

STATEMENT OF EMERGENCY

31 KAR 2:010E.

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 Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. In recent years, the General Assembly has amended the various Kentucky Revised Statutes related to voting in the Commonwealth. As election administrators adapt to these new changes, the need for administrative changes becomes apparent, so that Kentuckians may continue to cast their ballots with the highest degrees of ease and security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 2:010E. Preparation of ballots and voting systems prior to election day.

RELATES TO: KRS 116.025, 116.065, 117.075, 117.085(5), 117.125, 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, 117.285, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118.215(1), 118.770, 118A.010, 119.005, 424.290

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to administer the election laws of the state. KRS 117.383~~[(1)]~~ requires the State Board of Elections to promulgate rules and administrative regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS 117.383~~(1)~~~~[(2)]~~ requires the State Board of Elections to promulgate rules and administrative regulations to count, tabulate, and record votes. KRS 117.383~~(2)~~~~[(3)]~~ requires the State Board of Elections to promulgate rules and administrative regulations to establish a method for placing items on any ballot~~[the electronic voting device]~~, which shall, as closely as possible, follow the requirements pertaining to ballots~~[ballot labels]~~. KRS 117.383~~(5)~~~~[(6)]~~ requires the State Board of Elections to promulgate rules and administrative regulations to provide for checking the accuracy of the equipment. This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

Section 1. Definitions.

- (1) "Accuracy Board" means the county board of elections, or at least two (2) individuals appointed by the county board of elections, assigned with the duty of overseeing the accuracy testing of the voting machines and the voting systems required by 31 KAR 2:020.
- (2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking the accuracy of the voting equipment required by KRS 117.383(6), and the testing of the automatic tabulating equipment and voting systems required by KRS 117.389.
- (3) "Ballot accountability statement" means a form created by the county clerk in accordance with Section 4 of this administrative regulation.
- (4) "Ballot template" means a printout created by the program administrator of the voting systems that shows the results of the steps taken by the program administrator to place all candidates, races, and ballot questions on each ballot based on the information provided by the county clerk.
- (5) "Certification" means the information provided by the county clerk to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices and ballot questions to be placed on the ballot for each voting machine or voting system for each precinct within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.
- (6) "Program administrator" means the county clerk or authorized assistant designated to configure the voting machines and voting systems.
- (7) "Scan voting system" means a tabulating device that reads paper ballots by electronically detecting voters' marks.
- (8) "Voting machine" means hardware, which is a component of the voting system, used or relied upon by a voter in casting and recording his or her votes in a precinct in an election, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(9) "Voting system" means a system of components of hardware and software, including the voting machine, used by a voter to cast a ballot and by the election officials to tabulate the votes on election day, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(10) "Zero-file" means a computer-based electronic file type listing all electoral contests and questions, displaying precinct-by-precinct vote totals registering as zero, which includes all candidates, offices, and ballot questions in the order under which they have been certified pursuant to KRS 118.215(1) or KRS 118.770, for all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots.

Section 2. Preparation of Each Voting Machine and Voting System.

(1) The county clerk shall designate a program administrator to configure the voting machines and voting systems for each election.

(2)

(a) Within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770, the county clerk shall provide a certification to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices, and ballot questions.

(b) The program administrator shall place the information in the certification in the ballot template for each voting system and precinct.

(3) The program administrator, if other than the county clerk, shall provide a ballot template for each ballot to the county clerk not less than three (3) days before the deadline for printing ballots established in KRS 117.085(5) and 117.145(1).

(4) The county clerk shall compare the prepared ballots and ballot screens, if applicable, for each voting system with the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

(5) Once the county clerk has ascertained that all federal, state, county, and local candidates, offices and ballot questions are the same as listed on the certification and appear in the correct position, the program administrator shall electronically transmit to the State Board of Elections a zero-file in a format designated by the State Board of Elections.

