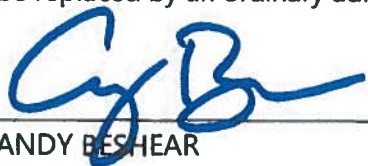


STATEMENT OF EMERGENCY

31 KAR 4:193E

This emergency administrative regulation is necessary given that the Kentucky Constitution requires free and fair elections, and specifically because the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and well-being of voters. See, Governor's Executive Orders 2020-215 and 2020-688. This emergency regulation will allow the Commonwealth to conduct general, special, and local option elections on November 3, 2020, in a manner that reduces the amount of exposure voters, poll workers, and administrators have to possible infection, thereby helping state and federal efforts to slow and stop the spread of the novel coronavirus. This emergency administrative regulation is promulgated pursuant to KRS 13A.190(a)(1) and (4), as well as to be consistent with the Voting Accessibility for the Elderly and Handicapped Act, 52 U.S.C. 20101 et seq. Pursuant to KRS 13A.190(1)(b)(1), this emergency regulation is temporary in nature and will expire as provided in this section. To take effect, it must be ratified by the Governor and Secretary of State through respective executive orders. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.



ANDY BESHEAR
Governor



JARED DEARING
Director, State Board of Elections

1 **STATE BOARD OF ELECTIONS**

2 **(New Emergency Administrative Regulation)**

3 **31 KAR 4:193E. Procedures for November 3, 2020 Elections.**

4 RELATES TO: KRS Chapters 39A and 117

5 STATUTORY AUTHORITY: KRS 39A.100(1)(l)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.100(1)(l) requires the State

7 Board of Elections to establish procedures for election officials to follow when the

8 Governor has declared a state of emergency and the Secretary of State has recommended

9 to the Governor, and the Governor has agreed, that a different time, place, or manner for

10 holding elections is necessary. This emergency administrative regulation outlines the

11 procedures to be undertaken to effectively conduct the November 3, 2020 elections. The

12 following temporary emergency regulations relate to the procedures by which a lawful,

13 registered Kentucky voter may cast a ballot for the elections to be held November 3, 2020.

14 This emergency administrative regulation governs the November 3, 2020 elections

15 only. Neither it, nor any of its component parts, is intended to govern or influence the

16 conduct of any other election. This emergency administrative regulation does not create

17 legal authority or precedent for any election beyond the November 3, 2020 elections.

1 Section 1. All provisions outlined in this emergency administrative regulation shall
2 apply to the Commonwealth's November 3, 2020 elections only. Any existing
3 administrative regulation promulgated by the State Board of Elections that conflicts with
4 any provision herein is suspended in pertinent part as applied to the November 3, 2020
5 elections. Any existing statute that directly conflicts with Governor's Executive Order
6 2020-688, inclusive of the Secretary of State's recommendations as incorporated therein,
7 is deemed suspended in pertinent part, by the authority of the General Assembly
8 consistent with Section 15 of the Kentucky Constitution, as applied to the November 3,
9 2020 elections. However, no regulation or statute is or shall be deemed as suspended, in
10 whole or in part, unless it directly conflicts with Governor's Executive Order 2020-688, the
11 Secretary of State's recommendations as incorporated therein, or the provisions herein.

12 Section 2. Definitions. All terms used herein shall have the same definitions as
13 currently stated in the Kentucky Revised Statutes and Kentucky Administrative
14 Regulations unless given a definition here.

15 (1) The phrase "not able to appear at the polls on election day on account of age,
16 disability or illness," as enacted at KRS 117.085(1)(a)(8) shall be interpreted to mean "of
17 an age, or possessing of a health condition or vulnerability, or potentially in contact with
18 a person of an age, or possessing a health condition or vulnerability, that the voter
19 believes subjects the voter, or other person, to an unacceptable risk of harm from
20 contracting or transmitting the novel coronavirus."

