



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

PUBLIC HEARING

Tuesday, October 20, 2020
James Monroe Building
Conference Room C, D, & E
Video and Teleconference

Videoconference:

[https://covaconf.webex.com/
covaconf/j.php?MTID=m6e12
dd3cc7fc56ead994ff62d2424
b09](https://covaconf.webex.com/covaconf/j.php?MTID=m6e12dd3cc7fc56ead994ff62d2424b09)

Meeting password: CXwpug4Br29

Teleconference:

1-517-466-2023 US Toll

1-866-692-4530 US Toll-Free

Access Code: 171 734 3658

Richmond, VA

1:00 P.M.



**PUBLIC HEARING FOR
PROPOSED CHANGES TO 1VAC20-70-20
AGENDA**

DATE: Tuesday, October 20, 2020

LOCATION: James Monroe Building

101 N. 14th St., Richmond, VA

Conference room C, D, & E

TELECONFERENCE:

+1-517-466-2023 US Toll

+1-866-692-4530 US Toll Free

Access code: 171 734 3658

VIDEO CONFERENCE:

[https://covaconf.webex.com/covaconf/j.php?MTID=m](https://covaconf.webex.com/covaconf/j.php?MTID=m6e12dd3cc7fc56ead994ff62d2424b09)

[6e12dd3cc7fc56ead994ff62d2424b09](https://covaconf.webex.com/covaconf/j.php?MTID=m6e12dd3cc7fc56ead994ff62d2424b09)

Password: CXwpug4Br29

TIME: 1:00 PM

I. CALL TO ORDER

Robert Brink, Chairman

II. Presentation of 1 VAC20-70-20: Material Omissions from Absentee Ballots

*Daniel Davenport
ELECT Policy Analyst*

III. PUBLIC COMMENT

IV. ADJOURNMENT

NOTE: Public comment will be offered prior to Board action, but comments will be limited to the specific agenda item in question. An open public comment period will be offered prior to adjournment. Members of the public participating virtually who wish to give public comment on any of the agenda items may do so; if using WebEx, by using the raise hands feature, or if by phone, identifying themselves when the Chair opens the floor to those members of the public attending via telephone. **Due to Social distancing guidelines, we are limited to 24 seats to the public. A face mask is required to enter the building.**

<https://townhall.virginia.gov/L/ViewMeeting.cfm?meetingid=31528>



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STATE BOARD *of* ELECTIONS

Presentation of 1 VAC20-70-20: Material Omissions from Absentee Ballots

BOARD WORKING PAPERS

Daniel Davenport
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise
From: Daniel Davenport, Policy Analyst
Date: October 20, 2020
Re: Regulatory Action Related to Processing Absentee Ballots with Missing or No Postmark

Applicable Code Section: § 24.2-709

Attachments:

- Regulation text 1VAC20-70-20, Material omissions from absentee ballots.
- Proposed Amendment to text 1VAC20-70-20, Material omissions from absentee ballots.

Background:

On August 4, 2020, the State Board of Elections approved this regulatory action, which amends the regulation 1VAC 20-70-20, Material omissions from absentee ballots. This regulatory action states that a ballot “[S]hall not be rendered invalid based on a missing or illegible postmark if the ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but the return envelope does not have a postmark, or the postmark is missing or illegible.” This regulatory action received more than twenty-five comments during its publication period on the Virginia regulatory Town Hall website. Pursuant to 1VAC20-10-90, the State Board of Elections will hold a public hearing on any regulatory action that receives twenty-five or more comments. Therefore, the State Board will now hold a public hearing on this action. I

In light of the concerns and comments posted on Town Hall, the Department of Elections has drafted a proposed amendment to this regulatory action for the State Board of Election’s consideration. The amended text would replace sections F and G, concerning missing or illegible postmarks, with new language. The new language adds additional safeguards to guarantee that the process of absentee voting is safe, secure, and fair.

Under the new amendment, if a mail ballot is received after Election Day but by Friday at noon after the election, the local general registrar will check the ballot’s postmark. If the postmark is missing or illegible, the registrar will then review the information stored in the ballot’s Intelligent Mail Barcode. If the information in the Intelligent Mail Barcode shows that the ballot was mailed after the close of polls, the ballot will be rendered invalid. If there is no evidence from the mail barcode that the ballot was mailed after the close of polls, then the registrar will review the date on which the oath on Envelope B was signed. This is a sworn oath by the voter to provide accurate information, under penalty of felony for misinformation. If the oath was signed on or before the date of the election, the ballot will not be rendered invalid. If the oath was signed after the date of the election, the ballot will be rendered invalid.

Regulation Text (Pulled from Virginia Regulatory Town Hall)

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.
10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. The ballot shall not be rendered invalid based on a missing or illegible postmark if the ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but the return envelope does not have a postmark, or the postmark is missing or illegible.

G. For the purposes of this regulation, "postmark" means an official postmark of the United States Postal Service (USPS) or any other official indicia of confirmation of mailing by the USPS or other postal or delivery service.

Proposed Amendment

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
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3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.
10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

~~F. The ballot shall not be rendered invalid based on a missing or illegible postmark if the ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but the return envelope does not have a postmark, or the postmark is missing or illegible.~~

~~G. For the purposes of this regulation, "postmark" means an official postmark of the United States Postal Service (USPS) or any other official indicia of confirmation of mailing by the USPS or other postal or delivery service.~~

F. If a ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia but the return envelope has a missing or illegible postmark, the General Registrar shall refer to the Intelligent Mail barcode on the return envelope to determine whether the ballot was mailed on or before the date of the relevant election.

(i) If there is evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, the ballot shall be rendered invalid.

(ii) If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, including if the Intelligent Mail barcode was not scanned, the General Registrar shall refer to the date on which the oath on Envelope B was signed.

- a. If the oath on Envelope B was signed on or before the date of the relevant election, the ballot shall not be rendered invalid due to receipt after the close of polls by the General Registrar.
- b. If the oath on Envelope B was signed after the date of the relevant election, the ballot shall be rendered invalid.



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Public Comment

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