



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

Election Advisory #20-02

Regarding Advance Processing of Early Voting Ballots

August 18, 2020

Under the provisions of section 7(k) of chapter 115 of the Acts of 2020, early voting ballots can be advance processed.

The purpose of this Advisory is to provide instruction and best practices with respect to advance processing of early voting ballots. This Advisory details the steps that must be taken when ballots are returned by mail and provides further guidance on the requirements for advance processing, which will provide some flexibility to either open and separate ballots from their envelopes, to deposit the ballots into a tabulator or both.

Please remember that all early voting ballots must be sealed into an early voting envelope by the voter. Neither the law or regulations allow for a voter to directly deposit their early voting ballot into a tabulator.

PROCESSING AN ABSENTEE OR EARLY VOTING BALLOT

Regardless of whether you will be advance processing early voting ballots, upon receipt of an absentee or early voting ballot envelope, you must follow the steps below:

1. Open the outer envelope (AV8);
2. Time stamp the inner envelope (AV7 or EV7);
3. Update VRIS with date received;
4. If the AV7 or EV7 is missing a signature or otherwise deficient, you must reject the ballot, notify the voter and send the voter a new ballot.
 - a. In VRIS, you must reject the ballot, select the reason and then enter the date the new ballot was sent.
 - b. On the ballot envelope, you must write "Rejected as Defective."

ADVANCE REMOVAL AND ADVANCE DEPOSITING OVERVIEW

Advance removal is the opening of the inner envelope and separating the ballot from that envelope prior to election day.

Advance depositing is the placing of the ballot which has already been advance removed into a tabulator prior to election day. Advance depositing functions almost the exact same way as central tabulation facilities are set up.

NOTE: You can advance remove without advance depositing. If you intend to advance deposit, you must first follow the process for advance removal.

Regardless of whether you decide to advance remove only (separate ballots from the envelopes) or to deposit those ballots into your tabulator, there are certain requirements that must be met for notice, record keeping and storage. The requirements for both are set forth below.

Notice Requirements: Notice of advance removal and/or advance depositing of ballots must be posted on the municipal website and notice provided to the state secretary at least three (3) days before each day of advance removal.

- Notice must include the date, time and location of advance removal.
- Both the advance removal process and advance depositing process must be open for public observation.

Record Keeping Requirements: A full record of advance removal and advance depositing shall be kept for each session. The record shall be kept by precinct and shall include:

- The number of ballot envelopes being processed for each precinct, and in a primary the number per party;
- The number of ballot envelopes accepted;
- The number of ballot envelopes not accepted; and
- The number of ballot envelopes rejected.

Storage Requirements: Before, during and after advance removal and advance depositing, ballots and envelopes must be securely stored.

- Ballots and envelopes must be stored, secured and labeled by precinct.
 - For the primary, ballots must be stored by party as well.
- Ballots for each advance processing session must be stored and labeled separately with the applicable date.

ADVANCE REMOVAL

When: Advance removal of ballots may begin as early as nine (9) days prior to election day and can continue until the day before the election.

Ballots are only eligible to be advance removed on the day following receipt at the earliest and only after being recorded in VRIS as received. No ballot can be advance removed on the same day it is received.

Where: Advance removal of ballots can only be done in an accessible location that has public access. Observers must be allowed to watch the process, from behind a guard rail, and can challenge ballots as they are opened. More information regarding the challenge process is set forth below.

If you are using a building other than where your offices are located or where you typically store and process returned ballots, you must transport the ballots and envelopes in sealed containers.

Before the opening of the advance removal facility, you must provide a list containing the names of all voters whose early voting ballots will be advance-removed.

How: Prior to advance removal, you must record the number of ballots received that will be advance removed. The number of ballots received for advance removal must be recorded by precinct and include a party breakdown within each precinct.

Similar to the clerk's record created for election day, you should document the time the advance removal begins, who is present and when advance removal ends for that session. You should further include any anomalies during the advance removal process such as ballots rejected as defective and any challenges made during the advance processing. The record should also include the seal numbers used for securing the ballots and envelopes after the advance processing has concluded for the session.

There shall be no lead pencils or blue or black pens at any table ballots are being removed from the inner envelopes. The only writing devices that are permitted at the table are those with a distinctive marking color that is not commonly used by voters on ballots such as red or green.

Ballots may only be advance removed by precinct. All early voting ballots from one precinct shall be processed before another precinct can be processed during a scheduled session.