1 (2) "Disability or illness" as enacted at KRS 117.228(1)(c)(8)(e), shall mean to include
2 "an inability to procure photographic proof of identification due to office closure,
3 temporary work stoppage, or backlog of issuing authorities of such photographic proof
4 of identification, as caused by the COVID-19 pandemic; or, possession of a health
5 condition or vulnerability that the voter believes subjects the voter to unacceptable risk
6 of harm from the novel coronavirus, including unacceptable risk of transmission of the
7 virus from the voter to others."

8 (3) "Inability to obtain his or her birth certificate or other documents needed to
9 show proof of identification," as enacted at KRS 117.228(1)(c)(8)(b) shall mean to include
10 "the inability to provide a copy of proof of identification possessed by the voter."

11 (4) "Covered voter," as enacted at KRS 117A.010 shall mean to include "those
12 within the disability community who wish to receive their ballot via electronic means in
13 the same manner as utilized by military and overseas voters."

14 Section 3. In lieu of in-person absentee voting, described by KRS 117.085, County
15 Clerks shall make in-person voting available to any registered voter of the county during
16 generally available hours coinciding with regular business hours beginning on October
17 13, 2020. No absentee excuse or application otherwise required by KRS 117.077 or
18 117.085 shall be required for eligibility to vote early in-person. County Clerks shall make
19 in-person voting available to any registered voter of the county on the three Saturdays
20 before the November 3, 2020 election for a span of at least four (4) hours each Saturday.

1 The location(s) for in-person voting shall be permitted to be outside of the County Clerk's
2 office, so long as voting is conducted in a secured area. County Clerks, with assistance
3 from the State Board of Elections and Secretary of State, shall publicize the location(s)
4 where in-person voting shall occur. During the days of in-person voting, appropriate
5 precautions shall be taken consistent with Centers for Disease Control guidance, and the
6 State Board of Elections, with the assistance of the Governor, shall provide materials to
7 assist in proper sanitization. County Clerks shall implement in-person voting procedures
8 that limit direct contact between individuals, whether poll workers or voters. Such
9 procedures shall promote a method of voting whereby poll workers do not come into
10 contact with voters.

11 ~~Section 4. County Clerks, taking into account population, geographical~~
12 ~~impediments, and consistent with the term of Section 5 herein, may reduce the number~~
13 ~~of sites for in-person voting on November 3, 2020 to the number of secured locations in~~
14 ~~which the Clerk reasonably believes can: (1) be fully staffed with election officials; and (2)~~
15 ~~facilitate voting in a manner consistent with Centers for Disease Control guidance, as well~~
16 ~~as, procedures that limit direct contact between individuals, whether poll workers or~~
17 ~~voters. Such procedures shall promote a method of voting whereby poll workers do not~~
18 ~~come into contact with voters. At any site used for voting on November 3, 2020, election~~
19 ~~officials shall be empowered to check-in any registered voter in the county, regardless of~~
20 ~~what precinct the voter is registered in, and counties shall have the flexibility to use the~~

1 same election equipment across sites. The State Board of Elections, with the assistance
2 of the Governor, shall provide materials to assist in proper sanitization.

3 Section 5. No later than September 30, 2020, counties shall present any plan to
4 reduce the number of sites for in-person voting on November 3, 2020 to the State Board
5 of Elections, the Office of the Governor, and the Office of the Secretary of State for
6 approval, and no plan for reduction of November 3, 2020 voting locations shall be
7 implemented without the consent of the State Board of Elections, the Office of the
8 Governor, and the Office of the Secretary of State. Plans shall include: the address and
9 type of facility for each voting location; the number and type of voting machine or
10 machines to be used at the voting location; the number of poll workers required to fully
11 staff the location. Counties shall be authorized to seek approval of an amended plan at
12 any time before November 2, 2020, to add or reduce locations as demand necessitates.

