

STATEMENT OF EMERGENCY

31 KAR 5:011E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

  
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ANDY BESHEAR  
Governor

  
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KAREN SELLERS  
Director, State Board of Elections

1 STATE BOARD OF ELECTIONS

2 (New Emergency Administrative Regulation)

3 31 KAR 5:011E. Use of the federal write-in absentee ballot.

4 RELATES TO: KRS 117.079, 117.086(3), 117A.050(2), 117A.060(3), 117A.100,  
5 117A.130, 117A.160(1), 52 U.S.C. 20302

6 STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), 117A.130, 52 U.S.C.  
7 20302(a)(3)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board  
9 of Elections, as circumstances warrant and with the concurrence of the Attorney General,  
10 to promulgate necessary administrative regulations to preserve the absentee voting rights  
11 of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C.  
12 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters  
13 to use federal write-in absentee ballots in general elections for federal office. KRS  
14 117A.130 requires the State Board of Elections, in coordination with local election officials,  
15 to implement an electronic free-access system by which a covered voter may determine  
16 by telephone, electronic mail, or Internet whether the voter's federal postcard application  
17 or other registration or military-overseas ballot application has been received and  
18 accepted and whether the voter's military-overseas ballot has been received. KRS

1 117A.030(2) authorizes the State Board of Elections to promulgate the administrative  
2 regulations necessary to implement KRS Chapter 117A. This administrative regulation  
3 establishes the procedures for the use of the federal write-in absentee ballot in elections  
4 in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

5 Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

6 (2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

7 (3) "Military-overseas ballot" is defined by KRS 117A.010(5).

8 Section 2. Suspension of Provisions of 31 KAR 6:030. The requirements of 31 KAR  
9 6:030, Uniform Definition of a Vote, Section 5(2)(a) and Section 6(1), (2), and (9), shall be  
10 suspended for the purposes of this administrative regulation.

11 Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal  
12 write-in absentee ballot, the county clerk shall:

13 (1) Not open the inner security envelope;

14 (2) Examine the voter's declaration/application accompanying the federal write-in  
15 absentee ballot to determine whether it was submitted by a covered voter for the purpose  
16 of registering to vote or requesting an absentee ballot;

17 (3) If the voter's declaration/application accompanying the federal write-in  
18 absentee ballot was submitted by a covered voter for the purpose of registering to vote  
19 or requesting an absentee ballot, process the application in the same manner as a federal  
20 postcard application;

1 (4) Enclose the voter's declaration/application accompanying the federal write-in  
2 absentee ballot and the inner security envelope in a separate envelope and label the outer  
3 envelope "FWAB"; and

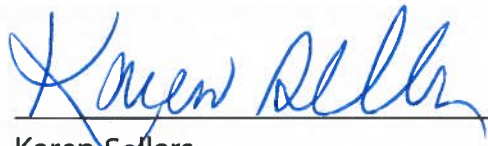
4 (5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(3).

5 Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot. (1)

6 The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS  
7 117.086(3) and not be opened until after the deadline for receipt of the state absentee  
8 ballot.

9 (2) If the county clerk receives no later than the deadline for receipt of the state  
10 absentee ballot a valid and voted state absentee ballot from a covered voter from whom  
11 the county clerk also receives a federal write-in absentee ballot, the county clerk shall not  
12 unseal the inner security envelope containing the federal write-in absentee ballot and  
13 shall write on the inner security envelope containing the federal write-in absentee ballot,  
14 "Cancelled because state absentee ballot received."

15 Section 5. Electronic Free-Access System. Each county clerk shall either participate  
16 in the electronic free-access system established by the State Board of Elections or  
17 establish a local electronic free-access system by which a covered voter may determine  
18 by telephone, electronic mail, or Internet whether the voter's federal postcard application  
19 or other registration or military-overseas ballot application has been received and  
20 accepted and whether the voter's military-overseas ballot has been received.



Karen Sellers

Executive Director, State Board of Elections

*Filed with the concurrence of the Attorney General*

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, 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 June 30, 2022. 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, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

31 KAR 5:011E 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 administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office; KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079 and 52 U.S.C. 20302(a)(3).

(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 administrative regulation.

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

This administrative regulation will affect all the State Board of Elections and county clerks.



(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. The State Board of Elections will need to maintain an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. County clerks will need to participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system.

(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 administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this 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: It is expected that implementation of this 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 administrative regulation.

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

## FISCAL NOTE

31 KAR 5:011E

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 will be impacted by this administrative regulation. At the local level, county clerks will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a), KRS 117.079, 52 U.S.C. 20302(a)(3), and KRS 117A.030(2) require and authorize the actions taken by this administrative regulation.

(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 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 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 expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings(+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].* The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**118.025 Voting to be by secret paper ballot -- General laws applicable -- Time for holding elections.**

- (1) Except as otherwise provided by law, voting in all primaries and elections shall be by secret paper ballot.
- (2) The general laws applying to primaries, regular elections, and special elections shall apply to primaries, regular elections, and special elections conducted with the use of voting equipment, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting system or voting equipment.
- (3) A primary for the nomination of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.
- (4) The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.
- (5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.
- (6) If the law requires that a special election be held within a period of time during which the voting equipment must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting equipment is locked.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 197, sec. 48, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 88, sec. 5, effective July 15, 2020. -- Amended 2008 Ky. Acts ch. 129, sec. 6, effective July 15, 2008. -- Amended 2002 Ky. Acts ch. 262, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 261, sec. 2, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 195, sec. 13, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 394, sec. 20, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 288, sec. 38, effective July 14, 1992; and ch. 296, sec. 7, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 431, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 29, sec. 12, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 44, sec. 6, effective March 2, 1984. -- Amended 1982 Ky. Acts ch. 402, sec. 3, effective January 1, 1984. -- Created 1974 Ky. Acts ch. 130, sec. 98, effective June 21, 1974.

**Section 150 Disqualification from office for using money or property to secure or influence election -- Corporation not to use money or other thing of value to influence election -- Exclusion from office for conviction of felony or high misdemeanor -- Laws to regulate elections.**

Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected who shall be convicted of having given, or consented to the giving, offer or promise of any money or other thing of value, to procure his election, or to influence the vote of any voter at such election; and if any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation, upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the General Assembly to provide for the enforcement of the provisions of this section. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law, but such disability may be removed by pardon of the Governor. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult or other improper practices.

**Text as Ratified on:** August 3, 1891, and revised September 28, 1891.

**History:** Not yet amended.