Step-by-step removal process:

1. Open the ballot envelope carefully so as not to deface, mark or tear the ballot or the ballot envelope or ballot.

2. Remove the ballot from the inner envelope without examining it and in a manner that will ensure the privacy of the voter.
 - a. Keep all ballot envelopes! You should provide a specific container in which the ballot envelopes will be stored.
3. Check that the ballot envelope contains only one ballot.
 - a. If more than one ballot is in the envelope, neither ballot can be counted and both ballots must be placed in the ballot envelope labeled "Rejected as Defective."
4. Unless the ballots will be deposited in accordance with the advance depositing process, the ballots and inner envelopes must be sealed by precinct, with the date of the opening recorded with the seal numbers, which must be securely stored until election day.

Challenge Process: If you are advance processing, it must be open for observers as this is their only opportunity to challenge those ballots. Any challenge can only be made when the name and address of the voter is being read from the envelope and recorded on the voting list. Ballots being advanced processed can be challenged for any legal cause. The challenger must state based upon information particular to that voter the reason for challenging the right of a person to vote, for example: this person is not old enough to vote; this person is not a U.S. citizen; this person should have been removed from the voting list; this person has already voted; this person is not the person he claims to be. G. L. c. 54, §§ 85, 85A; 950 CMR 54.04(23). When asked by an election officer, the challenger shall be required to briefly set forth factual information specific and personal to the challenged voter as to the reasons that voter is not qualified to vote in the election at that precinct.

If the election officer determines that the challenger has not provided factual information specific and personal to that voter that the voter is not qualified to vote at that precinct, then the election officer shall reject the challenge on the grounds that the challenge was not based upon a legal cause.

If an early voting ballot is challenged when opened at the advanced processing facility, the name and address of the early voter shall be written on the ballot by the local election official. The challenger's name and address shall be recorded and the event shall be noted in the record and the letters CV shall be placed on the voting list next to the name of the challenged voter. After this, the ballot and envelope shall be placed in the proper containers.

ADVANCE DEPOSITING OF BALLOTS INTO TABULATOR

When: Advance depositing of ballots into a tabulator or ballot box may begin as early as nine (9) days prior to election day and can continue until the day before the election. No results of votes from any precinct shall be made public until after 8 pm Election Day.

Ballots can only be advance deposited on the day following receipt at the earliest and only after being recorded as received. No ballot can be advance deposited on the same day it is received.

NOTE: If advance depositing into a tabulator, the vote tabulator must be tested in accordance with 950 CMR 54.02 at least four (4) days before the first date of advance depositing. Separate media cards must be used for advance depositing and for election day tabulation at a polling place.

Where: Advance depositing of ballots can only be done in an accessible location that has public access. Observers must be allowed to watch the process, from behind a guard rail, but there is no ability to challenge any ballots during the advance depositing process.

If you are using a building other than where your offices are located or where you typically store and process returned ballots, you must transport the ballots and envelopes in sealed containers.

Before the opening of the advance depositing facility, you must provide a list containing the names of all voters whose early voting ballots that have already been advance-removed and will be advance deposited.

How: In order to advance deposit ballots into a tabulator, you must first advance process in accordance with the information outlined above. Prior to advance depositing, you must record the number of ballots received that will be advance deposited. The number of ballots received for advance depositing must be recorded by precinct and include a party breakdown within each precinct.

This information was recorded as part of the advance removal process. Before beginning the advance depositing, you should verify the number of ballots received by precinct and party are the same as those recorded during the advance removal process. Any discrepancies should be recorded in a clerk's record book.

You must document the time the advance depositing begins, who is present and when advance depositing ends for that session. You should further include any anomalies during the advance depositing process such as the number of ballots rejected by the vote tabulator. The record should also include the seal numbers used for securing the ballots and envelopes after the advance depositing has concluded for the session.

There shall be no lead pencils or blue or black pens at any table ballots are being removed from the inner envelopes. The only writing devices that are permitted at the table are those with a distinctive marking color that is not commonly used by voters on ballots such as red or green.

Ballots may only be advance deposited by precinct. All early voting ballots from one precinct shall be processed before another precinct can be deposited during a scheduled session. You must use separate memory cards for advance depositing. You cannot use your election day memory cards during advance depositing. Further, you must use separate memory card for each precinct. Before each advance depositing session, you should publicly open the ballot box and examine it to ensure no ballots are contained therein. Additionally, you must record the number on the public counter before and after each precinct is deposited.

When advance depositing into a tabulator, please remember:

- Early voting ballots must be processed one precinct at a time. All early voting ballots from one precinct must be processed before another precinct can be processed.
- Once the tabulation of a precinct is complete, the tabulated ballots for the precinct must be removed from the ballot box and stored securely, but must remain in public view.
- You must remove ballots from the tabulator after all ballots for that precinct have been deposited.
 - Ballots must be stored by precinct and separately for each day of advance processing.
 - For the primary, those ballots must be sorted by party within each precinct.
- You cannot print the results until after 8 pm on Election night.
- PLEASE NOTE: You cannot advance remove or advance deposit ballots on the same day they are received.