13 Section 6. Each county shall establish at least one (1) site for in-person voting on
14 November 3, 2020, which is capable of permitting any registered voter residing in the
15 county to vote at that location. In each county's Section 5 Plan, each such site shall be
16 noted as a "County-wide Voting Center." County Clerks, with assistance from the State
17 Board of Elections and Secretary of State, shall publicize the address of this and all
18 location(s) where in-person voting shall occur on November 3, 2020.

19 Section 7. The provisions of KRS 117.065(2), requiring that buildings, including
20 schools, constructed, in whole or in part, with tax revenues be available as voting places

1 without cost shall not be deemed to directly conflict with any executive order,
2 administrative regulation, or statute.

3 Section 8. A voter may deliver an absentee ballot to the office of the County Clerk
4 in the county where the voter is registered, or to a secure drop-off location if one is
5 maintained by the County Clerk in the county where the voter is registered, rather than
6 mailing the ballot via the United States Postal Service. To assist County Clerks in
7 managing the flow of receipt of voter-delivered absentee ballots, the State Board of
8 Elections shall purchase secure drop-boxes and provide them to County Clerks based on
9 request and availability with each requesting county being guaranteed one drop-box at
10 minimum. Any county choosing to use a receptacle for ballot drop-off other than the
11 drop-boxes provided by the State Board of Elections during calendar year 2020, must
12 formally seek the State Board of Elections' approval of the receptacle before any ballot
13 shall be allowed to be deposited inside. Any county choosing to utilize a drop-off
14 receptacle, including those provided by the State Board of Elections, shall inform the State
15 Board of Elections of the number of receptacles being used, the type of each receptacle
16 being used, and the location of each drop-off location. Any receptacle located outside a
17 County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted
18 down, and be under video surveillance at all times. Any drop-box located inside, shall be
19 under direct supervision of the staff of the County Clerk at all times that it is accessible to
20 the public. Each County Clerk utilizing one or more ballot drop-off receptacle shall empty

1 each receptacle at least once each business day of the County Clerk's Office, and secure
2 the absentee ballots therein in a manner consistent with KRS 117.086(6); however, County
3 Clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably
4 accommodate the volume of voter-delivered absentee ballots.

5 Section 9. County Clerks shall be permitted to utilize as precinct election officials
6 voters who are registered to vote other than as Democrats or Republicans, and all precinct
7 election officials shall be permitted to work in shifts of less than twelve (12) hours.
8 Notwithstanding KRS 117.045(9), voters who have changed their registration within the
9 last year shall be eligible to serve as an election official for the November 3, 2020 elections.
10 In the appointment of precinct election officials for November 3, 2020, County Clerks shall
11 give preference to precinct election officials who have prior experience as same, whether
12 in prior elections or in early voting conducted pursuant to this regulation.

13 Section 10. The State Board of Elections shall ensure that each county is provided
14 access to sufficient election equipment, subject to available funding.

15 Section 11. As soon as feasible, the State Board of Elections shall make available a
16 secure online portal for the request of an absentee ballot by a registered voter. The
17 requester shall provide personally identifiable information in order to request the
18 absentee ballot. The secure online portal shall have the capacity to ensure verification of
19 the identity of the voter, in a manner not inconsistent with Senate Bill 2, 2020 Regular
20 Session of the Kentucky General Assembly, except as applied herein. Should a voter not

1 have a driver's license record on file with the Kentucky Department of Transportation, the
2 voter may confirm their identity by completing an oath of voter, not inconsistent with the
3 language provided from the Secretary of State, found on the secure online portal. The
4 secure online portal shall transmit the request to the County Clerk of the county in which
5 the requester is registered to vote. The County Clerk shall be responsible for determining
6 if a request is valid and may, at their discretion, fulfill a request believed valid by taking
7 the information of a voter without internet access over the telephone or in person and
8 directly inputting that information into the secure online portal. The County Clerk shall
9 transmit a valid absentee ballot to the registered voter within seven (7) days of receipt or
10 within seven (7) days of ballots being available, no sooner than September 15, 2020. The
11 secure online portal shall close at 11:59 p.m. ET, on October 9, 2020. Notwithstanding the
12 availability of this secure online portal, a registered voter shall still be entitled to request
13 a mail-in absentee ballot using the method of request described in KRS 117.085 until
14 October 9, 2020. From October 10, 2020, through November 3, 2020, only applications
15 for an absentee ballot due to medical emergency, pursuant to KRS 117.077, shall be
16 deemed as valid. An application for an absentee ballot due to a medical emergency need
17 not be notarized and this clause shall not expand the definition or use of the term medical
18 emergency.

