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Proposed Regulation Agency Background Document

Agency name	ELECT
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 20-90-40
VAC Chapter title(s)	Campaign Finance and Political Advertisements
Action title	Disclosure statement requirements; print media advertisement
Date this document prepared	3/4/2024

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

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, 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

House Bill 1238 from Virginia’s 2020 General Assembly Session instructs the SBE to promulgate regulations for the implementation of the bill’s provisions related to standards for the display of disclosure statements on print media. This regulation shall be included in the provisions of law summarized by the SBE under § 24.2-946 of the Code of Virginia.

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.

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

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.

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 be updated on printed campaign materials. This may be a financial burden to candidates and their campaigns as older printed campaign materials will either need to be altered or discarded. 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

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, 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

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, 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

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:	It is unclear if any costs, savings, fees, or revenue will change due to this regulation. This regulation may increase the number and amount
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<p>a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>of fees collected during its first year of enactment due to adjustments needed by candidates and their campaigns; if this occurs, this would increase the fees potentially collected from candidates and their campaigns. According to the SBE' 2022 Annual Report, a total of \$3,175 fees were collected in 2022 from SBYA violations.</p> <p>This regulation could increase the amount of money spent on postage to send individual candidates and campaigns notice of their violations as well notice of the SBE's hearing. If the number of violations increases, ELECT staff will have to take more time processing SBYA complaints.</p> <p>Alternatively, this regulation could reduce the number of complaints and violations thus reducing the fees collected and expenses related to postage.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No impact on other state agencies</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action seeks to provide new provisions for disclosure statements that are clear and conspicuous in the Virginia Administrative Code.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>Table 2</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Table 2</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Table 1a, Table 3, Table 4</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and;</p>	<p>Table 1a, Table 3, Table 4</p>

b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Table 1a, Table 3, Table 4
Benefits the regulatory change is designed to produce.	Table 1a, Table 3, Table 4

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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.

This language is from the current Candidate Campaign Committee Summary of Laws and Policies. The above is a summarization of the statute §24.2-956 and §24.2-956.1. However, this alternative falls below the federal regulation standards of 11 CFR § 110.11.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulation will have minimal to no effect on small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

**Periodic Review and
Small Business Impact Review Report of Findings**

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to report the results of a periodic review/small business impact review.

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.

No public comments were received regarding this proposed regulation.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Virginia Department of Elections is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to

Ashley Coles
 by mail at 1100 Bank Street 1st Floor, Richmond Virginia 23219
 by phone at (804) 864-8933
 via email at Ashley.Coles@elections.virginia.gov
 by fax (804) 371-0194.].

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period. A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

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 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	§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.

	<p>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>		
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