

Clearinghouse Rule 24-066

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION

The Wisconsin Elections Commission adopts the following permanent rule to create EL 13, relating to training for election inspectors and special voting deputies (SVD).

The statement of scope for this rule, SS 030-22, was approved by the Office of Wisconsin Governor Tony Evers on March 31, 2022, published in Register No. 796A1, on April 4, 2022, and approved by the Wisconsin Elections Commission on July 22, 2022.

RULE ANALYSIS

Statutes Interpreted:

Sections 7.31 and 7.315, Stats.

Statutory Authority:

Sections 5.05(1), 7.31(1), 7.315(1), and 227.11(2)(a), Stats.

Related Statutes:

Sections 7.15(1)(e), (1m), (11), 7.10(9), 7.30(2)(c), Stats.

Plain Language Analysis:

The proposed administrative rule will codify training standards for election officials that currently only exist as recommendations in Wisconsin Elections Commission manuals. The proposed rule provides specific substantive training requirements for election inspectors and special voting deputies and establishes requirements for how frequently election officials must attend training to maintain their certification. The proposed rule assigns responsibility for training election officials to municipal clerks. The proposed rule does not mandate that municipal clerks use Wisconsin Elections Commission materials for training, but requires all training materials or summaries to be submitted to the Wisconsin Elections Commission for review and approval prior to training.

Summary of, and Comparison With, Existing or Proposed Federal Regulations:

The Help America Vote Act (“HAVA”) provides that States shall use funds provided under HAVA to perform various federal election-related functions, including training election officials, poll workers, and election volunteers. 42 U.S.C. §§ 15301(b)(1)(D), 15421(b)(2). HAVA also provides that State plans for administering federal elections must include information about how the “State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State” in administering uniform and nondiscriminatory elections. 42 U.S.C. § 15404(a)(3). Finally, HAVA also provides funds to states to “support training in the use of voting systems and technologies[.]” 42 U.S.C. § 15461(c)(1)-(2).

The proposed rules are consistent with these federal provisions, and such rule would help the Commission further effectuate these federal requirements as well as the state statutory requirements under Wis. Stat. § 7.315.

Summary of Comments Received During Preliminary Comment Period and at Public Hearing on Statement of Scope

No members of the public attended the November 9, 2023 public meeting to offer comments on the statement of scope for the proposed rule. The Commission received two written comments specific to the scope statements for this rule. Both written comments were supportive of the scope statements for this proposed rulemaking, specifically because they claimed the rule would lead to clearer, more consistent instruction to voters across the state. Neither comment offered any suggested changes. The Commission reviewed the two written comments and voted to approve the scope statement as written on December 19, 2023.

Comparison with Similar Rules in Illinois, Iowa, Michigan, and Minnesota

Illinois requires election officials to undergo training from either a city, village or incorporated town Board of Election Commissioners or, in the case of unincorporated towns, a County Clerk. 10 ILCS 5/6-21, 13-2.1, 14-4.1. Training for election officials must involve at least four hours of instruction and a final exam which tests basic literacy and math skills as well as knowledge of election laws. 10 ILCS 5/14-4.1, 13-2.1, 13-2.2. The State Board of Elections is required to distribute a manual which local Boards of Election Commissioners and County Clerks shall use to prepare their own training courses. 10 ILCS 5/1A-8(3). All changes to the manual made by local Boards of Election Commissioners or County Clerks must receive approval from the State Board. *Id.* While Illinois has not codified its specific training requirements in an administrative rule, the training provided in the State Board of Elections manual is in line with the training requirements imposed by the proposed administrative rule. In addition, the proposed rule provides the Wisconsin Elections Commission with review and approval powers substantially identical to those of the Illinois State Board of Elections.

Iowa County Auditors serve as Commissioners of Elections and are required to conduct a training course for all election personnel no later than the day before an election. The Iowa Secretary of State serves as the State Commissioner of Elections and is required to both provide a training manual for commissioners and promulgate administrative rules outlining instruction requirements for election officials. IOWA CODE § 49.124, 49.126. At this time, however, the Secretary of State has only promulgated a rule requiring the state commissioner to “create and maintain training materials for poll workers related to voter identification and the use of electronic poll books.” Iowa Admin Code r. 721.21.76. The general election official training manual is not readily accessible on the Iowa Secretary of State’s website, but a 2020 version can be found on the Mahaska County website. https://www.mahaskacountyia.gov/files/auditor/peo_guide_2020_53625.pdf. The training provided by the 2020 manual is in line with the training required by the proposed administrative rule, and there is no reason to suspect that training standards in Iowa have radically deviated from Wisconsin since.