19 Section 12. Postage for all ballots sent by County Clerks to voters and for all ballots
20 sent from voters to County Clerks shall be paid by the State. Intelligent Barcodes shall be

1 utilized for tracking of all mail-in absentee ballots and shall serve in lieu of mail books for
2 County Clerks.

3 Section 13. Prior to issuance of an absentee ballot to a voter, County Clerks shall
4 highlight with a colored marker each signature blank an absentee-by-mail voter is
5 required by law to sign. All absentee ballots shall be received by the County Clerk of the
6 voter's county of registration by no later than 6:00 p.m., local time, on November 3, 2020,
7 except that, any absentee ballot postmarked on or before November 3, 2020 shall be
8 accepted upon receipt by a County Clerk until 6:00 p.m., local time, November 6, 2020. A
9 ballot delivered by 6:00 p.m., local time, on November 3, 2020 shall not be required to
10 bear a postmark.

11 Section 14. On or before September 14, 2020, each County Board of Elections shall
12 appoint an absentee ballot processing committee with a minimum of four (4) members,
13 all of whom must be registered voters of that county. Each committee shall have an equal
14 number of registered Democrats and registered Republicans, but membership shall not
15 be restricted to registered members of those parties. One political party shall not
16 compose a majority of a committee unless the role of the committee is assumed by the
17 local County Board of Elections. Each County Board of Elections shall establish, and
18 present to the State Board of Elections for approval, a process for observation of absentee
19 ballot processing and counting, to be conducted in a manner consistent with Centers for
20 Disease Control guidance. The absentee ballot processing committee may meet every

1 day, subject to the needs and requirements of ballot processing, beginning as early as
2 September 21, 2020, to review the absentee ballots cast in the county, but no person shall
3 publicize any tallies or counts of these ballots, or any partial election results, until 6:00
4 p.m. local time, on November 3, 2020. Once processed, absentee ballots must be stored
5 in a manner consistent with current statutes and practices.

6 Section 15. No absentee ballot may be processed and counted unless and until
7 the absentee ballot processing committee verifies the signature on the absentee ballot
8 envelope to match the voter's signature of record, to include the signature on the voter's
9 driver's license or voter registration card. If a signature match cannot be made, or if the
10 voter has committed another absentee ballot error that is subject to remediation, the
11 County Board of Elections, absentee ballot processing committee, or the County Clerk
12 shall make a reasonable effort to contact the voter using the contact information provided
13 by the voter's absentee ballot application, and provide the voter with a timeframe and
14 manner in which the voter may cure the discrepancy. All signature cures must be made
15 by November 9, 2020.

16 Section 16. Counties shall undertake a good-faith effort to cure all absentee ballot
17 irregularities, when possible, with attempts to cure absentee ballot irregularities starting
18 with a letter generated by the State Board of Elections and mailed to the voter with
19 appropriate instructions. In addition to the letter, counties may, but are not required to,

1 also use email or telephone contact information, if such is provided by the voter, in an
2 attempt to inform the voter of the irregularity.

3 Section 17. To determine voter intent for ballots imperfectly cast, County Boards
4 of Elections shall take the following universal directives into consideration when reviewing
5 ballot irregularities:

6 (1) Missing outside signature- DON'T REJECT automatically. If there is an inside
7 signature there is at least one signature for review that will meet substantial compliance.

