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**LEGISLATIVE RESEARCH COMMISSION**

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**MEMORANDUM**

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

FROM: Emily Caudill, Regulations Compiler

RE: Acknowledgement of Proposed & Emergency Regulations – 031 KAR 004:220 & 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 4:220E

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

1 STATE BOARD OF ELECTIONS

2 (New Emergency Administrative Regulation)

3 31 KAR 4:220E. Recount procedures.

4 RELATES TO: KRS 120.095, 120.157, 120.185, 120.260, 120.290,

5 STATUTORY AUTHORITY: KRS 117.015(1)(a)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) establishes the State  
7 Board of Elections as the independent agency of state government which shall administer  
8 the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all  
9 authorize the post-election recounting of ballots cast. These same statutes are all largely  
10 without procedures for how such an event should take place. This administrative  
11 regulation establishes procedures for the recounting of ballots so that there may be an  
12 established standard throughout the Commonwealth.

13 Section 1. Definition. "Recount" means a post-election retallying of ballots cast in  
14 a primary, general, or special election, as authorized under KRS 120.095, 120.157, 120.185,  
15 120.260, or 120.290.

16 Section 2. Locations.

1 (1) Upon identifying that a recount will be taking place, an affected county board  
2 of elections shall identify a suitable location, within the county, where the recount can  
3 take place.

4 (a) A suitable location shall be one where all of the voting equipment and ballot  
5 boxes required for the recount can be housed in one location and there is ample space  
6 for the personnel required for the task and all authorized observers, who shall have a  
7 dedicated area within the location to witness the recount.

8 (b) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk  
9 shall assist the Franklin Circuit Court in finding a location for the commencing of the  
10 recount should the Court find the courthouse at Frankfort unsuitable for the event.

11 Section 2. Recount Personnel.

12 (1) Pursuant to KRS 117.035(5), an affected county board of elections may  
13 employ a bipartisan staff sufficient to carry out the duties of the recount. Once a  
14 county board identifies that a recount will be taking place, the board shall immediately  
15 seek out citizens of the county who may wish to work for the county board on a  
16 temporary basis as recount officials.

17 (2) County boards shall recruit enough citizens of the county to work as recount  
18 officials so that the recount may be completed before any statutory deadline.

19 (a) Citizens hired to work as recount officials shall be registered voters of the  
20 county in which they desire to work.

1 (b) Recount officials shall be paid an hourly wage for their work during the entirety  
2 of the recount process. The hourly wage shall be set uniformly for all recount officials by  
3 the county board of elections at a rate that is both prevailing in the jurisdiction at the time  
4 for the type of work to be done and that is high enough to entice applicants qualified for  
5 such a short-term, temporary assignment.

6 (c) Before any recount official shall be allowed to work, the individual shall take  
7 the oath found in Section 228 of the Kentucky Constitution, which shall be administered  
8 by any officer authorized under KRS 62.020.

9 Section 3. Procedures as to Election Vendors.

10 (1) Upon identifying that a recount will be taking place, county clerks shall work  
11 with their voting equipment vendors to begin programming, distributing, and setting  
12 the voting equipment necessary for the recount.

13 (2) Election equipment shall be set to isolate the race or question subject to the  
14 recount and the straight-party option, if applicable.

15 Section 4. Initiating the Recount.

16 (1) Before recount proceedings may begin, on the day fixed for the recount, the  
17 county board of elections shall meet to confirm the integrity of the ballots subject to the  
18 recount.

19 (2) The confirmation of the integrity of the ballots shall be reflected in the  
20 recorded minutes of the meeting of the county board of elections.

1 (3) Absent a showing of clear and convincing evidence that the ballots have been  
2 purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

3 Section 4. Securing the Integrity of the Recount.

4 (1) Before members of the recount teams shall be allowed to handle individual  
5 ballots, each member shall present their hands and fingernails to the members of the  
6 county board of elections for visual inspection. Before proceeding to handle ballots,  
7 county board of elections members shall confirm that each recount official's hands and  
8 fingernails are clean enough so as to not transfer any ink, lead, or other markings onto  
9 the ballots.

