

STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION

Rule No.: Wis. Adm. Code EL Chapter 12

Relating to: Certification and Training of Municipal Clerks

Rule Type: Permanent / Amendment

FINDING OF EMERGENCY:

N/A

RULE ANALYSIS:

a) A description of the objective of the proposed rule.

The Wisconsin Elections Commission (“Commission”) unanimously approved directives to Commission staff to create a scope statement for the purpose of amending Chapter EL 12 to comport with the applicable statute on clerk training cycles, while also adding a provision regarding the notification of top elected officials in each municipality where local officials have not met those training obligations in the current cycle. The Commission also directed staff to add a line to Chapter EL 12 indicating that the statewide voter registration system is named “WisVote,” and that the name of the system may change in the future. As such, the Commission now proposes a permanent change in the form of an amendment to Chapter EL 12 of the Wisconsin Administrative Code (“Certification and Training of Municipal Clerks”). Specifically, Wis. Adm. Code § EL 12.03 would be amended to comply with Wis. Stat. § 7.15(1m), the definition of “Election cycle” in Wis. Adm. Code § EL 12.01(2) needs to be similarly amended, and the definition of “Statewide Voter Registration System” in Wis. Adm. Code § EL 12.01(5) would be further clarified. Finally, Wis. Adm. Code § EL 12.02(2) will be expanded to include greater detail on how local officials will be notified when training requirements are not being met by municipal clerks.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

The rule amendments proposed here would bring the current provisions of Chapter EL 12 of the Wisconsin Administrative Code into full compliance with Wis. Stat. § 7.15(1m). That statute provides:

Each municipal clerk shall, at least once every 2 years during the period beginning on January 1 of each even-numbered year and ending on December 31 of the following year, attend a training program sponsored by the commission under ss. 7.31 and 7.315.

Chapter EL 12 currently defines “election cycle” as follows:

“Election cycle” begins on January 1 of an odd-numbered year and continues through December 31 of the following even-numbered year.

This administrative code training cycle applies to both municipal clerk and election inspector cycles, and thus is now non-compliant with the provisions of Wis. Stat. § 7.15(1m). The actual training cycles for clerks and elections inspectors were modified to comply with Chapter 7 when the statute was originally updated. This was done by implementing one, three-year training cycle that ultimately shifted all subsequent two-year cycles to a start date in even-numbered years, in accordance with Wis. Stat. § 7.15(1m). That change rendered training processes statutorily compliant, but the provisions of administrative code have not been updated to reflect actual practices yet.

As such, the proposed rule amendment will redefine Wis. Adm. Code § EL 12.01(2) to reflect a training cycle from January 1 of even-numbered years through December 31 of odd-numbered years. This definitional change/amendment will also bring Wis. Adm. Code § EL 12.03 into full compliance with Wis. Stat. § 7.15(1m).

Chapter EL 12 of the Wisconsin Administrative Code currently also defines “Statewide Voter Registration System” as follows:

“Statewide Voter Registration System” is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting, and administer elections.

At the December 1, 2021, meeting of the Wisconsin Elections Commission, Commissioners rendered a decision that this definition did not inherently mean that Chapter EL 12 was out of date simply because the Statewide Voter Registration System is no longer called “SVRS” and was subsequently renamed “WisVote.” Rather, it was determined that a reference to the “Statewide Voter Registration System” in administrative code properly refers to any iteration, branding, or naming of the actual statewide voter registration system, both now and in the future. However, for clarity purposes, the Commission also unanimously passed a motion to seek an amendment to Chapter EL 12 of the Wisconsin Administrative Code noting that the statewide voter registration system is named “WisVote,” and that the name of the system may change in the future. This amendment will be proposed as an addition to the definitional language found in Wis. Adm. Code § EL 12.01(5).

At its December meeting, the Commission also directed staff to pursue an amendment to Wis. Adm. Code § EL 12.02(7). This addition would expand the section to further clarify the processes by which a municipality’s governing body is contacted by Commission staff to notify the body that local officials have not met the required training standards for the applicable election cycle. The modification to code will require staff to solicit the official municipal mailing addresses to which notices will be sent. The update will also require staff to send notice of training deficiencies to the top elected official in a particular municipality by first class mail within thirty days of the election cycle’s end.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

- Wis. Stat. § 5.05(1): General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate 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 laws regulating campaign financing, or ensuring their proper administration.

- Wis. Stat. § 7.08(3): Election manual. Prepare and publish separate from the election laws an election manual written so as to be easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the commission considers advisable...

- Wis. Stats. § 227.11(2)(a): Each agency 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, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it will take approximately 40 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

These changes will affect clerks, election officials, and members of municipal governing bodies, only to the extent training is conducted and requirements are enforced. The effect of the proposed rule amendments, and subsequent processes, will have little to no impact on small businesses. In fact, the administrative rule amendments pertaining to training cycles will simply bring the code into compliance with the training cycles that have already been implemented, thus having no impact upon clerks and elections inspectors, as well as local businesses or secondary parties. There are no increased commitments in time or training. The proposed rule amendment pertaining to the definition of the Statewide Voter Registration System will also serve to make existing code clearer, thus reducing the risk that any party trying to interpret the provision will find it difficult and/or contact Commission staff seeking clarification. The remaining changes will be implemented to ensure clerks are up to date in their training responsibilities.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

The Help America Vote Act of 2002 allocated federal funds to states where that state's chief executive and chief election official provided verification that the funds would be used to modernize election operations in predefined ways, and those requirements included the training of election officials, poll workers, and election volunteers (*see* § 101(b)(1)(D)).

Agency Contact Person:

Jim Witecha, Staff Attorney
(608)266-0136, james.witecha@wisconsin.gov