

The impetus for the proposed amendments is the experience of local election officials and ELECT staff during approximately four years of mandatory absentee ballot pre-processing. That experience has demonstrated that many localities do not need to conduct multiple pre-processing meetings to ensure that all absentee ballots are processed before Election Day. Localities may presently be required to schedule and staff additional meetings to process relatively small numbers of outstanding ballots, creating unnecessary administrative and staffing burdens during the week immediately preceding an election. The proposed amendments are intended to maintain timely and successful processing of absentee ballots while reducing unnecessary administrative burdens.