10 (2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough  
11 to contain multiple ballots shall be allowed in any area in the direct proximity of voting  
12 equipment or ballots during the counting of ballots.

13 (3) The use of cell phones or other electronic devices shall not be permitted within  
14 the direct proximity of voting equipment or ballots. Any capturing of photographic or  
15 video images of ballots shall be prohibited.

16 (4) No food or drink shall be permitted in any area in the direct proximity of voting  
17 equipment or ballots without prior authorization from the county board of elections.

18 Section 6. Before Voting Equipment is Opened.

1 (1) The county board of elections or the county clerk shall split the recount officials  
2 into recount teams of two so that each team contains individuals registered of differing  
3 political party affiliations.

4 (2) Each recount team shall be assigned to only one piece of voting equipment  
5 at any one time and no piece of voting equipment shall have more than one recount  
6 team operating it at any one time.

7 (3) Before a piece of voting equipment is opened by a recount team, the  
8 information from the voting equipment's Machine Verification Form shall be transposed  
9 onto the Form SBE 82, Recount Tabulation Form.

10 Section 7. Opening the Voting Equipment.

11 (1) Once a recount team opens a piece of voting equipment, the seal number,  
12 beginning counter number, and lifetime counter number shall be checked to match the  
13 Machine Verification Form.

14 (2) Once the ballot box or tub containing the ballots is opened, the seal number  
15 shall be recorded on the Form SBE 82, Recount Tabulation Form.

16 (3) Every ballot from the ballot box or tub shall be removed and placed on a  
17 segregated table next to the voting equipment and the broken seal shall be placed  
18 inside the ballot box or tub. At no point shall ballots from one ballot box or tub be  
19 comingled with any other materials, including ballots from another ballot box or tub. At  
20 no time shall ballots be left outside of a ballot box or tub unattended.



1 Section 8. Procedure to Recount Ballots.

2 (1) Every ballot removed from a ballot box or tub for a recount shall be scanned  
3 back through the piece of voting equipment from which the ballot box or tub was  
4 originally associated, one ballot at a time. If a county is in possession of a separate  
5 piece of voting equipment designed and regularly used to count larger amounts of  
6 ballots, the use of such voting equipment shall be authorized.

7 (2) Scanned ballots shall be counted by the electronic voting equipment in  
8 accordance with 31 KAR 6:03054(1) and the cumulative totals for each slate of  
9 candidates shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

10 (3) If a ballot does not scan through the piece of voting equipment on the first  
11 attempt, each member of the associated recount team shall attempt to scan the ballot  
12 one additional time each. If, after three unsuccessful attempts, a ballot does not scan, it  
13 shall be set aside for later adjudication.

14 (4) Once only those ballots set aside remain, they shall be adjudicated as one of  
15 three types: 1) an overvote, meaning that upon visual inspection of the ballot, more than  
16 one slate of candidates appears to have been selected by the voter; 2) an undervote,  
17 meaning that upon visual inspection, no slate of candidates appears to have been  
18 selected by the voter on the ballot; or 3) a damaged ballot, no longer capable of being  
19 scanned into the voting equipment because of damage sustained to the physical ballot,

1 but clearly having a selection for only one slate of candidates or that slate's straight-  
2 party option.

3 (5) The number of undervotes, overvotes, and damaged ballots shall be recorded  
4 on the Form SBE 82, Recount Tabulation Form as such.

5 (6) The recount officials shall place the cumulative number of undervotes in a  
6 manilla envelope, seal the envelope with tape, label it with the word "undervotes," and  
7 then sign it alongside the date and time of their signature. This procedure shall then be  
8 followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative  
9 number of undervotes, overvotes, or damaged ballots will not fit inside one manilla  
10 envelope, multiple envelopes may be used.

