

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

RELATES TO: KRS 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130, 52 U.S.C. 20302

STATUTORY AUTHORITY: KRS 117.015(1)(a), KRS 117.079, 117.086(1), 117A.030(2), (4)-(6), 117A.130, 52 U.S.C. 20302(e)

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 117.086(1) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. 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 has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions.

- (1) "Covered voter" is defined by KRS 117A.010(1).
- (2) "Federal postcard application" is defined by KRS 117A.010(3).
- (3) "Instructions to Voter" means the Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot, SBE 46A.
- (4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically.

(1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

- (a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;
- (b) Complete the county clerk's portion of the Instructions to Voter;
- (c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and
- (d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

- (1) If the covered voter requires assistance in voting, the covered voter and the person who assists the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";
- (2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;
- (3) The covered voter shall complete and sign the Voter Verification and Declaration;
- (4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;
- (5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;
- (6) The covered voter shall sign across the back flap of the outer envelope;
- (7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and
- (8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local 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.

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot", SBE 46A, rev. July 2014;
 - (b) "Voter Assistance Form", SBE 31, 04/2022; and
 - (c) "Voter Verification and Declaration", SBE 46B, rev. July 2014.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

*Filed with the concurrence of the Attorney General
KAREN SELLERS, Executive Director*

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 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 July 31, 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.