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Minority Whip



**LEGISLATIVE RESEARCH COMMISSION**

State Capitol 700 Capital Avenue Frankfort KY 40601

502-564-8100

Capitol Fax 502-564-2922

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**Jason Nemes**  
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**Rachel Roberts**  
Minority Whip

**MEMORANDUM**

TO: Taylor Brown, General Counsel, State Board of Elections

FROM: Emily Caudill, Regulations Compiler

RE: Acknowledgement of Proposed & Emergency Regulations – 031 KAR 002:010 & E

DATE: April 15, 2024

A copy of the ordinary and emergency administrative regulations listed above are enclosed for your files. Pursuant to KRS 13A.190, these emergency administrative regulations became effective upon filing with our office on **April 15, 2024** and, unless an extension on an accompanying ordinary is requested, will expire either in 270 days on **January 10, 2025**, or when replaced by its corresponding ordinary regulation, whichever occurs first. Please note - Expiration dates may be impacted by legislation or other statutes.

**Emergency regulations**

The emergency regulations are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **June 2024** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, **if** comments are received during the public comment period, a Statement of Consideration for these emergency regulations is due **by noon on June 14, 2024**.

**Ordinary regulations**

The ordinary regulations are tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **July 2024** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, **if** comments are received during the public comment period, a Statement of Consideration for these ordinary regulations or a one-month extension request is due **by noon on July 15, 2024**.

Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at [RegsCompiler@LRC.ky.gov](mailto:RegsCompiler@LRC.ky.gov) or (502) 564-8100.

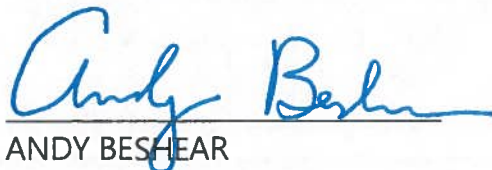
Enclosures

FILED WITH LRC  
TIME: 10:56 AM  
APR 15 2024  
Emily B Caudill  
REGULATIONS COMPILER

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 of Kentucky



KAREN SELLERS  
Director, State Board of Elections

1 STATE BOARD OF ELECTIONS

2 (Emergency Amendment)

3 31 KAR 2:010E. Preparation of ballots and voting systems prior to election day.

4 RELATES TO: RELATES TO: KRS 116.025, 116.065, 117.075, 117.085(5), 117.125,  
5 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, 117.285, 117.375,  
6 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015,  
7 118.215(1), 118.770, 118A.010, 119.005, 424.290

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

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State  
10 Board of Elections to promulgate administrative regulations necessary to administer the  
11 election laws of the state. KRS 117.383~~[(1)]~~ requires the State Board of Elections to  
12 promulgate rules and administrative regulations to achieve and maintain the maximum  
13 degree of correctness, impartiality, and efficiency of the procedures of voting. KRS  
14 117.383~~(1)~~~~[(2)]~~ requires the State Board of Elections to promulgate rules and  
15 administrative regulations to count, tabulate, and record votes. KRS 117.383~~(2)~~~~[(3)]~~  
16 requires the State Board of Elections to promulgate rules and administrative regulations  
17 to establish a method for placing items on any ballot ~~[the electronic voting device]~~, which  
18 shall, as closely as possible, follow the requirements pertaining to ballots ~~[labels]~~. KRS

1 117.3835~~[(6)]~~ requires the State Board of Elections to promulgate rules and administrative  
2 regulations to provide for checking the accuracy of the equipment. This administrative  
3 regulation establishes the procedures for the county clerk and the county board of  
4 elections to follow in preparing the ballots and the voting systems prior to each election.

5 Section 1. Section 1. Definitions.

6 (1) "Accuracy Board" means the county board of elections, or at least two (2)  
7 individuals appointed by the county board of elections, assigned with the duty of  
8 overseeing the accuracy testing of the voting machines and the voting systems required  
9 by 31 KAR 2:020.

10 (2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking  
11 the accuracy of the voting equipment required by KRS 117.383(6), and the testing of the  
12 automatic tabulating equipment and voting systems required by KRS 117.389.

13 (3) "Ballot accountability statement" means a form created by the county clerk in  
14 accordance with Section 4 of this administrative regulation.

15 (4) "Ballot template" means a printout created by the program administrator of the  
16 voting systems that shows the results of the steps taken by the program administrator to  
17 place all candidates, races, and ballot questions on each ballot based on the information  
18 provided by the county clerk.