11 (7) Once the undervotes, overvotes, and damaged ballots are placed in  
12 envelopes, the envelopes shall be placed back in the ballot box or tub on top of the  
13 ballots already recounted by the electronic voting equipment.

14 (8) Once a conclusive accounting has been reached for all ballots removed from  
15 the ballot box or tub, the voting equipment shall be secured with a seal of a color not  
16 previously used in the election and the serial number of the seal shall be recorded on  
17 the Form SBE 82, Recount Tabulation Form.

18 (9) The Form SBE 82, Recount Tabulation Form shall then be signed by the  
19 recount team members and all members of the county board of elections.

1 (10) Once this process is complete for one piece of voting equipment, a recount  
2 team may move on to a new piece of voting equipment and begin the process of  
3 recounting the ballots found within.

4 (11) Once all ballots have been counted by the electronic voting equipment and  
5 all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall  
6 scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of  
7 Elections.

8 (a) For a recount conducted under KRS 120.157, the State Board of Elections shall  
9 examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results  
10 submitted. If the tally of results submitted shows that the count of ballots by the  
11 electronic voting equipment did not result in a margin of victory of 0.25% or less, the  
12 State Board of Elections shall notify each county that their recount is complete. If the  
13 tally of results submitted shows that the count of ballots by the electronic voting  
14 equipment did result in a margin of victory of 0.25% or less, the State Board of Elections  
15 shall tally the total number of overvotes and damaged ballots reported on the  
16 submitted Form SBE 82, Recount Tabulation Forms. If the cumulative number of  
17 overvotes and damaged ballots is large enough to overcome the machine-established  
18 margin of victory, the State Board of Elections shall notify the counties that they are to  
19 meet immediately to count the overvotes and damaged ballots. If the cumulative  
20 number of overvotes and damaged ballots is not large enough to overcome the

1 machine-established margin of victory, the State Board of Elections shall notify the  
2 counties that their recount is complete.

3 (12) Upon the need for a count of overvotes and damaged ballots, the county  
4 board of elections shall meet to remove all manila folders containing overvotes and  
5 damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full  
6 county board of elections using the procedures described in 31 KAR 6:030§4(2) and 31  
7 KAR 6:030§4(3). Overvotes shall also be subject to the allowances of 31 KAR 6:030§4(4).

8 (a) Each adjudicated ballot, shall, by majority vote of the county board of  
9 elections, result in a vote for either: 1) one valid candidate, one valid slate of candidates,  
10 or valid answer to a question; 2) one valid write-in candidate or slate of candidates, or 3)  
11 no candidate, slate of candidates, or answer to a question. The adjudication of each  
12 ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

13 (b) After overvotes and undervotes are adjudicated, they shall be placed, along  
14 with the original manila envelope, in a new manila envelope. The county board of  
15 elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots,"  
16 accordingly, and then sign it alongside the date and time of their signature.

17 Section 9. Reporting of Recount Totals.

18 (1) Once every piece of voting equipment has been opened, all ballots have  
19 been recounted, and a conclusive recount total for each piece of equipment has been  
20 established, the county board of elections shall transfer the totals for each candidate or

1 question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official  
2 Count and Record of Election Totals.

3 (2) The same totals recorded onto the Form SBE 49, Official Count and Record of  
4 Election Totals shall also concurrently be input into an online portal belonging to the  
5 Secretary of State should such be available.

6 (3) The members of the county board of elections shall affix their signatures to  
7 the completed Form SBE 49, Official Count and Record of Election Totals, which shall  
8 mark the completion of the recount.

9 (4) Once the Form SBE 49, Official Count and Record of Election Totals is signed,  
10 the county board of elections shall fax a copy the document to the office of the  
11 Secretary of State, no later than 4:00PM, local time, on the day following the completion  
12 of the county's recount. Each county clerk shall retain a copy of the completed Form  
13 SBE 49, Official Count and Record of Election Totals for their records and mail the  
14 original signed copy to the office of the Secretary of State.

