

To: New Hampshire Moderators
From: Bud Fitch, Elections Legal Counsel, Assistant Secretary of State
Re: Partial pre-processing of absentee ballots – alternative process
Date: August 24, 2020

A new law adopted in July of 2020 authorizes limited partial processing of absentee ballots before a 2020 state election. The election procedure manual addresses this statute in the Special Guidance COVID-19 section:

PARTIAL PROCESSING OF ABSENTEE BALLOTS

Laws of 2020, Chapter 14, authorizes the moderator or designee to partially process the absentee ballots that have been received by the clerk. The single session may be held on the Thursday, Friday, Saturday, or Monday prior to the election, under the following conditions:

- Notice must be posted with the date, time, and location of partial processing at least 48 hours prior to the partial processing. If the town/city has a web site, one notice shall be on the website. The other notice must be posted in an appropriate public place. As an alternative, the notice may be printed in a newspaper of general circulation in the city or town at least 48 hours, excluding Sundays and legal holidays, prior to the partial processing;
- A copy of the notice must be sent to the Secretary of State. Mail a copy to: Secretary of State, State House Room 204, 107 N Main St., Concord, NH 03301
Or e-mail a copy to: elections@sos.nh.gov;
- The corrected checklist must have been posted by the supervisors;
- Use a checklist, certified by the supervisors, that will be used at the polling place on election day as the check-in checklist;
- The clerk prints a clerk's list of absentee voters from *ElectioNet*. The moderator will document rejected absentee ballots on that list. The clerk will need to print an updated clerk's list of absentee voters for election day, that will also show absentee ballots received after the partial pre-processing.
- If a voter's absentee ballot was rejected at partial processing and the voter was notified, the voter can cure the defect by requesting and returning a new properly completed absentee ballot sealed in its affidavit and mailing envelopes. The clerk must enter this second absentee ballot into *ElectioNet*. The clerk's list of absentee voters, when printed for election day, will have this voter listed twice. After election day, the clerk will need to enter information from both the partial processing copy and the election day copy of the clerk's list of absentee voters into *ElectioNet*;
- The partial processing must occur in public at the location and time stated in the notice. Locate the public, who are present to observe, where they can see and hear the process. Best practice is to keep the public at least 6 feet from the election officers, but in any case not within 4 feet of the absentee ballot envelopes. RSA 659:63;
- The moderator shall be assisted by at least 3 other election officers as defined under RS 652:14;
- Under no circumstances may the inner affidavit envelope be opened;
- Under no circumstance can the absentee ballot be counted;
- All absentee ballots received by the end of the day preceding processing shall be partially processed at the session;

- Only one session of partial processing can be held. Choose your date and hours for processing with consideration of how many absentee ballots have been returned and how many absentee ballots that were sent out have not yet been returned. These numbers are available from *ElectioNet*;
- The clerk should separate out any returned absentee ballot envelopes marked “Not Registered” where the supervisors have not yet received and acted on the person’s application for absentee voter registration. These returned absentee ballots must be processed on election day, after the supervisors act on the application for registration.
- Best practice is to have the returned envelopes organized in alphabetical order by the voter’s last name. This makes it easier on election day to locate and mark the voter’s name on the checklist. You can quickly move from one absentee voter in alphabetical order to the next. Ensure you keep envelopes in alphabetical order during the partial processing; and
- Keep the partially processed absentee envelopes in a separate collection from those received after the partial processing. Ideally, keep the envelopes grouped alphabetically, by letter. Best practice is to put the partially processed absentee ballot envelopes in a secured box that is taped shut and labeled. On election day, this will allow teams of election officials to simultaneously complete the processing of partially processed absentee ballots while other teams fully process the more recently received absentee ballots.

This special law for 2020 elections restricts partial processing to:

- Opening the outer (mailing) envelope;
- Removing and examining the inner (affidavit) envelope, without opening it;
- Determining whether the affidavit envelope has “been properly executed” RSA 659:50, I (b). This means that:
 - There is a signature in one of the two affidavit boxes on the line for the voter’s signature. The signature is either legible as the name of the voter or illegible (you must assume it is the voter’s signature), or there is the name and signature of a person who assisted a voter with disability written on the line for that purpose on the form (if the line for the voter’s signature is blank you must assume the voter has a disability that prevents the voter from signing);
 - A rejection is proper only if:
 - There is no signature or name on either the line for the voter’s signature or the line for the person assisting a voter with a disability;
 - There is a clearly legible signature on the line for the voter’s signature that is the name of a person other than the voter;
- Publicly announce the name of the absentee voter (unless the voter is a confidential voter – the clerk should segregate returned absentee ballots received from confidential voters);
- Best practice is to publicly announce the procedure you will follow during the partial processing to all present, repeating that description if new challengers arrive.
- Include in that description an explanation that as soon as a notation is made on the checklist that the absentee ballot has been partially processed, the opportunity to challenge the absentee ballot expires. Partially processed ballots cannot be challenged on election day;
- Provide an opportunity for a challenger appointed by a political party or any voter in the town or ward to challenge the absentee voter.
- If a challenge is made, process the challenge. See page **Error! Bookmark not defined.** in the Election Procedure Manual 2020-2021;

