

STATE BOARD OF ELECTIONS
(Amendment)

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)(b), 117A.030(2), (4)-(6), 117A.130, 52 U.S.C. 20302(e)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB6, Section 8.

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)(b) 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 Cover 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, 10/2025~~[July 2014]~~;
 - (b) "Voter Assistance Form", SBE 31, 04/2022;
 - (c) "Voter Verification and Declaration", SBE 46B, 10/2025~~[July 2014]~~;
 - (d) "Transmission Cover Sheet", Federal Voting Assistance Program~~[, 2017]~~; and
 - (e) "Federal Postcard Application", Federal Voting Assistance Program, 01/2023~~[2021]~~.
- (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.
- (3) This material may also be obtained on:
 - (a) The board's Web site at <https://elect.ky.gov>; or
 - (b) The Federal Voting Assistance Program Web site at <https://fvap.gov>.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: October 13, 2025

FILED WITH LRC: October 14, 2025 AT 11:55 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2025, at 11:00 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 December 31, 2025. 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

Subject Headings:Elections and Voting; County Clerks; Local Governments

(1) Provide a brief summary of:

(a) What this administrative regulation does:

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.

(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 updates Form SBE 46A and Form SBE 46B and incorporates updated federal forms.

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

This amendment updates Form SBE 46A and Form SBE 46B for the first time since 2014 and incorporates updated federal forms.

(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 maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(3) Does this administrative regulation or amendment implement legislation from the previous five years?This amendment does not implement legislation from the previous five years.

(4) 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, covered voters as defined by KRS 117A.010(1), county boards of election, and the State Board of

Elections.

(5) Provide an analysis of how the entities identified in question (4) 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 (4) will have to take to comply with this administrative regulation or amendment:

. To comply with this amendment, the State Board of Elections and county boards of election will need to make available the required items, while covered voters will need to take the described steps to receive and return a ballot.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

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 (4):

Compliance with this new administrative regulation will benefit all by assisting in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(6) 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.

(b) On a continuing basis:

The continuing costs of this administrative regulation for the State Board of Elections will be minimal.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:

Funds from the State Board of Elections' administrative budget will be used in the implementation and enforcement of this administrative regulation.

(8) 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.

(9) 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.

(10) 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), KRS 117.079, KRS 117.086(1), 52 U.S.C. 20302(e), and KRS 117A.130 require and authorize the actions taken by this administrative regulation.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

This administrative regulation is expressly authorized by the creation of KRS 117.015(a), 2005 Ky. Acts ch. 91, sec. 2.

(3)(a) 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.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

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

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

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

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

3. Cost Savings:

For the first year:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

For subsequent years:The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

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

This administrative regulation will affect county boards of election. (b) Estimate the following for the first year:

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

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

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

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

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

3. Cost Savings:

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

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

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

This administrative regulation will affect voters of the Commonwealth and covered voters as defined by KRS 117A.010(1).

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

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

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

2. Revenues:

For the first year:It is not expected or intended that this administrative regulation will generate any revenue.

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

3. Cost Savings:

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

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

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(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 reach this conclusion:

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.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

The State Board of Elections does not expect that this administrative regulation will result in a "major economic impact" as the combined implementation and compliance costs of an administrative regulation are not expected to rise to at least five hundred thousand dollars (\$500,000) over any two (2) year period.

(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.