15 Section 10. Reimbursement of Recount Costs.

16 (1) All costs associated with the recount proceedings, including but not limited to,  
17 personnel expenses and vendor charges, shall be recorded and documented by the  
18 county clerk.

19 Section 11. Incorporated by Reference.

20 (1) The following material is incorporated by reference:


1 (a) "Recount Tabulation Form," Form SBE 82, 04/2024 and

2 (b) "Official Count and Record of Election Totals," Form SBE 49, 04/2024;

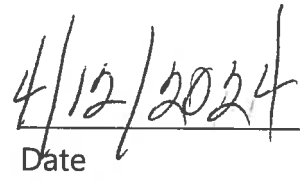
3 (2) This material may be inspected, copied, or obtained, subject to applicable

4 copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky

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



Karen Sellers  
Executive Director, State Board of Elections



Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this new 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 4:220E

Contact Person: Taylor Brown, phone: 502-782-9499, email: [TaylorA.Brown@ky.gov](mailto:TaylorA.Brown@ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast but are all largely without procedures for how such an event should take place.

(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 will allow for uniform recount procedures in each county should a recount be required under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

(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:

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

(c) How the amendment conforms to the content of the authorizing statutes:

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

This is a new administrative regulation.

(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 candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, county boards of election, the Secretary of State, 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, candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question,

vendors of electronic voting equipment, county clerks, and county boards of elections will need to follow instructions setting forth procedures for a recount of ballots; the Secretary of State will need to determine whether or not to provide an online reporting tool for recount results; the State Board of Elections may need to determine if further recounting of ballots is necessary under KRS 120.157.

(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 cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will allow those impacted by a recount of ballots to know that a recount in one jurisdiction is being conducted under the same procedures as one in another jurisdiction, ensuring an equitable process.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budgets of county fiscal courts, pursuant to KRS 117.345 and funds from the administrative budgets of the Secretary of State and the State Board of Elections will be used in the respective 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, though with the recent passing of KRS 120.157, funding for mandatory statutory recounts should be considered in future legislative sessions.

(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 4:220E

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), 120.095, 120.157, 120.185, 120.260, and 120.290 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, as well as the Secretary of State.

(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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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 clerks and 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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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 candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, and vendors of electronic voting equipment.

(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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

"Recount Tabulation Form," Form SBE 82, 04/2024, is the form used in a recount to track the origin and process of ballots throughout the process and record unofficial vote totals as they are counted.

"Official Count and Record of Election Totals," Form SBE 49, 04/2024, is the form with vote totals attested to by a county board of elections following a recount, sent to the Secretary of State.





**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.

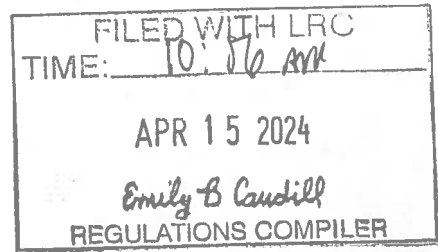
**History:** Not yet amended.

**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.



1 STATE BOARD OF ELECTIONS

2 (New Administrative Regulation)

3 31 KAR 4:220. Recount procedures.

4 RELATES TO: KRS 120.095, 120.157, 120.185, 120.260, 120.290,

5 STATUTORY AUTHORITY: KRS 117.015(1)(a)

6 NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) establishes the State

7 Board of Elections as the independent agency of state government which shall administer

8 the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all

9 authorize the post-election recounting of ballots cast. These same statutes are all largely

10 without procedures for how such an event should take place. This administrative

11 regulation establishes procedures for the recounting of ballots so that there may be an

12 established standard throughout the Commonwealth.

13 Section 1. Definition. "Recount" means a post-election retallying of ballots cast in

14 a primary, general, or special election, as authorized under KRS 120.095, 120.157, 120.185,

15 120.260, or 120.290.

16 Section 2. Locations.



1 (1) Upon identifying that a recount will be taking place, an affected county board  
2 of elections shall identify a suitable location, within the county, where the recount can  
3 take place.

