

STATE BOARD OF ELECTIONS
(Amended at Subject Matter Committee)

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

RELATES TO: KRS ~~116.025~~, 117.001, 117.025, ~~117.076~~, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365, ~~118.025~~

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

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. ~~KRS 117.085, 117.086, 117.087(3)(d), 117.145, and 117.228~~ ~~Several Kentucky Revised Statutes in Chapter 117~~ 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 established 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. Upon the need to issue a voter a second mail-in absentee ballot pursuant to KRS 117.085(9), the outer envelope of the ~~subsequent~~ second mail-in absentee ballot shall bear a new unique barcode or label.

Section 3.

(1) 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.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, Ballot Reconciliation Statement.

(3) If paper ballots need 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.

(4) 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.

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076, each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) 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.

(7) 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 117.076 until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) 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, 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).

(11) 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. A 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 established by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5.

(1) 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.

(2) If a voter noted to have requested a mail-in absentee ballot appears at a polling location 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.

(3) 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.

(4) 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.

(1) 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, to a secure ballot drop-box in the county where the voter is registered, or to a secure drop-off receptacle if one (1) 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.

(2)

(a) A county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, shall formally seek the State Board of Elections' approval of the receptacle before any ballot is allowed to be deposited inside.

(b) A county choosing to utilize a drop-off receptacle shall provide information about the receptacle to the State Board of Elections as required by KRS 117.086(2)(b).

(3) A drop-box or receptacle located outside a County Clerk's Office shall be located, secured, and identified as required by KRS 117.086(2)(c).

(4) A drop-box or receptacle located inside shall be under direct supervision as required by KRS 117.086(2)(d) and shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box or receptacle from any other that may be in use in the area.

(5) 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.

(6)

(a) The county clerk shall empty the drop box and any receptacle used each business day as required by KRS 117.086(2)(e) and secure the absentee ballots therein in a manner consistent with KRS 117.086(3).

(b) Upon each emptying of a drop-box or 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.

(1) After the receipt of a mail-in absentee ballot by the county clerk, the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5.

(2) If a signature match cannot be made, notice shall be provided to the voter as required by KRS 117.087(3)(c)5, which shall, at minimum, include the mailing of Form SBE 77, Discrepant Mail-in Absentee Signature.

(3) 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.

~~[(1)] [A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:]~~

~~[(a)] [Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and]~~

~~[(b)] [Provide alternative proof of identification as required by KRS 117.228(2).]~~

~~[(2)] [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.]~~

~~[(3)] [Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.]~~

~~[Section 9.]~~ A voter may make application to cast an excused in-person absentee ballot pursuant to KRS 117.076(2) by completing SBE Form 44E, Excused In-Person Absentee Ballot Application.

Section 9. ~~[Section 10.]~~ The status of the tamper-resistant seal and the number on the public counter shall be recorded as required by KRS 117.076(12) 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 10. ~~[Section 11.]~~ ***A voter who changes his or her place of registration to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an absentee ballot for President and Vice President only, pursuant to KRS 116.025(7) and 117.085(1)(h)4. by completing SBE Form 44P, Presidential Only Absentee Ballot Application.***

Section 11. Incorporation ~~[Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

- (a) "Oath of Voter", Form SBE 32, 04/2022;
 - (b) "Ballot Reconciliation Statement", Form SBE 76, 04/2022;
 - (c) "Discrepant Mail-in Absentee Signature", Form SBE 77, 08/2022;
 - ~~[(d)] ["Voter Affirmation Form", Form SBE 71, 04/2022;]~~
 - ~~[(e)] ["Election Officer Affirmation Form", Form SBE 72, 04/2022;]~~
 - ~~(d)~~ ~~[(f)]~~ "Excused In-Person Absentee Ballot Application", Form SBE 44E, ~~04/2024~~~~[04/2022]~~;
 - ~~(e)~~ ~~[(g)]~~ "Daily Voting Machine Verification Sheet", Form SBE 79, ~~03/2023~~~~[04/2022]~~; ~~and~~
 - ~~(f)~~ ~~[(h)]~~ "Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022; ~~and~~
 - ~~(g)~~ **"Presidential Only Absentee Ballot Application", Form SBE 44P, 08/2024.**
- (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.
- (3) This material may also be obtained on the board's Web site at <https://elect.ky.gov>.
- (49 Ky.R. 1031; eff. 1-31-2023; 50 Ky.R. 2250; 51 Ky.R. 244, 492; eff. 8-22-2024.)
- FILED WITH LRC: August 22, 2024
- CONTACT PERSON: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.