19 (5) "Certification" means the information provided by the county clerk to the  
20 program administrator that includes an accurate listing of all federal, state, county, and

1 local candidates, offices and ballot questions to be placed on the ballot for each voting  
2 machine or voting system for each precinct within five (5) days of receiving the  
3 certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or  
4 immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

5 (6) "Program administrator" means the county clerk or authorized assistant  
6 designated to configure the voting machines and voting systems.

7 (7) "Scan voting system" means a tabulating device that reads paper ballots by  
8 electronically detecting voters' marks.

9 (8) "Voting machine" means hardware, which is a component of the voting system,  
10 used or relied upon by a voter in casting and recording his or her votes in a precinct in an  
11 election, which has been approved by the State Board of Elections for use in elections in  
12 the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

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

18 (10) "Zero-file" means a computer-based electronic file type listing all electoral  
19 contests and questions, displaying precinct-by-precinct vote totals registering as zero,  
20 which includes all candidates, offices, and ballot questions in the order under which they

1 have been certified pursuant to KRS 118.215(1) or KRS 118.770 , for all mail-in absentee  
2 ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and  
3 election day ballots.

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

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

7 (2)

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

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

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

18 (4) The county clerk shall compare the prepared ballots and ballot screens, if  
19 applicable, for each voting system with the ballot template and the certification supplied  
20 by the county clerk to the program administrator to ascertain that all federal, state, county,

1 and local candidates, offices and ballot questions shall be the same as listed on the  
2 certification and shall appear in the correct positions.

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

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

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

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



1           Section 3. Number of Ballots to be Printed.

2           In addition to the requirements established in KRS 117.145, the county clerk shall  
3 provide a sufficient number of printed ballots for each precinct in a county that uses scan  
4 voting systems for each election. The number of ballots required to be printed and  
5 distributed to each precinct with scan voting systems shall be determined as follows:

6           (1) For a primary, the number of ballots shall be at least ten (10) percent more than  
7 the total number of votes cast in each party's primary and nonpartisan race in the most  
8 recent presidential primary election;

9           (2) For the general election, the number of ballots shall be at least ten (10) percent  
10 more than the total number of votes cast in the most recent general election in which  
11 votes were cast for the electors for the President of the United States; and

12           (3) For a special election, the number of ballots shall be a sufficient number as  
13 determined by the county clerk considering the number of registered voters in the  
14 precinct and the type of special election to be held.

15           Section 4. Preparation and Delivery of Ballots.

16           (1) The county clerk shall place into a container the paper ballots, if applicable, for  
17 each precinct.

18           (2) The container shall be secured with a seal and contain a certificate signed by  
19 the county clerk recording the total number of ballots in the container and that the ballots  
20 were counted and sealed by the county clerk.

1           (3) Ballots not issued to a precinct or assigned for absentee voting shall be secured  
2 and accounted for by the county clerk.

3           (4) The county clerk shall maintain a record of the number of ballots and serial  
4 numbers of the voting systems issued to each precinct.

5           (5) If using paper ballots for a scan voting system, the county clerk shall create a  
6 ballot accountability statement to be provided along with the ballots to each precinct that  
7 includes the following:

8           (a) In a primary, an accounting of the total number of ballots for each party primary  
9 and nonpartisan race submitted to the precinct to be completed by the county clerk;

10          (b) In a general election, an accounting of the total number of each type of ballot  
11 submitted to the precinct to be completed by the county clerk;

12          (c) An oath for the county clerk to sign attesting to the accuracy of the information  
13 provided by the county clerk on the statement;

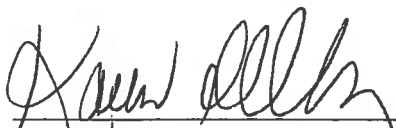
14          (d) An accounting of the total number of ballots used, unused, and spoiled on  
15 election day to be completed by the precinct election clerk and signed by all four (4)  
16 precinct election officers;

17          (e) An accounting of the total number of ballots returned to the county clerk at the  
18 end of the election day to be completed by the precinct election clerk;

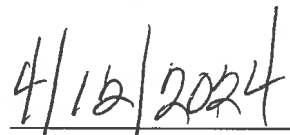
19          (f) A section that allows for the precinct election clerk to explain any discrepancies;

20 and

- 1 (g) An oath for the precinct election officers to sign attesting to the accuracy of the
- 2 information provided on the statement.



