



# COMMONWEALTH *of* VIRGINIA

*Office of the Attorney General*

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TO: Robert Brink, Chairman  
State Board of Elections

Christopher E. Piper, Commissioner  
Department of Elections

FROM: Carol L. Lewis  
Assistant Attorney General

A handwritten signature in black ink, appearing to read "Carol L. Lewis".

Date: 10/21/2020

Subject: Letter of Assurance for Amendment to Regulation 1VAC 20-70-20

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I have reviewed the proposed amendment to regulation 1 VAC 20-70-20, regarding material omissions from absentee ballots. In my view as counsel to the State Board of Elections, it has the authority to promulgate this regulation pursuant to Virginia Code § 24.2-103. This regulatory action is exempt from the Administrative Process Act pursuant to Virginia Code § 2.2-4002(B)(8) as it relates to the conduct of elections. The proposed amendment does not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, or any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed amendment.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	1VAC20-70-20
<b>VAC Chapter title(s)</b>	Absentee Voting.
<b>Action title</b>	Action Making an Illegible or Missing Postmark an Immaterial Omission on Absentee Ballot Envelopes
<b>Final agency action date</b>	10/20/2020
<b>Date this document prepared</b>	10/21/2020

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.*

This regulatory action modifies the regulation so that subsection (F) requires a general registrar to count a returned mail absentee ballot with a missing or illegible postmark under certain conditions. The mail ballot must be received by noon on the third day after the election. If the postmark is missing or illegible, the registrar will first review the ballot's Intelligent Mail Barcode then, if necessary, the sworn oath on the Ballot's B envelope to determine the ballot's submission date, pursuant to the rules of this regulation.

### 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."*

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Board decision.

### **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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The final amended text of this regulation was approved by the State Board of Elections on October 20, 2020 for immediate effect through the exempt process. The relevant regulation title is 1VAC20-70. Absentee Voting.