



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Elections
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 20-70-20
VAC Chapter title(s)	Material omissions from absentee ballots
Action title	Processing Absentee Ballots with Missing or No Postmark
Final agency action date	3/10/2021
Date this document prepared	3/5/2021

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.

The amendments alter the text of subsection (F)(2) and add subsection (F)(3) to the regulatory action. This language applies to mail absentee ballots with missing or illegible postmarks received by the General Registrar's office by noon on the third day after Election Day.

Under section (F), the General Registrar may use data from a ballot's Intelligent Mail barcode (IMb) to count the ballot, IF the IMb data shows the ballot was mailed on or before the date of the relevant election. If the data does not meet (F) but also does not show the ballot was mailed after the election the General Registrar will do the following:

Under (F)(2) if the ballot has an illegible postmark, the general registrar shall refer to the date on which the Envelope B oath was signed to determine whether the ballot was cast on or before the date of the relevant election.

Under (F)(3), a ballot with no IMb data and a missing postmark would not be counted.

Under (F)(1) any ballot with a missing or illegible postmark with IMb data showing it was mailed after Election Day will not be counted.

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."

On August 4, 2020, the State Board of Elections approved a regulatory action that allows for the counting of mail absentee ballots with missing or illegible postmarks that are received by the appropriate general registrar by noon the third day after an election. In a subsequent board meeting held on October 20, 2020, the State Board of Elections adopted amendments to this regulatory action, compelling the use of Intelligent Mail barcodes (IMBs) and voter oaths as evidence of the date that a ballot was postmarked. On January 13, 2021, plaintiff Thomas P. Reed and the Virginia Department of Elections entered into a consent decree to further amend and refine the text of this regulatory action. The consent decree was signed by Judge William Eldridge IV of the Circuit Court for Frederick County.

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.

The State Board of Elections at its meeting on February 23, 2021, approved the amendment to regulatory action 1VAC20-70-20 Material Omissions from Absentee Ballots, related to processing absentee ballots with missing or no postmark. This impacts Virginia Code 24.2-709.