The Michigan Director of Elections is responsible for conducting training schools throughout the state before each November election for county clerks. Mich. Comp. Laws § 168.33(1). The Director of Elections is also responsible for year-round training of all county, city, and township clerks who are involved in the training of precinct inspectors, as well as all precinct inspectors in counties where no clerk has been accredited to conduct training schools. Mich. Comp. Laws § 168.33(2–3). County, city, township, and village clerks are required to complete continuing

election education training once every 2 years to maintain accreditation as a clerk. Mich. Comp. Laws § 168.33(4). Individual election inspectors are themselves required to have either attended an election school or passed an examination given by a city or town election commission and approved by the Secretary of State within the last two years to serve at an election. Mich. Comp. Laws § 168.683. The Michigan Secretary of State is required to establish comprehensive curricula for training all county, city, township, and village officials responsible for conducting elections, as well as all precinct inspectors. Mich. Comp. Laws § 168.31(1)(j), (m).

Michigan's training frequency requirements for election officials are virtually identical to those in the proposed rule, with the lone exception that election inspectors and special voting deputies in Wisconsin will be required to receive at least two hours of training each election cycle in addition to the two year recertification requirement. The Secretary of State's training manual also provides instruction that is in line with the training required by the proposed administrative rule. <https://www.michigan.gov/sos/elections/admin-info>. While the proposed rule provides the Wisconsin Elections Commission with more explicit review and approval powers than the Michigan Director of Elections or Secretary of State, it also provides more explicit flexibility to local election officials to amend Wisconsin Elections Commission guidance for local needs.

Minnesota county auditors are responsible for providing training for all election officials appointed to serve at any election. Minn. Stat. § 204B.25 subdivision 1. County auditors may delegate responsibility for training election judges within municipalities or school districts to a municipal election official. *Id.* The Minnesota Secretary of State is responsible for developing a training program for county auditors and providing county auditors with materials to be used in training local election officials. Minn. Stat. § 204B.27 subdivision 10. Election officials are required to undergo training once every two years in order to maintain their certification. Minn Stat. § 204B.25 subdivision 4.

The Minnesota Secretary of State has promulgated a significant number of administrative rules elaborating on training requirements for election officials. Minn. R. 8240. Election officials are required to go through at least a two hour basic training course which covers specific information. Minn. R. 8240.1600. Specific training requirements are also set out for head election officials and election officials assisting with absentee voting in a health care facility. Minn. Rs. 8240.1750, 8240.1800. While the specific training requirements for Wisconsin officials contained in the proposed administrative rule are more specific, the substance of the requirements are the same.

Summary of Factual Data and Analytical Methodologies

Commission staff did not perform empirical analysis for this rule as the rule simply promulgates existing guidance that has been published in comprehensive manuals that clerks use to train their election inspectors, election registration officials, and special voting deputies.

Analysis and Supporting Documents used to Determine Effect on Small Business

There is no anticipated effect on small business. No specific analysis was performed for the fiscal estimate, nor were any supporting documents generated, because there is no anticipated effect on any fiscal liabilities and revenue, and no anticipated costs to be incurred by the private sector.

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RULE TEXT

13.01 Election Official Training. (1) Definitions. In this chapter:

- (a) "Commission" means the Wisconsin Elections Commission.
- (b) "Election cycle" means the period beginning on January 1 of an even-numbered year and continuing through December 31 of the following odd-numbered year.
- (c) "Election" has the meaning given in s. 5.02(4), Stats.
- (d) "Election observer" means a member of the public who has signed in as an observer at an observable location and is present at an observable location to observe an election or the absentee ballot voting process.
- (e) "Municipal clerk" has the meaning given in s. 5.02(10), Stats.
- (f) "Election official" has the meaning given in s. 5.02(4e), Stats.

13.02 Municipal clerk training responsibilities.

- (1) The municipal clerk is responsible for providing training opportunities for election inspectors, chief election inspectors, election registration officials, and special voting deputies.
- (2) The municipal clerk may utilize the commission, another election official who uses the commission materials, or another election official who has received training material approval as described in this section for such training. If the municipal clerk opts not to use the commission's provided training, the clerk shall submit the training materials to the commission's training team for review and approval no less than ten business days prior to the proposed training. If no materials exist, the municipal clerk must provide an agenda or detailed summary for the proposed training. The commission's training team may require revisions to the materials if errors, concerns, or inaccuracies exist. Training using other materials other than those provided by the commission may not commence until approval is received from the commission's training team.