4 (a) A suitable location shall be one where all of the voting equipment and ballot  
5 boxes required for the recount can be housed in one location and there is ample space  
6 for the personnel required for the task and all authorized observers, who shall have a  
7 dedicated area within the location to witness the recount.

8 (b) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk  
9 shall assist the Franklin Circuit Court in finding a location for the commencing of the  
10 recount should the Court find the courthouse at Frankfort unsuitable for the event.

11 Section 2. Recount Personnel.

12 (1) Pursuant to KRS 117.035(5), an affected county board of elections may  
13 employ a bipartisan staff sufficient to carry out the duties of the recount. Once a  
14 county board identifies that a recount will be taking place, the board shall immediately  
15 seek out citizens of the county who may wish to work for the county board on a  
16 temporary basis as recount officials.

17 (2) County boards shall recruit enough citizens of the county to work as recount  
18 officials so that the recount may be completed before any statutory deadline.

19 (a) Citizens hired to work as recount officials shall be registered voters of the  
20 county in which they desire to work.

1 (b) Recount officials shall be paid an hourly wage for their work during the entirety  
2 of the recount process. The hourly wage shall be set uniformly for all recount officials by  
3 the county board of elections at a rate that is both prevailing in the jurisdiction at the time  
4 for the type of work to be done and that is high enough to entice applicants qualified for  
5 such a short-term, temporary assignment.

6 (c) Before any recount official shall be allowed to work, the individual shall take  
7 the oath found in Section 228 of the Kentucky Constitution, which shall be administered  
8 by any officer authorized under KRS 62.020.

9 Section 3. Procedures as to Election Vendors.

10 (1) Upon identifying that a recount will be taking place, county clerks shall work  
11 with their voting equipment vendors to begin programming, distributing, and setting  
12 the voting equipment necessary for the recount.

13 (2) Election equipment shall be set to isolate the race or question subject to the  
14 recount and the straight-party option, if applicable.

15 Section 4. Initiating the Recount.

16 (1) Before recount proceedings may begin, on the day fixed for the recount, the  
17 county board of elections shall meet to confirm the integrity of the ballots subject to the  
18 recount.

19 (2) The confirmation of the integrity of the ballots shall be reflected in the  
20 recorded minutes of the meeting of the county board of elections.

1 (3) Absent a showing of clear and convincing evidence that the ballots have been  
2 purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

3 Section 4. Securing the Integrity of the Recount.

4 (1) Before members of the recount teams shall be allowed to handle individual  
5 ballots, each member shall present their hands and fingernails to the members of the  
6 county board of elections for visual inspection. Before proceeding to handle ballots,  
7 county board of elections members shall confirm that each recount official's hands and  
8 fingernails are clean enough so as to not transfer any ink, lead, or other markings onto  
9 the ballots.

10 (2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough  
11 to contain multiple ballots shall be allowed in any area in the direct proximity of voting  
12 equipment or ballots during the counting of ballots.

13 (3) The use of cell phones or other electronic devices shall not be permitted within  
14 the direct proximity of voting equipment or ballots. Any capturing of photographic or  
15 video images of ballots shall be prohibited.

16 (4) No food or drink shall be permitted in any area in the direct proximity of voting  
17 equipment or ballots without prior authorization from the county board of elections.

18 Section 6. Before Voting Equipment is Opened.

1 (1) The county board of elections or the county clerk shall split the recount officials  
2 into recount teams of two so that each team contains individuals registered of differing  
3 political party affiliations.

4 (2) Each recount team shall be assigned to only one piece of voting equipment  
5 at any one time and no piece of voting equipment shall have more than one recount  
6 team operating it at any one time.

7 (3) Before a piece of voting equipment is opened by a recount team, the  
8 information from the voting equipment's Machine Verification Form shall be transposed  
9 onto the Form SBE 82, Recount Tabulation Form.

10 Section 7. Opening the Voting Equipment.

11 (1) Once a recount team opens a piece of voting equipment, the seal number,  
12 beginning counter number, and lifetime counter number shall be checked to match the  
13 Machine Verification Form.

