

**STATE BOARD OF ELECTIONS**  
**(New Administrative Regulation)**

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

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

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

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. 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. 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 use of the federal write-in absentee ballot in elections in Kentucky 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 write-in absentee ballot" is defined by KRS 117A.010(4).
- (3) "Military-overseas ballot" is defined by KRS 117A.010(5).

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

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

- (1) Not open the inner security envelope;
- (2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;
- (3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;
- (4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and
- (5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(3).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot.

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

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

Section 5. 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.

*KAREN SELLERS, Executive Director*

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, 40 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email [TaylorA.Brown@ky.gov](mailto:TaylorA.Brown@ky.gov).