

Clearinghouse Rule 17-043

PROPOSED ORDER ADOPTING RULE Wisconsin Elections Commission

The Wisconsin Elections Commission proposes an order to repeal EL 6.03, 6.04(2) (Note), and EL 6.05; to amend EL 6.02(1), EL 6.02(2), EL 6.04 (title), EL 6.04(2), EL 6.04(3), EL 6.04(4), EL 6.04(5) and EL 6.04(6); to create 6.04(1)(ag) and 6.04(1)(ar), relating to procedure.

ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** ss. 5.05(1), 5.05(2m)(c)2.a., 5.06(1), 8.10(5), 8.10(6), 8.15(5)(a), 8.15(8), 8.20(6), 8.20(8)(a), 8.21, 9.01, 9.10, Stats.
2. **Statutory authority:** ss. 5.05(1)(f), 227.11(2)(a), Stats.; 2015 Wisconsin Act 118, Section 266 (6).
3. **Explanation of agency authority:** 2015 Wisconsin Act 118, Section 266 (6) directed all current rules of the Government Accountability Board to transfer to the Elections Commission or the Ethics Commission and shall be effective on the date of the transfer, and remain in effect until the Commissions amend or repeal the rules. As a successor agency to the Government Accountability Board, the Elections Commission has the responsibility for the administration of election laws and other law relating to elections and election campaigns, other than laws relating to campaign financing. s. 5.05 (1), Stats. Pursuant to such responsibility, the Elections Commission may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than campaign financing, or ensuring their proper administration.” s. 5.05(1)(f), Stats. The Elections Commission “may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute[.]” s. 227.11 (2) (a), Stats.
4. **Related statute(s) or rule(s):** Wisconsin Statutes s. 5.05(1)(f) provides the Commission the authority to implement rules which outline the procedures and standards the Commission uses when accepting complaint filings from the public under Wisconsin Statutes Ch. 5. Wisconsin Statutes s. 5.05(1)(f) provides the Commission the authority to implement rules which outline the procedures and standards the Commission uses when accepting ballot access filings and other election related filings from candidates and the public under Wisconsin Statutes Chs. 8 and 9.
5. **Plain language analysis:** This rule amends and repeals sections of EL Ch. 6 which no longer apply to the Wisconsin Elections Commission after the

transition from the Government Accountability Board. This rule also amends sections of EL Ch. 6 to update the procedures and standards for filing documents electronically with the Commission.

6. **Summary of, and comparison with, existing or proposed federal regulations:**

The Commission is unaware of any existing or proposed federal regulation that is applicable to this proposed rule.

7. **Comparison with rules in adjacent states:**

Iowa: The filing of certain election related documents can be accomplished by facsimile or email, if original documents are received by prescribed deadlines. Certain filings, including verified complaints must be submitted in hard copy with the appropriate filing officer.

Minnesota: Filing officers may accept only original hard-copy election petitions and recall petitions offered for filing, which is consistent with the amendments to the Wisconsin rules.

Illinois: The filing of complaints and filing of other documents with the Illinois State Board of Elections is accomplished by hard copy filing. The Illinois administrative code definition of filing does not include an option for filing documents by email or other electronic means.

Michigan: Consistent with the amendments to Wisconsin rules, certain election related document can only be filed in hard-copy like affidavits of candidacy and petitions.

8. **Summary of factual data and analytical methodologies:** Adoption of this rule was not predicated on any factual data or analytical methodologies. As part of the transition from the Government Accountability Board to the Wisconsin Elections Commission, the plan called for transferring GAB Ch. 6 in its entirety to the Wisconsin Elections Commission and rename it EL Ch. 6. Upon transfer, portions of the rule that no longer applied to the Wisconsin Elections Commission were to be removed.