Processing Ballots Not Read by the Tabulator or Containing Write-In Votes: During the advance depositing process, any ballot that cannot be read or is rejected by the vote tabulator must be set aside and hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of advance depositing for that session.

Any ballots containing a write-in vote shall be hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of advance depositing for that session.

Tally sheets for hand-counted ballots shall be signed by the election officials and sealed with the session date and precinct, but separately from the ballots themselves.

Completion of an Advance Deposit Session: After the advance depositing is complete for each day, which includes hand-counting ballots and/or recording write-ins in accordance with the instructions above, the ballots must be sealed and stored by precinct and by party in a primary.

Ballots must be stored in secure sealed containers in a locked secure ballot storage room. The early voting lists shall also be sealed in separate envelopes for transport and transmitted to the office of the local election official.

NOTE: You cannot determine or announce results until after the time the polls close on the date of the primary or the general election. The results from advance processing must be added to the election day results and posted in a public place.

Processing Results on Election Night: You cannot process any final tabulation results until after 8:00 pm on election night. When processing results on election night, you must use the original memory cards used during the advance depositing process by inserting them back into a designated tabulator to print the results.

Once you have printed results from the advance deposited tapes, you will add those to the tally sheets from the advance deposited sessions and the precinct level results from election day.

RELEASING ELECTION RESULTS

You should not release partial results. Results from the precincts must be announced in accordance with law, but no further declarations of results should be made until such time as the full results for that precinct are totaled. This includes the release of unofficial and official results.

REGULATIONS

The applicable regulations are attached to this Advisory.

QUESTIONS?

Contact the Elections Division at 617-727-2828 or elections@sec.state.ma.us.

REGULATIONS

47.12: Processing Early Voting Ballots

To the extent allowed by law, early voting ballots may be advance processed in accordance with this section. Otherwise, early voting ballots may be processed at the polls or at centralized tabulation facilities as set forth in 950 CMR 47.13.

(1) Advance Removal of Ballots from Envelopes: To the extent allowed by law, local election officials may open early voting envelopes prior to election day and separate the ballots from the envelopes. Advance removal of ballots may began as early as nine (9) days prior to election day and can continue until the day before the election.

(a) The local election official, or a person designated by the local election official, shall open each outer mailing envelope purporting to contain an official early voting ballot as soon as possible after receiving it, in the view of any persons who may be present. The local election official shall remove therefrom the outer mailing envelope provided in 950 CMR 47.06(1)(b), without opening such affidavit envelope, and examine the affidavit on each such envelope. If the local election official finds that such affidavit has been improperly executed, or is incomplete, the local election official shall mark across the face thereof "Rejected as defective," and shall place on the early voting disposition list required by 950 CMR 47.08, as the case may be, opposite the name of the voter the capital letter R.

(b) The local election official shall notify, as soon as possible, each voter whose early voting ballot was rejected. Said notice of rejection shall be on a form prescribed by the Secretary and provided by the local election official. Unless the local election official determines that there is clearly insufficient time for the voter to return another ballot, the local election official shall then proceed as if the voter had requested a substitute ballot. If the local election official received the original ballot by mail, the local election official shall enclose the substitute ballot and other papers described in 950 CMR 47.06 with the mailed notice of rejection. If the local election official timely receives an affidavit envelope purporting to contain such a substitute ballot, and does not mark it "Rejected as Defective" under this section, the local election official shall strike the letter R from any list on which it has been placed under the preceding paragraph.

(c) If the affidavit on the affidavit envelope appears to be complete, the local election official shall mark the early voting list that the early voting ballot has been received and accepted and is eligible for advance removal from the inner envelope.

(d) Notice of advance removal of ballots must be posted on the municipal website and notice provided to the state secretary at least three (3) days before each day of advance removal. Notice must include the date, time and location of advance removal. The advance removal process shall be open for public observation.

(e) Before any ballots can be separated from the inner envelope, they must be recorded on the early voting list with the date and time being processed. The local election official must read the name and address of the voter from the affidavit envelope and record it on the voting list, which should have the letters EV already printed next to it. For any primary election, the local election official must also read the party and record the party on the voting list. The election officer shall place a mark beside the name of the voter to indicate that the early voting ballot vote has been received and opened.

1. Ballots can be advance removed on the day following receipt at the earliest and only after being recorded as received. No ballot can be advance removed on the same day it is received.

2. Ballots must be transported to the advance removal facility in a sealed container if located in a separate building. Before the opening of the advance removal facility, a list containing the names of all voters whose early voting ballots will be advance-removed shall be delivered.

- a. The election officers assigned to the advance removal facility, shall, as soon as early voting ballots are delivered, record the total number of ballots received, by precinct. For a primary election, they shall also record the number of ballots by party.