14 (2) Once the ballot box or tub containing the ballots is opened, the seal number  
15 shall be recorded on the Form SBE 82, Recount Tabulation Form.

16 (3) Every ballot from the ballot box or tub shall be removed and placed on a  
17 segregated table next to the voting equipment and the broken seal shall be placed  
18 inside the ballot box or tub. At no point shall ballots from one ballot box or tub be  
19 comingled with any other materials, including ballots from another ballot box or tub. At  
20 no time shall ballots be left outside of a ballot box or tub unattended.

1 Section 8. Procedure to Recount Ballots.

2 (1) Every ballot removed from a ballot box or tub for a recount shall be scanned  
3 back through the piece of voting equipment from which the ballot box or tub was  
4 originally associated, one ballot at a time. If a county is in possession of a separate  
5 piece of voting equipment designed and regularly used to count larger amounts of  
6 ballots, the use of such voting equipment shall be authorized.

7 (2) Scanned ballots shall be counted by the electronic voting equipment in  
8 accordance with 31 KAR 6:030§4(1) and the cumulative totals for each slate of  
9 candidates shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

10 (3) If a ballot does not scan through the piece of voting equipment on the first  
11 attempt, each member of the associated recount team shall attempt to scan the ballot  
12 one additional time each. If, after three unsuccessful attempts, a ballot does not scan, it  
13 shall be set aside for later adjudication.

14 (4) Once only those ballots set aside remain, they shall be adjudicated as one of  
15 three types: 1) an overvote, meaning that upon visual inspection of the ballot, more than  
16 one slate of candidates appears to have been selected by the voter; 2) an undervote,  
17 meaning that upon visual inspection, no slate of candidates appears to have been  
18 selected by the voter on the ballot; or 3) a damaged ballot, no longer capable of being  
19 scanned into the voting equipment because of damage sustained to the physical ballot,

1 but clearly having a selection for only one slate of candidates or that slate's straight-  
2 party option.

3 (5) The number of undervotes, overvotes, and damaged ballots shall be recorded  
4 on the Form SBE 82, Recount Tabulation Form as such.

5 (6) The recount officials shall place the cumulative number of undervotes in a  
6 manilla envelope, seal the envelope with tape, label it with the word "undervotes," and  
7 then sign it alongside the date and time of their signature. This procedure shall then be  
8 followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative  
9 number of undervotes, overvotes, or damaged ballots will not fit inside one manilla  
10 envelope, multiple envelopes may be used.

11 (7) Once the undervotes, overvotes, and damaged ballots are placed in  
12 envelopes, the envelopes shall be placed back in the ballot box or tub on top of the  
13 ballots already recounted by the electronic voting equipment.

14 (8) Once a conclusive accounting has been reached for all ballots removed from  
15 the ballot box or tub, the voting equipment shall be secured with a seal of a color not  
16 previously used in the election and the serial number of the seal shall be recorded on  
17 the Form SBE 82, Recount Tabulation Form.

18 (9) The Form SBE 82, Recount Tabulation Form shall then be signed by the  
19 recount team members and all members of the county board of elections.

1 (10) Once this process is complete for one piece of voting equipment, a recount  
2 team may move on to a new piece of voting equipment and begin the process of  
3 recounting the ballots found within.

4 (11) Once all ballots have been counted by the electronic voting equipment and  
5 all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall  
6 scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of  
7 Elections.