8 (2) Missing signature on flap- DON'T REJECT automatically. If there was an outside
9 signature there is at least one signature for review that will meet substantial compliance.

10 (3) Missing outside signature- DO NOT REJECT automatically, but if the inside flap
11 is missing the signature then REJECT IT.

12 (4) Signature on outside but missing inside flap: REJECT IT.

13 (5) If there is a signature that can be matched, but flap is missing: REJECT IT.

14 (6) Inner envelope not sealed but all the components are present and doesn't
15 appear tampered with: ACCEPT IT.

16 (7) Detached flap: if it isn't attached but is either inside the white envelope or even
17 inside the yellow envelope it will meet substantial compliance: ACCEPT IT.

18 (8) The Inner Envelope is missing and the ballot is just in the white envelope:
19 REJECT IT.

1 (9) Returned or dropped off in just the inner envelope with flap attached and
2 signature present: ACCEPT IT.

3 (10) Returned in an unofficial outside envelope, if inside envelope, flap and
4 signature are present: ACCEPT IT; If no signature on flap: REJECT IT.

5 (11) A signature is present, but in wrong location: ACCEPT IT

6 Section 18. State funds shall procure, at minimum, an additional eight staff
7 members for each county, with the eight largest counties by population receiving more
8 staffing and funding proportionally. All meetings of any absentee ballot processing
9 committees must be posted on the State Board of Elections website at least twenty-four
10 (24) hours prior to the meeting; a schedule of meetings that is updated when changes are
11 made to meeting dates shall satisfy this requirement as long as they are posted in advance
12 of the meeting. At least seven (7) business days prior to November 3, 2020 , each County
13 Board of Elections must also post on the State Board of Elections' website: the members
14 of an absentee ballot processing committee; any registered challengers; all plans
15 submitted or approved pursuant to Section 5 of this regulation; and all polling locations
16 with addresses and hours of operation. Any cancellation of a meeting by an absentee
17 ballot processing committee, shall not require twenty-four (24) hour notice.

18 Section 19. The State Board of Elections and the Secretary of State shall jointly
19 conduct an advertising campaign, subject to available funding, to inform voters of
20 changes to election rules referenced herein and voters' options to vote.

1 Section 20. The Governor shall take such action as is necessary to provide funds
2 sufficient to cover the increase in cost necessitated by implementation of these
3 regulations, including but not limited to matching state funds against, and in order to
4 secure, the maximum matching federal funds available for pandemic-related election
5 costs.

6 Section 21. Voters required to submit an affirmation as described in KRS
7 117.228(1)(c) shall complete "Voter Affirmation Form" SBE 71, 08/2020. Election Officials
8 required to submit an affirmation as described in KRS 117.228(4) shall complete "Election
9 Official Affirmation Form" SBE 72, 09/2020. All final vote totals must be transmitted via
10 "Certification, Official Count and Record of Election Totals" SBE 49, 08/2020 to the
11 Secretary of State's Office no later than 6:00 p.m., local time, November 10, 2020.

12 Section 22. Counties shall publicly report results from ballots cast by voters in-
13 person on Election Day, by voters during early voting, and all absentee ballots processed
14 by 6:00 p.m., local time, November 3, 2020. Such reporting shall occur no later than 11:59
15 p.m. ET, November 3, 2020. A second reporting of all votes tallied shall be submitted by
16 counties before 5:00 p.m. ET, November 6, 2020.

17 Section 23. If an absentee ballot is delivered by hand to a County Clerk's Office by
18 6:00 p.m., November 3, 2020 or by the United States Postal Service, bearing a postmark
19 of November 3, 2020 or an earlier date, by 6:00 p.m., November 7, 2020., and is discovered
20 to have been delivered to the wrong County Clerk's Office, it shall be sent by the receiving

1 County Clerk to the correct County Clerk via overnight delivery by the United State Postal
2 Service no later than November 9, 2020. County Clerks shall use the Postal Corporate
3 Express Mail Account, which shall be no cost, and shall inform the Postal Clerk that they
4 were instructed to use the Postal Corporate Express Mail Account under the direction of
5 the Kentuckiana Political Mail Coordinator. Once a voter has requested a mail-in absentee
6 ballot, the voter shall not vote in person unless the voter has failed to receive such
7 requested ballot by October 28, 2020.

