

NOTICE OF OPEN MEETING

Wisconsin Elections Commission

Special Meeting

Wednesday, October 25, 2023

5:30 P.M.

This meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit <https://elections.wi.gov/event/special-meeting-10252023> to view materials for the meeting. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email electioncomments@wi.gov with "Message to Commissioners" in the subject line.

Zoom information for the meeting:

Please click the link below to join the webinar:

https://us06web.zoom.us/j/86715523931?pwd=PFLD2uyVvV5hitZY7v_hBrbl2FRwAQ.e1bf62L4y_JgS7yU

Passcode: 523134

Or One tap mobile :

+13052241968,,86715523931#,,,,*523134# US

+13092053325,,86715523931#,,,,*523134# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 305 224 1968 US; +1 309 205 3325 US; +1 312 626 6799 US (Chicago); +1 646 558 8656 US (New York); +1 646 931 3860 US; +1 301 715 8592 US (Washington DC); +1 689 278 1000 US; +1 719 359 4580 US; +1 720 707 2699 US (Denver); +1 253 205 0468 US; +1 253 215 8782 US (Tacoma); +1 346 248 7799 US (Houston); +1 360 209 5623 US; +1 386 347 5053 US; +1 507 473 4847 US; +1 564 217 2000 US; +1 669 444 9171 US

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NOTICE OF OPEN MEETING

AGENDA

- A. Call to Order**
- B. Administrator's Report of Appropriate Meeting Notice**
- C. Uniform Instructions and Ballot Access Administrative Rules: Updates, Commission Review, Approval of Next Steps** **1**
- D. Submission of Written Comments to Staff on the Election Observer Administrative Rule** **29**
- E. Adjourn**



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: October 25, 2023

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared by:
Angela O'Brien
Staff Attorney

SUBJECT: Consideration of Public Hearing on Statements of Scope for Administrative Rules relating to Ballot Access Challenge Procedures and the Mandatory Use of Uniform Instructions

I. Introduction

On August 30, 2023, the Commission authorized staff to begin the emergency and permanent administrative rule making process for rules to require municipalities to use the Uniform Instructions for absentee voting and to implement a discrete administrative process for ballot access challenges.

On September 7, 2023, staff presented statements of scope for emergency and permanent rulemaking for three proposed administrative rules: 1) create a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting; 2) amend existing administrative rules to clarify the procedural components of nomination paper challenges; and 3) create a new administrative rule provision detailing the procedures for Declaration of Candidacy challenges. At that meeting, the Commission directed staff to submit all three sets of scope statements, for emergency and permanent rulemaking, to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2). On September 15, 2023, staff transmitted the statements of scope to the Department of Administration.

On September 19, 2023, the Department of Administration legal team completed review of the scope statements and confirmed the Commission's statutory authority to enact the proposed rules, and forwarded the scope statements to the Governor's Office for review. See **Attachment B**.

On September 28, 2023, Governor Evers approved all three sets of the scope statements described above. See **Attachment C**.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Carrie Riepl | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

II. Next Steps

The next steps in the administrative rulemaking process are the same for both emergency and permanent rulemaking. After the Governor approves the scope statements, the agency transmits them to the Legislative Reference Bureau (LRB) for publication in the weekly Administrative Register. Wis. Stats. §§ 227.24(1)(e)1d. and 227.135 (3). At the same time, agency staff must also transmit the statements of scope and a copy of the Governor’s approval letter to the Secretary of the Department of Administration and to the chief clerks of each house of the Legislature so they can distribute the statements of scope to the co-chairs of the Joint Committee for Review of Administrative Rules (JCRAR). Pursuant to Executive Order 50 issued during Governor Walker’s Administration, an agency must transmit approved statements of scope to the LRB within 30 days of approval, or the scope statements will be considered abandoned and any effort to continue the rulemaking will need to start anew. The deadline to transmit the statements of scope to the LRB is **Friday, October 27, 2023.**

Once the statements of scope have been published in the Administrative Register, the 10 Day Waiting Period begins. Wis. Stats. §§ 227.24(1)(e)1d. and 227.135(2). The 10 Day Waiting Period means the time during which the Commission must wait after the rules are published in the Administrative Register and before the Commission can vote to approve the statements of scope. During the 10 Day Waiting Period, JCRAR has the ability to direct the Commission to hold a preliminary public hearing and comment period on the statement of scopes. Wis. Stats. §§ 227.24(1)(e)1d. and 227.136 (1). The Commission may also affirmatively decide to hold a public hearing and comment period on the statement of scopes without waiting to be directed to do so by JCRAR. Wis. Stats. §§ 227.24(1)(e)1d. and 227.136 (1).

If a public hearing and comment period is held, the Commission may not vote to approve the statements of scope without receiving and reviewing public comments and feedback reported by the agency from the hearing. Wis. Stats. §§ 227.24(1)(e)1d., 227.136, and 227.135(2). Commission staff are prohibited by statute from performing any activity in connection with the drafting of an emergency or permanent rule until the statements of scope have been approved by the Commission after a period for public hearing and comment, if applicable. Wis. Stats. §§ 227.24(1)(e)1d. and 227.135(4).

III. Staff Recommendations

Staff recommend that the Commission consider affirmatively noticing a public hearing and comment period for the scope statements discussed above, without waiting to be directed to do so by JCRAR. For recent administrative rule promulgations, JCRAR has consistently directed the Commission to hold a public hearing and comment period for all scope statements, unless the Commission decided to do so on its own motion. Accordingly, if the Commission decides not to notice a public meeting and comment period on its own, it’s almost certain that JCRAR will direct it to do so anyway.