9. **Analysis and supporting documentation used to determine effect on small businesses:** The Wisconsin Elections Commission does not anticipate that the changes to EL Ch. 6 will have an impact on small businesses. The proposed changes are limited to Wisconsin Elections Commission staff procedures and how candidates and the general public can comply with those procedures when filing complaints or ballot access documents. These procedures are wholly unrelated to small businesses and will have no impact.

10. **Effect on small business:** The creation of this rule does not affect small business.

11. **Agency contact person:** Nathan W. Judnic, Legal Counsel, Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 267-0953; nathan.judnic@wisconsin.gov

12. **Submission of written comments:** Comments may be submitted by mail or email to the above contact or to the Wisconsin Elections Commission generally, 212 E. Washington Ave., 3rd Floor, P.O. Box 7984, Madison, WI 53701-7984; or sent by email to elections@wi.gov. Comments may also be submitted to the Wisconsin Elections Commission using the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov>.

Comments on this rule will be accepted until close of business on June 25, 2017.

13. **Public hearing:** The proposed rule will be published under the 30-day notice procedure in s. 227.16 (2) (e). The proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by one of the following:

- (a) Twenty-five natural persons who will be affected by the rule.
- (b) A municipality that will be affected by the rule.
- (c) An association that is representative of a farm, labor, business or professional group that will be affected by the rule.

TEXT OF PROPOSED RULE:

SECTION 1. EL 6.02 is amended to read:

EL 6.02 Registration statement sufficiency. (1) Any registration filed with a filing officer under ~~ss. 11.0501, 11.0502, and 11.0503~~ chs. 8, 9, Stats., which is insufficient as to essential form, information or attestations shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. ~~The proposed registrant shall be informed that the attempted registration is not effective. The filing officer shall inform the proposed registrant that the attempted registration is not effective.~~

(2) Any registration statement filed with a filing officer under ~~ss. 11.0501, 11.0502, and 11.0503~~ chs. 8, 9, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective. The filing officer shall inform the registrant that the registration has lapsed and is not effective.

SECTION 2. EL 6.03 is repealed.

SECTION 3. EL 6.04 (title) is amended to read:

EL 6.04 Filing documents by facsimile (FAX) or email process.

SECTION 4. EL 6.04 (1) (ag) and (ar) are created to read:

EL 6.04 (1) (ag) “Email” has the same meaning as email process.

(ar) “Email process” means the electronic transmission of a duplicate copy of a signed original document.

SECTION 5. EL 6.04 (2) is amended to read:

EL 6.04 (2) ~~Nomination papers, recall petitions, and those campaign finance reports provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001 Stats.,~~ other election related petitions may not be filed with the filing officer by facsimile process or email process. ~~Nomination papers, and recall petitions, and other election related petitions shall not be considered filed with the filing officer until the signed original of each nomination paper, and each recall petition, or other election related petition is received in the offices of the filing officer. Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., and which are delivered by the U.S. mails are considered filed with the filing officer when the report is postmarked. Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., and which are not delivered by the U.S. mails, are considered filed with the filing officer when received in the filing officer's offices.~~

SECTION 6. EL 6.04 (2) (Note) is repealed.

SECTION 7. EL 6.04 (3) (a), (4), (5), and (6) are amended to read:

EL 6.04 (3) (a) A duplicate copy of the document is received by the filing officer, in its offices, by facsimile process or by email process, no later than the day and hour at which the document is required to be filed and

(4) Any document which is filed by facsimile process or by email process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the filing officer's staff when the facsimile copy or email copy is delivered to the filing officer's offices.

(5) If, for any reason, transmission of a document is not received at the filing officer's offices, whether because of a failure in the receiving system of the filing officer or

because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy or email copy is delivered to and received at the filing officer's offices and the signed original is received at the filing officer's offices with a postmark not later than the filing deadline.

(6) The burden of establishing that a document has been received by facsimile process or by email process at the offices of the filing officer shall be upon the person who, or the committee or group which, is required to file the document.

SECTION 8. EL 6.05 is repealed.

SECTION 9. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22, Stats.