3. There shall be no lead pencils or blue or black pens at any table where election officials are advance removing ballots. The only writing devices that are permitted at the table are those with a distinctive marking color that is not commonly used by voters on ballots such as red or green.

4. Ballots may only be advance removed by precinct. All early voting ballots from one precinct shall be processed before another precinct can be processed during a scheduled session.

5. Election officers shall open the ballot envelope carefully so as not to deface, mark or tear the ballot or the ballot envelope. The election officers shall then remove the ballot from the inner envelope without examining it and in a manner that will ensure the privacy of the voter. Election officers shall place the ballot envelopes in the proper container.

6. The ballot envelope must not contain more than one ballot. If more than one ballot is in the envelope, neither ballot shall be counted and those ballots shall be placed in the ballot envelope which shall be marked "Rejected as Defective" and placed in the proper container.

6. Unless the ballots will be deposited in accordance with (2), the ballots and inner envelopes must be sealed by precinct, with the date of the opening recorded with the seal numbers, which must be securely stored until election day.

(f) If an early voting ballot is challenged when opened at the advanced processing facility, the name and address of the early voter shall be written on the ballot by the local election official. The challenger's name and address shall be recorded and the event shall be noted in the local election official's Election Record, and the letters CV shall be placed on the voting list next to the name of the challenged voter. After this, the ballot shall be placed in the proper container.

(g) Ballots that have been removed from their envelopes may be advance deposited in accordance with (2) or deposited into a tabulator or ballot box on election day at either the precinct polling place or at a duly designated central tabulation facility.

1. Ballots must remain sealed from the advance removal until received at the precinct polling place or duly designated central tabulation facility

2. Ballots being deposited into a tabulator or ballot box on election day at either a precinct polling place or at a duly designated central tabulation facility must be accompanied by a list of the early voters whose ballots are being deposited.

(2) Advance Depositing of Ballots into Tabulator: To the extent allowed by law, local election officials may deposit early voting ballots into a tabulator or ballot box prior to election day and in accordance with the following provisions. Advance depositing of ballots into a tabulator or ballot box may begin as early as nine (9) days prior to election day and can continue until the day before the election. No results of votes from any precinct shall be made public until after 8 pm Election Day

(a) The provisions of 950 CMR 47.12(1) must first be followed before any ballot can be deposited into a tabulator or ballot box.

(b) Notice of advance depositing ballots must be posted on the municipal website and given to the state secretary at least three (3) days before each day of

advance depositing. Notice must include the date, time and location of advance depositing. The advance depositing process shall be open for public observation.

1. If advance depositing into a tabulator, the vote tabulator must be tested in accordance with 950 CMR 54.02 at least four (4) days before the first date of advance depositing. Separate media cards must be used for advance depositing and for election day tabulation at a polling place.

2. Ballots can be advance-deposited on the day following receipt at the earliest and only after being recorded as received. No ballot can be advance deposited on the same day it is received.

3. Ballots must be transported to the advance deposit facility in a sealed container if located in a separate building. Before the opening of the advance depositing facility, a list containing the names of all voters whose early voting ballots will be advance-deposited shall be delivered.

- a. The election officers assigned to the advance deposit facility, shall, as soon as early voting ballots are delivered, record the total number of ballots received, by precinct.

- b. A record of the number on the public counter shall be made before and after processing of each precinct on each day advance processing is conducted.

4. There shall be no lead pencils or blue or black pens at any table where election officials are advance depositing ballots. The only writing devices that are permitted at the table are those with a distinctive marking color that is not commonly used by voters on ballots such as red or green.

5. Ballots may only be advance-deposited by precinct. All early voting ballots from one precinct shall be processed before another precinct can be processed during a scheduled session.

- a. Any ballot that cannot be read or is rejected by the vote tabulator must be set aside and hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of advance depositing for that session.

- b. Any ballots containing a write-in vote shall be hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of advance depositing for that session.

c. Tally sheets for hand-counted ballots shall be signed by the election officials and sealed with the session date and precinct, but separately from the ballots themselves.

6. For each day of advance processing, after the advance depositing is complete, the ballots must be sealed and stored by precinct and by party in a primary. Ballots must be stored in secure sealed containers in a locked secure ballot storage room. The early voting lists shall also be sealed in separate envelopes for transport and transmitted to the office of the local election official.

7. No results shall be determined or announced until after the time the polls close on the date of the primary or the general election. The results from advance processing must be added to the election day results and posted in a public place.

(3) A full record of advance processing and advance depositing shall be kept. The record shall be kept by precinct and shall include:

1. the number of ballot envelopes being processed for each precinct, and in a primary the number per party;
2. the number of ballot envelopes accepted;
3. the number of ballot envelopes not accepted; and
4. the number of ballot envelopes rejected.