

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 5:026. Ballot standards and election security.

RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots outlined in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections.

Section 3. Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections. The possession of all pre-printed ballots shall be accounted for on SBE Form 76, "Ballot Reconciliation Statement." Upon the need for paper ballots to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, "Ballot Reconciliation Statement" or by the printing equipment. Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, "Ballot Reconciliation Statement." Beginning with the casting of ballots during the period described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1). At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, "Ballot Reconciliation Statement." All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again. If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot Reconciliation Statement" shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. Any voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal which shall conform to web accessible design standards as set forth by the W3C Web Accessibility Initiative.

Section 5. Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers. Should a voter noted to have requested a mail-in absentee ballot appear at a polling location in order to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter. If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box from any other that may be in use in the area. Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material. Each county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the county clerk's office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(3); however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots. Upon each emptying of a receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, "Daily Absentee Drop-Box Verification Sheet."

Section 7. After the receipt of a mail-in absentee ballot by the county clerk and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record, if a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77, "Discrepant Mail-in Absentee Signature," to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election. Upon the county board of elections, central counting board, or the county clerk determining the need for a

signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8. A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 9. Notwithstanding KRS 117.225(3), in a county using an electronic pollbook, if a voter's name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025, the voter provides proof of identification, the voter is exempt pursuant to KRS 117.225(2), or the voter otherwise satisfies the requirements of KRS 117.228, and if no challenge is made, then on the electronic pollbook he or she shall sign his or her name where prompted.

Section 10. Any voter who is qualified to vote on election day in the county of his or her residence may make application to cast an excused in-person absentee ballot during normal business hours during the six (6) business days immediately preceding the Thursday of no-excuse in-person absentee voting by completing SBE Form 44E, "Excused In-Person Absentee Ballot Application."

Section 11. The status of the tamper-resistant seal and the number on the public counter to be recorded from all voting equipment to be used, shall be recorded before and after each day of in-person absentee voting, on SBE Form 79, "Daily Voting Machine Verification Sheet" which, cumulatively shall be collected by the County Clerk.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) "Oath of Voter," SBE Form 32, 04/2022;
- (b) "Ballot Reconciliation Statement," Form SBE 76, 04/2022;
- (c) "Discrepant Mail-in Absentee Signature," Form SBE 77, 04/2022;
- (d) "Voter Affirmation Form," Form SBE 71, 04/2022;
- (e) "Election Officer Affirmation Form" Form 72, 04/2022;
- (f) "Excused In-Person Absentee Ballot Application" Form 44E, 04/2022;
- (g) "Daily Voting Machine Verification Sheet" Form 79, 04/2022;

(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 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.