- (3) The clerk or election official conducting any training for chief inspectors, election inspectors, election registration officials and special voting deputies must have completed, at a minimum, their own core curricula of training as prescribed by the commission for their position.
- (4) The municipal clerk shall maintain records that document the attendance at training sessions by chief inspectors, election inspectors, election registration officials, and special voting deputies. The training records, which are open to public inspection, shall include the date, location, and duration of the training event, as well as the full name, attendance record, dates, courses, and the election official's title for all relevant attendees of these trainings.

13.05 Election inspector training.

- (1) The content and curriculum of the training required of election inspectors shall be prescribed by the commission as described in sub. (2).
- (2) The training shall include, no less than, the following elements:
 - (a) Instruction on polling place preparation, including detailed instruction on the set up, operation, and use of voting equipment. Training may also be provided by county clerks, equipment vendors of approved election equipment, subject matter experts, and law enforcement.
 - (b) Information on determining elector residence and qualifications to vote.
 - (c) Instruction on registering electors at the polling place, including directions on the proper completion of the voter registration application form. Specific consideration should be given to the registration methods being utilized by that municipality, such as an electronic pollbook.
 - (d) Direction on recording elector information on the poll list, including special notations for absentee, challenged, and provisional voters and voters who have been convicted of a felony. Specific consideration should be given to the methods being utilized by that municipality, such as an electronic pollbook.
 - (e) Direction on maintaining ballot security and issuing ballots to voters.
 - (f) Instruction on provisional voting procedures.
 - (g) Instruction on assisting electors.
 - (h) Instruction on processing absentee ballots. Specific consideration should be given to the specifics of local absentee ballot processing, such as the use of central count, runners, or other methods and procedures.

- (i) Instruction on procedures for challenging electors.
 - (j) Instruction on maintaining order at the polling place, including instruction on dispute resolution and de-escalation. This training may include the use of outside subject matter experts or law enforcement.
 - (k) Information on the rights and responsibilities of election observers.
 - (l) Instruction on the procedures for closing the polling place, including instruction on disaster preparedness.
 - (m) Instruction on the procedures for reconciling voter lists.
 - (n) Instruction on the procedures for counting ballots.
 - (o) Instruction on determining voter intent.
 - (p) Instruction on the proper use and completion of the inspectors' statement.
 - (q) Instruction on the proper completion of forms used at the polling place, including direction on the requirement that the information on forms be legible.
 - (r) Instruction on the procedures for securing and delivering completed election materials.
 - (s) Instruction on the consequences of failing to follow prescribed procedures.
- (3) Any other information prescribed by the commission.

13.10 Special voting deputy training.

- (1) The content and curriculum of the training required of special voting deputies shall be prescribed by the commission as described in sub. (2).
- (2) The training shall include the following elements:
 - (a) Information on the absentee voting process for residents of nursing homes, retirement homes, and community-based residential facilities.
 - (b) Information on determining elector residence and qualifications to vote.
 - (c) Instruction on registering electors, including directions on the proper completion of the voter registration application form, if the special voting deputy is also an election registration official.
 - (d) Direction on completing the absentee ballot certificate envelope.

- (e) Direction on maintaining ballot security and issuing ballots to voters.
 - (f) Instruction on assisting electors to vote.
 - (g) Instruction on the procedures for challenging electors.
 - (h) Instruction on maintaining order at the voting location, including instruction on dispute resolution and de-escalation. This training may include the use of outside subject matter experts or law enforcement.
 - (i) Information on the rights and responsibilities of election observers.
 - (j) Instruction on the procedures for securing and delivering completed election materials.
 - (k) Instruction on the consequences for failing to follow prescribed procedures.
- (3) Any other information prescribed by the commission.

13.15 Election official training requirements.

- (1) Election inspectors shall receive training from the municipal clerk within two years of any election at which they serve. Chief inspectors shall also attend “baseline chief inspector” training to be certified for elections in the current term. To recertify, chief inspectors shall complete six hours of elections commission-approved continuing election education during the current term. Chief inspector training shall be in accordance with s. 7.31, Stats., and the provisions of this ch. EL 13, Wis. Admin. Code. Municipal clerks are responsible for administering and tracking chief inspector training.
- (2) Special voting deputies shall attend training every two years and shall have attended training within two years of any election at which they serve.
- (3) Election registration officials shall receive training from the municipal clerk within two years of any election at which they serve. Municipal clerks shall be responsible for providing adequate training for the registration officials’ duties.
- (4) Municipal clerks shall arrange for election inspectors and special voting deputies to receive at least two hours of training in an election cycle.
- (5) Election inspectors and special voting deputies may not serve as an election official until completing the training required by this chapter.