Karen Sellers  
Executive Director, State Board of Elections



Date

## PUBLIC HEARING AND PUBLIC 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

31 KAR 2:010E Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(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 established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. 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

31 KAR 2:010E

Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(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.

(a) How much cost savings will this administrative regulation generate for the regulated entities 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.

(b) How much cost savings will this administrative regulation generate 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) 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.

**Section 150 Disqualification from office for using money or property to secure or influence election -- Corporation not to use money or other thing of value to influence election -- Exclusion from office for conviction of felony or high misdemeanor -- Laws to regulate elections.**

Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected who shall be convicted of having given, or consented to the giving, offer or promise of any money or other thing of value, to procure his election, or to influence the vote of any voter at such election; and if any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation, upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the General Assembly to provide for the enforcement of the provisions of this section. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law, but such disability may be removed by pardon of the Governor. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult or other improper practices.

**Text as Ratified on:** August 3, 1891, and revised September 28, 1891.

**History:** Not yet amended.

**118.025 Voting to be by secret paper ballot -- General laws applicable -- Time for holding elections.**

- (1) Except as otherwise provided by law, voting in all primaries and elections shall be by secret paper ballot.
- (2) The general laws applying to primaries, regular elections, and special elections shall apply to primaries, regular elections, and special elections conducted with the use of voting equipment, and all provisions of the general laws applying to the custody of ballot boxes shall apply, as far as applicable, to the custody of the voting system or voting equipment.
- (3) A primary for the nomination of candidates to be voted for at the next regular election shall be held on the first Tuesday after the third Monday in May of each year.
- (4) The election of all officers of all governmental units shall be held on the first Tuesday after the first Monday in November.
- (5) If the law authorizes the calling of a special election on a day other than the day of the regular election in November, the election shall be held on a Tuesday.
- (6) If the law requires that a special election be held within a period of time during which the voting equipment must be locked as required by KRS 117.295, the special election shall be held on the fourth Tuesday following the expiration of the period during which the voting equipment is locked.

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 197, sec. 48, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 88, sec. 5, effective July 15, 2020. -- Amended 2008 Ky. Acts ch. 129, sec. 6, effective July 15, 2008. -- Amended 2002 Ky. Acts ch. 262, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 261, sec. 2, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 195, sec. 13, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 394, sec. 20, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 288, sec. 38, effective July 14, 1992; and ch. 296, sec. 7, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 431, sec. 1, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 29, sec. 12, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 44, sec. 6, effective March 2, 1984. -- Amended 1982 Ky. Acts ch. 402, sec. 3, effective January 1, 1984. -- Created 1974 Ky. Acts ch. 130, sec. 98, effective June 21, 1974.



FILED WITH LRC  
TIME: 10:50 AM  
APR 15 2024  
Emily B Caudill  
REGULATIONS COMPILER

1 STATE BOARD OF ELECTIONS

2 (Amendment)

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5 Section 1. Section 1. Definitions.

6 (1) "Accuracy Board" means the county board of elections, or at least two (2)  
7 individuals appointed by the county board of elections, assigned with the duty of  
8 overseeing the accuracy testing of the voting machines and the voting systems required  
9 by 31 KAR 2:020.

10 (2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking  
11 the accuracy of the voting equipment required by KRS 117.383(6), and the testing of the  
12 automatic tabulating equipment and voting systems required by KRS 117.389.

13 (3) "Ballot accountability statement" means a form created by the county clerk in  
14 accordance with Section 4 of this administrative regulation.

15 (4) "Ballot template" means a printout created by the program administrator of the  
16 voting systems that shows the results of the steps taken by the program administrator to  
17 place all candidates, races, and ballot questions on each ballot based on the information  
18 provided by the county clerk.

19 (5) "Certification" means the information provided by the county clerk to the  
20 program administrator that includes an accurate listing of all federal, state, county, and

1 local candidates, offices and ballot questions to be placed on the ballot for each voting  
2 machine or voting system for each precinct within five (5) days of receiving the  
3 certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or  
4 immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

5 (6) "Program administrator" means the county clerk or authorized assistant  
6 designated to configure the voting machines and voting systems.

7 (7) "Scan voting system" means a tabulating device that reads paper ballots by  
8 electronically detecting voters' marks.