8 (a) For a recount conducted under KRS 120.157, the State Board of Elections shall  
9 examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results  
10 submitted. If the tally of results submitted shows that the count of ballots by the  
11 electronic voting equipment did not result in a margin of victory of 0.25% or less, the  
12 State Board of Elections shall notify each county that their recount is complete. If the  
13 tally of results submitted shows that the count of ballots by the electronic voting  
14 equipment did result in a margin of victory of 0.25% or less, the State Board of Elections  
15 shall tally the total number of overvotes and damaged ballots reported on the  
16 submitted Form SBE 82, Recount Tabulation Forms. If the cumulative number of  
17 overvotes and damaged ballots is large enough to overcome the machine-established  
18 margin of victory, the State Board of Elections shall notify the counties that they are to  
19 meet immediately to count the overvotes and damaged ballots. If the cumulative  
20 number of overvotes and damaged ballots is not large enough to overcome the

1 machine-established margin of victory, the State Board of Elections shall notify the  
2 counties that their recount is complete.

3 (12) Upon the need for a count of overvotes and damaged ballots, the county  
4 board of elections shall meet to remove all manila folders containing overvotes and  
5 damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full  
6 county board of elections using the procedures described in 31 KAR 6:030§4(2) and 31  
7 KAR 6:030§4(3). Overvotes shall also be subject to the allowances of 31 KAR 6:030§4(4).

8 (a) Each adjudicated ballot, shall, by majority vote of the county board of  
9 elections, result in a vote for either: 1) one valid candidate, one valid slate of candidates,  
10 or valid answer to a question; 2) one valid write-in candidate or slate of candidates, or 3)  
11 no candidate, slate of candidates, or answer to a question. The adjudication of each  
12 ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

13 (b) After overvotes and undervotes are adjudicated, they shall be placed, along  
14 with the original manila envelope, in a new manila envelope. The county board of  
15 elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots,"  
16 accordingly, and then sign it alongside the date and time of their signature.

17 Section 9. Reporting of Recount Totals.

18 (1) Once every piece of voting equipment has been opened, all ballots have  
19 been recounted, and a conclusive recount total for each piece of equipment has been  
20 established, the county board of elections shall transfer the totals for each candidate or



1 question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official  
2 Count and Record of Election Totals.

3 (2) The same totals recorded onto the Form SBE 49, Official Count and Record of  
4 Election Totals shall also concurrently be input into an online portal belonging to the  
5 Secretary of State should such be available.

6 (3) The members of the county board of elections shall affix their signatures to  
7 the completed Form SBE 49, Official Count and Record of Election Totals, which shall  
8 mark the completion of the recount.

9 (4) Once the Form SBE 49, Official Count and Record of Election Totals is signed,  
10 the county board of elections shall fax a copy the document to the office of the  
11 Secretary of State, no later than 4:00PM, local time, on the day following the completion  
12 of the county's recount. Each county clerk shall retain a copy of the completed Form  
13 SBE 49, Official Count and Record of Election Totals for their records and mail the  
14 original signed copy to the office of the Secretary of State.

15 Section 10. Reimbursement of Recount Costs.

16 (1) All costs associated with the recount proceedings, including but not limited to,  
17 personnel expenses and vendor charges, shall be recorded and documented by the  
18 county clerk.

19 Section 11. Incorporated by Reference.

20 (1) The following material is incorporated by reference:

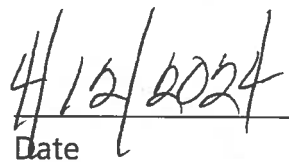
- 1 (a) "Recount Tabulation Form," Form SBE 82, 04/2024 and
- 2 (b) "Official Count and Record of Election Totals," Form SBE 49, 04/2024;
- 3 (2) This material may be inspected, copied, or obtained, subject to applicable
- 4 copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky
- 5 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.



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Karen Sellers

Executive Director, State Board of Elections



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Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this new 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 4:220

Contact Person: Taylor Brown, phone: 502-782-9499, email: [TaylorA.Brown@ky.gov](mailto:TaylorA.Brown@ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast but are all largely without procedures for how such an event should take place.

(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 will allow for uniform recount procedures in each county should a recount be required under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

(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:

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

(c) How the amendment conforms to the content of the authorizing statutes:

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

This is a new administrative regulation.