- If no challenge is made or a challenge is ruled not well grounded, make a “notation” on the checklist to help facilitate final processing on election day. The notation may not be drawing a thin line through the voter’s name, putting a checkmark in the box for that voter, or marking “A.V.” in red ink. That final marking of the checklist must be done on election day at the polling place;
 - An effective notation would be highlighting the voter’s name with a highlighter (yellow, pink, color of your choice, but use just one color). A highlighted name will be easier to find when, on election day, the ballot clerks are marking the name as having voted absentee.
- Adopt one uniform notation and use just that notation for all partially processed absentee ballots;
- At a primary, for an undeclared voter, the notation must include marking the party’s initials (DEM or REP) in the party affiliation column for that voter based on the party affiliation listed on the clerk’s list of absentee voters; and
- Keep the inner (affidavit) envelope unopened and either replace it in the outer (mailing) envelope or attach it to the outer envelope and application for the absentee ballot.

REJECTED ABSENTEE BALLOTS - PARTIAL PROCESSING

Rejected absentee ballots must be processed in the same manner as on election day. The moderator must write the words "Rejected" and the reason for the rejection (such as "affidavit not signed" "missing affidavit" or "affidavit improperly executed") across the envelope and on the absentee ballot list provided by the clerk. A list of the permitted absentee ballot rejection reasons can be found in *ElectioNet* > Help > Instructions and at page **Error! Bookmark not defined.** in the Election Procedure Manual 2020-2021.

Segregate and preserve the rejected absentee ballots in their envelopes and with the attached application. At the end of election day these rejected absentee ballots, still in the envelopes, must be preserved in the sealed box(es) of ballots used on election day.

If the outer envelope contains a ballot, but no affidavit envelope or printed affidavit from a UOCAVA voter or voter with a print disability, reseal the ballot in the outer envelope. On election day, when processing absentee ballots, open the inner envelope and determine if it contains a separate affidavit. If yes and properly executed, process and cast the absentee ballot. If no, reject the absentee ballot for “Missing Affidavit.”

If the outer envelope contains a ballot and an affidavit envelope, but the ballot was not sealed in the affidavit envelope, seal the ballot in the affidavit envelope. Process as if received with the ballot sealed in the affidavit envelope. Note that the ballot was not in the affidavit envelope on the outer envelope.

If the outer envelope contains two ballots outside the affidavit envelope(s), the ballots must be rejected for “multiple ballots returned in the same envelope.”

Best practice is to attempt to notify any absentee voter whose absentee ballot has been rejected for any reason. Notice is not explicitly required by Laws of 2020, Chapter 14. The Absentee Ballot Application form was recently changed to require the applicant to provide a phone number and or e-mail address where the voter can be contacted. Keep a record of your efforts to notify the voter. Be prepared to explain to the voter what opportunity exists to cure the defect that caused the rejection. Explain how and where the voter may correct the deficiency.

In most cases the voter should obtain a fresh absentee ballot, affidavit, and mailing envelope from the

Clerk and resubmit a properly completed absentee ballot affidavit envelope containing an absentee ballot marked by the voter. The rejected ballot with its envelopes will be preserved unopened and destroyed with the ballots used at the election after the retention period expires.

The voter may also come to the polling place on election day and vote in-person or using outside accessible absentee voting (curbside). Voters who are actually out-of-state may not be able to cure the reason for the rejection in the time that remains. Those voting absentee due to work obligations, child care, concern for COVID, etc. may be able to cure the defect before or on election day.

ELECTION DAY FINAL PROCESSING

Ensure a notice of the time when outer envelopes will be opened (for ballots received after partial processing) and the time when processing will start has been posted at least 24 hours prior to the polls opening. RSA 659:49; RSA 659:49-b.

Complete processing of the absentee ballots on election day:

- Open the inner envelope so the affidavit is not destroyed. RSA 659:52 requires that the envelope be opened “after announcing the name of the voter.” For absentee ballots fully processed on election day, that announcement is done when the opportunity is provided to make a challenge, in some polling places before the moderator approaches the checklist. For 2020, that announcement is done for partially processed absentee ballots at the pre - processing session;
- Remove the ballot without unfolding or permitting it to be examined;
- Locate the voter on the checklist and, provided the voter has not voted in person, usually with the assistance of the ballot clerk, mark the checklist to show the absentee vote with a checkmark, a thin line through the last name, and an “A.V.” in red ink;
 - **See alternative procedure below;**
- Cast the ballot into the ballot box or ballot counting device;
- Preserve the affidavit and application in a secure location within the rail to later be placed in sealed boxes with the ballots cast at the election as required by RSA 659:101.