(6) The county clerk shall provide the ballot templates to the county board of elections or designated Accuracy Board prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(7) ~~[(6)]~~ The county board of elections, or designated review board, shall review the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(8) ~~[(7)]~~ The county clerk shall review and verify the audio ballots to be placed on the accessible voting systems by listening to the audio ballot through a headset to ensure proper pronunciation of all candidate names and to confirm that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

Section 3. Number of Ballots to be Printed. In addition to the requirements established in KRS 117.145, the county clerk shall provide a sufficient number of printed ballots for each precinct in a county that uses scan voting systems for each election. The number of ballots

required to be printed and distributed to each precinct with scan voting systems shall be determined as follows:

- (1) For a primary, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in each party's primary and nonpartisan race in the most recent presidential primary election;
- (2) For the general election, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in the most recent general election in which votes were cast for the electors for the President of the United States; and
- (3) For a special election, the number of ballots shall be a sufficient number as determined by the county clerk considering the number of registered voters in the precinct and the type of special election to be held.

Section 4. Preparation and Delivery of Ballots.

- (1) The county clerk shall place into a container the paper ballots, if applicable, for each precinct.
- (2) The container shall be secured with a seal and contain a certificate signed by the county clerk recording the total number of ballots in the container and that the ballots were counted and sealed by the county clerk.
- (3) Ballots not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the county clerk.
- (4) The county clerk shall maintain a record of the number of ballots and serial numbers of the voting systems issued to each precinct.
- (5) If using paper ballots for a scan voting system, the county clerk shall create a ballot accountability statement to be provided along with the ballots to each precinct that includes the following:
 - (a) In a primary, an accounting of the total number of ballots for each party primary and nonpartisan race submitted to the precinct to be completed by the county clerk;
 - (b) In a general election, an accounting of the total number of each type of ballot submitted to the precinct to be completed by the county clerk;
 - (c) An oath for the county clerk to sign attesting to the accuracy of the information provided by the county clerk on the statement;
 - (d) An accounting of the total number of ballots used, unused, and spoiled on election day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;
 - (e) An accounting of the total number of ballots returned to the county clerk at the end of the election day to be completed by the precinct election clerk;
 - (f) A section that allows for the precinct election clerk to explain any discrepancies; and
 - (g) An oath for the precinct election officers to sign attesting to the accuracy of the information provided on the statement.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, 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 May 31, 2024. 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

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to maintain the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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:

This amendment defines the computer-based electronic file type listing all electoral contests and questions to be shared by program administrators with the State Board of Elections so that the agency can accurately produce its Election Night Reporting website to provide the public with election results.

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

Without a defined computer-based electronic file type, shared by program administrators and the State Board of Elections, county boards of election may not be able to efficiently upload election results, and the public's ability to access election-night results may be delayed, restricted, or otherwise blocked.

(c) How the amendment 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.

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

This amendment will assist in meeting the requirement of KRS 117.275(15) that a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes.

(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 voters of the Commonwealth, county boards of election, vendors serving as program administrators, and the State Board of Elections.

(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:

To comply with this administrative regulation, program administrators and the State Board of Elections will need to work together to successfully transfer the defined computer-based electronic file type; voters and county boards of election will not have to take any steps towards compliance as a result of this amendment.

(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 have minimal 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 all in establishing what exactly is required to produce a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, so that voters may see accurate election-night results.

(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 administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

(b) On a continuing basis:

The continuing costs of this administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

(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:

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 establishes any fees or directly or indirectly increases any fees:

No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the

administration of elections throughout all of the counties in the Commonwealth.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 117.015(1)(a) and KRS 117.383 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues:It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

This administrative regulation will affect county boards of election.

(a) Estimate the following for the first year:

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

Revenues:It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3):

This administrative regulation will affect voters of the Commonwealth and vendors serving as program administrators.

(a) Estimate the following for the first year:

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

Revenues:It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact:

This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion:

This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.