(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 candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, county boards of election, the Secretary of State, 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, candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question,

vendors of electronic voting equipment, county clerks, and county boards of elections will need to follow instructions setting forth procedures for a recount of ballots; the Secretary of State will need to determine whether or not to provide an online reporting tool for recount results; the State Board of Elections may need to determine if further recounting of ballots is necessary under KRS 120.157.

(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 cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will allow those impacted by a recount of ballots to know that a recount in one jurisdiction is being conducted under the same procedures as one in another jurisdiction, ensuring an equitable process.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budgets of county fiscal courts, pursuant to KRS 117.345 and funds from the administrative budgets of the Secretary of State and the State Board of Elections will be used in the respective 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, though with the recent passing of KRS 120.157, funding for mandatory statutory recounts should be considered in future legislative sessions.

(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 4:220

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), 120.095, 120.157, 120.185, 120.260, and 120.290 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, as well as the Secretary of State.

(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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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 clerks and 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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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 candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, and vendors of electronic voting equipment.

(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 under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

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.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

"Recount Tabulation Form," Form SBE 82, 04/2024, is the form used in a recount to track the origin and process of ballots throughout the process and record unofficial vote totals as they are counted.

"Official Count and Record of Election Totals," Form SBE 49, 04/2024, is the form with vote totals attested to by a county board of elections following a recount, sent to the Secretary of State.



# Commonwealth of Kentucky

## Recount Tabulation Form

|   |  |
|---|--|
| <b>DATE /COUNTY</b>   | <b>MACHINE SERIAL NUMBER</b>                     |
| <b>VOTING LOCATION OF MACHINE</b>   | <b>BEGINNING COUNTER NUMBER</b>                  |
| <b>SEAL ON MACHINE</b><br>NUMBER: <input type="checkbox"/> SEALED <input type="checkbox"/> BROKEN | <b>PRE-RECOUNT LIFETIME COUNTER NUMBER</b>       |
| <b>NUMBER OF BALLOTS RECOUNTED</b>  | <b>POST-RECOUNT LIFETIME COUNTER NUMBER</b>      |
| <b>NUMBER OF BALLOTS NOT COUNTED (OVERVOTE)</b>   | <b>NUMBER OF BALLOTS NOT COUNTED (UNDERVOTE)</b> |

| POST-RECOUNT VOTE TOTALS |                       |
|--------------------------|-----------------------|
| CANDIDATE/SLATE/QUESTION | TOTAL NUMBER OF VOTES |
|                          |                       |
|                          |                       |
|                          |                       |
|                          |                       |
|                          |                       |
|                          |                       |
|                          |                       |

| ADDITIONAL NOTES |  |
|------------------|--|
|                  |  |
|                  |  |

Verified by: Print \_\_\_\_\_ Signature \_\_\_\_\_  
 Recount Team Member 1

Print \_\_\_\_\_ Signature \_\_\_\_\_  
 Recount Team Member 2

Attested by: Signature \_\_\_\_\_ Signature \_\_\_\_\_  
 Democrat Member County Board of Elections Republican Member County Board of Elections

Signature \_\_\_\_\_ Signature \_\_\_\_\_  
 Sheriff/Sheriff's Replacement Chair County Board of Elections



**CERTIFICATION  
OFFICIAL COUNT AND RECORD  
OF ELECTION TOTALS**

We, the \_\_\_\_\_ County Board of Elections, do certify that an election was held in said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

We further certify that following a  canvass  recanvass  recount (select one) of vote totals, conducted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the following votes were cast for the Office or on the Question indicated:

| Office or Question | Name | Election Day Votes | In-Person Excused Absentee Votes | In-Person No-excuse Absentee Votes | Mail-in Absentee Votes | Provisional Votes | Total Votes |
|--------------------|------|--------------------|----------------------------------|------------------------------------|------------------------|-------------------|-------------|
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County Board of Elections (Democrat) \_\_\_\_\_  
County Board of Elections (Republican) \_\_\_\_\_  
County Board of Elections (Sheriff) \_\_\_\_\_  
County Board of Elections (County Clerk) \_\_\_\_\_