8 Section 24. If a voter has requested, but not received their absentee ballot by
9 October 28, 2020, the voter may appear at a county polling location to vote in person. The
10 election officer shall contact the County Clerk and County Board of Elections who shall
11 determine the voter's eligibility and verify the ballot has not been returned and/or
12 counted. The County Clerk or their designee shall cancel the voter's absentee ballot in
13 the Voter Registration System. Only after the voter's application has been canceled in the
14 Voter Registration System shall the voter be required to sign the supplemental roster, an
15 oath of voter, and be informed that voting more than once in an election is a criminal
16 offense. Each voter who is deemed ineligible to vote may vote a provisional ballot or
17 request a hearing before the County Board of Elections.

18 Section 25. The deadline for a candidate to seek a canvass for any special
19 election held on November 3, 2020 shall be extended to 4:00 p.m. ET, on November 10,
20 2020.

1 Section 26. The provisions of KRS 117.085(10) shall remain except that the State
2 Board of Elections shall be required to produce to any duly qualified candidate, political
3 party or organization committee or officials thereof, or any committee that advocates or
4 opposes an amendment or public question, for a one-time fee of \$3,500, the names of
5 those voters who have: (1) completed an application for a mail-in absentee ballot; (2)
6 turned in an absentee ballot; and (3) those that have voted in-person before November
7 3, 2020. Requests from the State Board of Elections for production of such information
8 shall require accompanying payment at the time of first request. The payment of the one-
9 time fee of \$3,500 shall require the State Board of Election to provide updates of the
10 information in a Microsoft Excel spreadsheet format twice weekly to the requestor from
11 August 31, 2020 through November 2, 2020. The information provided by the State Board
12 of Elections shall not be used for any commercial purpose.

13 Section 27. Should changes in conditions related to the COVID-19 pandemic or
14 the effective administration of the November 3, 2020 election require additional policies
15 or procedures, the State Board of Elections shall be authorized to promulgate further
16 administrative regulations after a public meeting of the State Board of Elections, with
17 contingent approval of both the Governor and the Secretary of State.

18 Section 28. Incorporated by Reference. (1) The following material is incorporated
19 by reference:

20 (a) "Certification, Official Count and Record of Election Totals", SBE 49, 08/2020;

1 (b) "Voter Affirmation Form" SBE 71, 08/2020;

2 (c) "Election Official Affirmation Form" SBE 72, 09/2020.

3 (2) This material may be inspected, copied, or obtained, subject to applicable
4 copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky
5 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:40 p.m.


Andy Beshear
Governor


Jared Dearing
Executive Director, State Board of Elections

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this temporary emergency administrative regulation shall be held on November 30, 2020, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

31 KAR 4:193E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation outlines the procedures to be undertaken to effectively conduct the November 3, 2020 elections.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary given that the Kentucky Constitution requires free and fair elections, yet the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and well-being of voters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.100(1)(l) orders the State Board of Elections to establish procedures for election officials to follow when the Governor has declared a state of emergency and the Secretary of State has recommended to the Governor, and the Governor has agreed, that a different time, place, or manner for holding elections is necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation fulfills the mandates of KRS 39A.100(1)(l) and will provide the necessary framework for the Commonwealth's November 3, 2020 given the ongoing state of emergency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