9 (8) "Voting machine" means hardware, which is a component of the voting system,  
10 used or relied upon by a voter in casting and recording his or her votes in a precinct in an  
11 election, which has been approved by the State Board of Elections for use in elections in  
12 the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

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

18 (10) "Zero-file" means a computer-based electronic file type listing all electoral  
19 contests and questions, displaying precinct-by-precinct vote totals registering as zero,  
20 which includes all candidates, offices, and ballot questions in the order under which they

1 have been certified pursuant to KRS 118.215(1) or KRS 118.770 , for all mail-in absentee  
2 ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and  
3 election day ballots.

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

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

7 (2)

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

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

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

18 (4) The county clerk shall compare the prepared ballots and ballot screens, if  
19 applicable, for each voting system with the ballot template and the certification supplied  
20 by the county clerk to the program administrator to ascertain that all federal, state, county,

1 and local candidates, offices and ballot questions shall be the same as listed on the  
2 certification and shall appear in the correct positions.

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

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

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

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

1           Section 3. Number of Ballots to be Printed.

2           In addition to the requirements established in KRS 117.145, the county clerk shall  
3 provide a sufficient number of printed ballots for each precinct in a county that uses scan  
4 voting systems for each election. The number of ballots required to be printed and  
5 distributed to each precinct with scan voting systems shall be determined as follows:

6           (1) For a primary, the number of ballots shall be at least ten (10) percent more than  
7 the total number of votes cast in each party's primary and nonpartisan race in the most  
8 recent presidential primary election;

9           (2) For the general election, the number of ballots shall be at least ten (10) percent  
10 more than the total number of votes cast in the most recent general election in which  
11 votes were cast for the electors for the President of the United States; and

12           (3) For a special election, the number of ballots shall be a sufficient number as  
13 determined by the county clerk considering the number of registered voters in the  
14 precinct and the type of special election to be held.

15           Section 4. Preparation and Delivery of Ballots.

16           (1) The county clerk shall place into a container the paper ballots, if applicable, for  
17 each precinct.

18           (2) The container shall be secured with a seal and contain a certificate signed by  
19 the county clerk recording the total number of ballots in the container and that the ballots  
20 were counted and sealed by the county clerk.

1           (3) Ballots not issued to a precinct or assigned for absentee voting shall be secured  
2 and accounted for by the county clerk.

3           (4) The county clerk shall maintain a record of the number of ballots and serial  
4 numbers of the voting systems issued to each precinct.

5           (5) If using paper ballots for a scan voting system, the county clerk shall create a  
6 ballot accountability statement to be provided along with the ballots to each precinct that  
7 includes the following:

8           (a) In a primary, an accounting of the total number of ballots for each party primary  
9 and nonpartisan race submitted to the precinct to be completed by the county clerk;

10          (b) In a general election, an accounting of the total number of each type of ballot  
11 submitted to the precinct to be completed by the county clerk;

12          (c) An oath for the county clerk to sign attesting to the accuracy of the information  
13 provided by the county clerk on the statement;

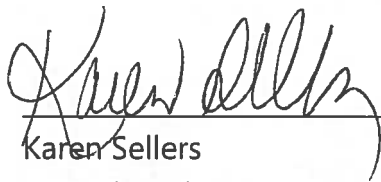
14          (d) An accounting of the total number of ballots used, unused, and spoiled on  
15 election day to be completed by the precinct election clerk and signed by all four (4)  
16 precinct election officers;

17          (e) An accounting of the total number of ballots returned to the county clerk at the  
18 end of the election day to be completed by the precinct election clerk;

19          (f) A section that allows for the precinct election clerk to explain any discrepancies;  
20 and

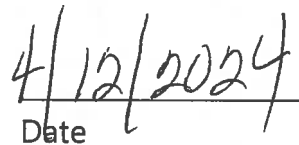
- 1 (g) An oath for the precinct election officers to sign attesting to the accuracy of the
- 2 information provided on the statement.





Karen Sellers

Executive Director, State Board of Elections



Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on June 28, 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 June 30, 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

31 KAR 2:010 Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(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 established any fees or directly or indirectly increased any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Explain why or why not. 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

31 KAR 2:010

Contact Person: Taylor Brown, phone: 502-782-9499, email: TaylorA.Brown@ky.gov

(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.

(a) How much cost savings will this administrative regulation generate for the regulated entities 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.

(b) How much cost savings will this administrative regulation generate 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) 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.