

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL § 6.06

Relating to: Correction of Absentee Ballot Certificate Envelopes

Rule Type: Emergency/Wis. Stat. § 227.26(2)(b) Order

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). However, the Wisconsin Elections Commission (“Commission”) need not make a finding of emergency, as this rule promulgation was directed by a unanimous vote of the Commission on January 28, 2022, as a response to a Wis. Stat. § 227.26(2)(b) order by the Joint Committee for the Review of Administrative Rules (“JCRAR”) dated January 10, 2022. (*See also* WIS. LEGISLATIVE COUNSEL / WIS. LEGISLATIVE REFERENCE BUREAU, ADMINISTRATIVE RULES PROCEDURES MANUAL, 58 (2020) and Wis. Stat. § 227.24(3))

RULE ANALYSIS:

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

The Wisconsin Elections Commission (“Commission”) issued guidance on October 4, 2016, titled “Missing or Insufficient Witness Address on Absentee Certificate Envelopes” (Amended October 18, 2016). On December 1, 2021, the Commission directed staff to draft a scope statement for the promulgation of that guidance, as well as a scope statement on the best alternative to existing guidance, one of which would be authorized for consideration and promulgation into a permanent administrative rule. The JCRAR later ordered the Commission to also promulgate its guidance into an emergency rule. The Commission directed staff to proceed with a scope statement executing certain improvements to the existing guidance, but largely keeping it intact. The proposed rule will detail how and when clerks should take corrective action to remedy a witness address error. However, clerks would be required to make contact and obtain voter consent before personally making any required corrections to missing information.

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 proposed here would create an additional provision within Chapter EL 6 of the Wisconsin Administrative Code. That section would codify updated guidance into a formal rule.

2015 Wisconsin Act 261 created Wis. Stat. § 6.87(6d) which provides, “If a certificate is missing the address of a witness, the ballot may not be counted.” This statute expanded upon the various provisions within Wis. Stat. § 6.87 which details what an absentee ballot certificate envelope’s structure should be, and what is required of the voter’s chosen witness. The Commission created responsive guidance in answer to the potential invalidation of votes due only to certain missing information, and it now seeks to codify modernized guidance into administrative code.

Specifically, this rule will define what constitutes a complete address, dictate how/when clerks take corrective measures to try and remedy address insufficiencies, detail what clerks are lawfully able to self-correct after obtaining voter consent, outline how clerks should perform outreach to voters and witnesses, allow for the return of the certificate for correction, and specify when voters or witnesses must appear to correct the certificate in person. Voters may also opt to spoil the ballot and vote a new one.

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. § 6.869: Uniform instructions. The commission shall prescribe uniform instructions for municipalities to provide to absentee electors. The instructions shall include the specific means of electronic communication that an absentee elector may use to file an application for an absentee ballot and, if the absentee elector is required to register, to request a registration form or change his or her registration. The instructions shall include information concerning whether proof of identification is required to be presented or enclosed. The instructions shall also include information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot. The procedure shall, to the extent possible, respect the privacy of each elector and preserve the confidentiality of each elector's vote.

- 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.

This will affect clerks and election officials, although it is likely to provide necessary clarity, authority, and streamline certificate envelope correction processes. The proposed rule will do so by codifying existing practices with minimal changes, including standards about requiring proactivity by the clerk only if time permits, and a requirement for voter consent before clerk correction. This will require minimal compliance outreach and training for clerks because of their familiarity with the 2016 guidance. The effect of the proposed rule, and subsequent processes, will have little to no impact on small businesses. These processes have voter implications as well, but the proposed rule should minimize the risk that the ballot would be invalidated based on witness certification deficiencies.

- 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.

N/A

Agency Contact Person:

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



Meagan Wolfe
Administrator, Wisconsin Elections Commission
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