This is a new emergency administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This emergency administrative regulation will affect all registered voters in the Commonwealth, along with county fiscal courts, and governmental entities related to the administration of electoral processes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is anticipated that any regulated entities impacted by this emergency administrative regulation will have to take no action fundamentally divergent from those actions already established for the administration of electoral processes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the state government level. County-level should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new emergency administrative regulation will benefit the entirety of the Commonwealth in that it will allow for the conduction of elections that minimize the health-risk of all involved during the ongoing state of emergency related to the COVID-19 pandemic.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this emergency administrative regulation for the State Board of Elections will be minimal as most costs will be borne at the county level or subsidized pursuant to the federal Help America Vote Act (HAVA) and Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(b) On a continuing basis: This will be a temporary emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal, state, and

local funds will be used in the implementation and enforcement of this emergency administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an

amendment: The State Board of Elections believes that the implementation of this emergency administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not used in this emergency administrative regulation as a desired result of the promulgation of this emergency administrative regulation is a uniform procedure for the administration of the November 3, 2020 elections throughout all of the counties in the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

31 KAR 4:193E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the Secretary of State's Office will be impacted by this emergency administrative regulation. At the local level, office of all County Clerks and all local Boards of Elections will be impacted by this emergency administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Statutes and regulations either requiring or authorizing this emergency administrative regulation include: KRS 13A.190, KRS 13A.190, and 52 U.S.C. 20101 *et seq.*

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)

for the first year? It is not expected or intended that this emergency administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)

for subsequent years? It is not expected or intended that this emergency administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the at the state-government level. County-level expenses should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation is temporary and will not be in force following the administration of the November 3, 2020 elections.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

"Certification, Official Count and Record of Election Totals" SBE 49, 11/03, is the 1-page permit application form that counties use return vote totals to the Secretary of State.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this temporary emergency administrative regulation shall be held on December 30, 2020, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

31 KAR 4:193E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation outlines the procedures to be undertaken to effectively conduct the November 3, 2020 elections.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary given that the Kentucky Constitution requires free and fair elections, yet the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and well-being of voters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.100(1)(l) orders the State Board of Elections to establish procedures for election officials to follow when the Governor has declared a state of emergency and the Secretary of State has recommended to the Governor, and the Governor has agreed, that a different time, place, or manner for holding elections is necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation fulfills the mandates of KRS 39A.100(1)(l) and will provide the necessary framework for the Commonwealth's November 3, 2020 given the ongoing state of emergency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

This is a new emergency administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This emergency administrative regulation will affect all registered voters in the Commonwealth, along with county fiscal courts, and governmental entities related to the administration of electoral processes.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: It is

anticipated that any regulated entities impacted by this emergency administrative regulation will have to take no action fundamentally divergent from those actions already established for the administration of electoral processes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the state government level. County-level should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new emergency administrative regulation will benefit the entirety of the Commonwealth in that it will allow for the conduction of elections that minimize the health-risk of all involved during the ongoing state of emergency related to the COVID-19 pandemic.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost of the implementation of this emergency administrative regulation for the State Board of Elections will be minimal as most costs will be borne at the county level or subsidized pursuant to the federal Help America Vote Act (HAVA) and Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(b) On a continuing basis: This will be a temporary emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal, state, and

local funds will be used in the implementation and enforcement of this emergency administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an

amendment: The State Board of Elections believes that the implementation of this emergency administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not used in this emergency administrative regulation as a desired result of the promulgation of this emergency administrative regulation is a uniform procedure for the administration of the November 3, 2020 elections throughout all of the counties in the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

31 KAR 4:193E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the Secretary of State's Office will be impacted by this emergency administrative regulation. At the local level, office of all County Clerks and all local Boards of Elections will be impacted by this emergency administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Statutes and regulations either requiring or authorizing this emergency administrative regulation include: KRS 13A.190, KRS 13A.190, and 52 U.S.C. 20101 *et seq.*

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)

for the first year? It is not expected or intended that this emergency administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts)

for subsequent years? It is not expected or intended that this emergency administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the at the state-government level. County-level expenses should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation is temporary and will not be in force following the administration of the November 3, 2020 elections.

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