Once the checklist has been marked for an absentee vote, the voter may no longer vote in person. RSA 659:55.

Alternative Procedure

Moderators ideally start with all partially processed absentee ballots organized in alphabetical order and grouped by letters of the alphabet.

On election day, the Moderator will instruct ballot clerks to alert the moderator if during the first hour and at any time prior to the voter being marked as voting absentee, a voter checks in whose name has a notation showing that voter’s absentee ballot has been partially processed. The Moderator will find that voter’s absentee ballot envelope and mark it as “rejected – voter voted in person.” (This is rare, at the 2020 Presidential Primary, 40 voters both sent in an absentee ballot and voted in person before that absentee was cast. At the 2016 general election 91 voters both sent in an absentee ballot and voted in person before that absentee was cast.)

At the time stated in the notice of when absentee ballot processing will start, the Moderator:

1. Directs the ballot clerks to examine the checklist entry for each voter whose name has a notation on it (highlighted) as having submitted an absentee ballot which was partially processed and the moderator has determined will be cast, unless the person has voted in person, and:
 - a. If the person is marked as voting in person, notify the Moderator. The Moderator will find that absentee ballot envelope, mark it as rejected "Voter voted in-person" on the envelope and clerk's list of absentee voters and set it aside for sealing into ballot storage boxes at the end of the day; or
 - b. If the person is not marked as voting in person, using a straight edge draw a thin line through the voter's last name, check the box to the left of the Party column for that voter as having voted, and write "A.V.," in red ink, to the left of the checkbox.
2. While this is occurring the moderator will open the inner (affidavit) envelopes and without unfolding or displaying the marked ballot determine if each envelope contains one marked absentee ballot that is the correct ballot for that polling place and at a primary the correct party ballot (based on the clerk's list of absentee voters). Keep the ballot and envelope together.
 - a. If the Moderator finds an envelope that does not contain a ballot, contains the wrong ballot (different town/ward) or which contains more than one ballot, the Moderator notifies the ballot clerk to either not mark that voter as voting, or if the voter has been marked as voting absentee, makes a corrective entry on the checklist and initials that correction.
 - b. It is rare that a ground to reject the absentee ballot is found upon opening the envelope.
 - i. At the 2020 Presidential Primary 459,159 ballots were cast statewide. Five absentee ballot envelopes were rejected because there was no ballot in the envelope, 10 were rejected because the wrong ballot (different town or ward) was in the envelope, none contained multiple ballots.
 - ii. At the November 8, 2016 general election 755,850 ballots were cast. Thirty-two envelopes were received with no ballot in the envelope, 28 contained the wrong ballot, and 9 were rejected for containing multiple ballots. Therefore, 69 were rejected at the stage when the moderator opens the inner, affidavit, envelope.
3. When the ballot clerk completes marking all absentee voters for some agreed upon section of the checklist, the ballot clerk notifies the Moderator. (For example after marking all voters whose last name begins with "A," the ballot clerks would notify the Moderator that all As have been marked on the checklist.)
4. The Moderator then takes the partially processed absentee ballot envelopes for that section of the checklist (for this example all 'As'), separates the absentee ballot from the envelope and casts the ballot into the ballot box or ballot counting device.
5. This would proceed in an identical manner, section by section of the checklist. However, not necessarily in alphabetical order. If the ballot clerks finish marking the end of the checklist before a middle section due to either fewer absentee voters or fewer in-person voters consuming the clerk's attention, the Moderator would cast those marked voters' absentee ballots.

This procedure is similar to that used for processing election day absentee ballots, except:

- The Moderator opening the inner envelope is occurring simultaneously with the ballot clerk marking the checklist for partially pre-processed voters in a section of the checklist.
- Consistent with HB1266, the moderator is not stating the voter's name to the ballot clerk, the ballot clerk instead is relying on the notation to identify the absentee voters who were partially pre-processed.
- Rare occasions may occur where the ballot clerk marks a voter as voting absentee before the moderator discovers there is no ballot, the wrong ballot, or too many ballots in the envelope. This will require a corrective entry on the checklist.

This process preserves a voter's right to vote in person if he or she arrives before his or her name is marked with the red "A.V."

HB1266 prohibits a challenge to an absentee voter at the polling place if his or her absentee ballot was partially processed prior to election day. Therefore there is no purpose to that voter's name being announced to the public at the polls on election day, as the name is marked on the checklist.