Affirmatively noticing a public hearing and comment period is consistent with past practice as the Commission chose to do so when promulgating the administrative rule on election observers.¹ Choosing to notice a public meeting and comment period will also allow more time for the public to prepare to offer comments at the meeting or prepare written comments during the comment period.

If the Commission chooses to affirmatively notice a public hearing and comment period on the scope statements, Commission staff must submit the notice of hearing and comment period to the LRB for publication in the register, which can be done at the same time as the scope statement and approval letter transmittal, though simultaneous transmittal is not required. The Commission cannot hold the public hearing any sooner than 3 days after the scope statements are published in the Administrative Register. The Administrative Register is published on Mondays, and the submission deadline for each Monday is the preceding Thursday.

Recommended Motion: The Commission will hold a virtual public hearing and comment period on the scope statements included in this memo on November 3 from 1 p.m. to 4 p.m. The Commission directs staff to transmit the notice for a preliminary public hearing and comment period included as Attachment A to this memo under Wis. Stats. §§ 227.24(1)(e)1d. and 227.136 (1), the statements of scope, and the Governor's approval letter to be published simultaneously by the Legislative Reference Bureau in the Administrative Register. The Commission also directs staff to transmit the statements of scope and a copy of the Governor's approval letter to the Secretary of the Department of Administration and to the chief clerks of each house of the Legislature so they can distribute the statements of scope to the co-chairs of the Joint Committee for Review of Administrative Rules (JCRAR).

¹ See Open Meeting Minutes of the Wisconsin Elections Commission, Page 5 (September 21, 2022). Available at: <https://elections.wi.gov/event/wisconsin-elections-commission-september-meeting>.

Notice of Preliminary Public Hearing and Comment Period

The Wisconsin Elections Commission (WEC) announces that it will hold a preliminary public hearing and comment period on the following statements of scope for emergency and permanent rulemaking:

- 510 – EL 6 – Uniform Instructions for Absentee Voting – Concerning the creation of a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting.
- 510 – EL 2 – Nomination Papers – Concerning the amendment of existing administrative rules to clarify the procedural components of nomination paper challenges.
- 510 – EL 2 – Declarations of Candidacy – Concerning the creation of a new administrative rule provision detailing the procedures for Declaration of Candidacy challenges.

Members of the public may attend the hearing and provide their perspective on the scope statements. Members of the public may also submit written comments as described below at any time before 4:00 p.m. on November 3, 2023.

Hearing Information

Date: November 3, 2023

Time: 1:00 p.m. to 4:00 p.m. CST

Location: *see below for virtual attendance options*

Virtual

When: Nov 3, 2023 01:00 PM Central Time (US and Canada)

Topic: Public Hearing and Comment on Rulemaking Statements of Scope

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/87349398060?pwd=5nu6-wsmh-P1CX7-eBZeLyYgvQG4mg.tkXN-wmsbJf7gzg7>

Passcode: 796206

Or One tap mobile :

+13017158592,,87349398060#,,,,*796206# US (Washington DC)

+13052241968,,87349398060#,,,,*796206# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 301 715 8592 US (Washington DC); +1 305 224 1968 US; +1 309 205 3325 US; +1 312 626 6799 US (Chicago); +1 646 558 8656 US (New York); +1 646 931 3860 US; +1 720 707 2699 US (Denver); +1 253 205 0468 US; +1 253 215 8782 US (Tacoma); +1 346 248 7799 US (Houston); +1 360 209 5623 US; +1 386 347 5053 US; +1 507 473 4847 US; +1 564 217 2000 US; +1 669 444 9171 US; +1 689 278 1000 US; +1 719 359 4580 US

Webinar ID: 873 4939 8060

Passcode: 796206

International numbers available: <https://us06web.zoom.us/j/keJLo4qha>

Accessibility

This meeting will include the option for captioning. Additional accessibility considerations may be available and can be requested by contacting elections@wisconsin.gov.

Submittal of Written Comments

The statements of scope may be reviewed at [LINK] and written comments may be submitted to that site or directly to the WEC at angela.obrien@wisconsin.gov no later than 4:00 p.m. on November 3, 2023.

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Scope Statements

Friday, November 3, 2023

1:00p.m. to 4:00p.m. CST

A quorum of the members of the Wisconsin Elections Commission may be present at the agency’s public hearing seeking comment relating to the following scope statements for emergency and permanent rulemaking:

- 510 – EL 6 – Uniform Instructions for Absentee Voting – Concerning the creation of a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting.
- 510 – EL 2 – Nomination Papers – Concerning the amendment of existing administrative rules to clarify the procedural components of nomination paper challenges.
- 510 – EL 2 – Declarations of Candidacy – Concerning the creation of a new administrative rule provision detailing the procedures for Declaration of Candidacy challenges.

Notice is hereby given that the above gathering may constitute a meeting of the Wisconsin Elections Commission. However, no items are on an agenda for Commission consideration, nor will action be taken by the Commission.

Approved: [DATE]

[Signature]

[Name]

Commission Secretary, Wisconsin Elections Commission



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary
Anne L. Hanson, Chief Legal Counsel

SENT VIA E-MAIL

September 19, 2023

Governor Tony Evers
Office of the Governor
115 East State Capitol
Madison, WI 53702

Re: Statement of Scope relating to mandatory use of uniform instructions for absentee voting (Wis. Admin. Code Ch. EL 6 – emergency and permanent rule).

Dear Governor Evers:

The Wisconsin Elections Commission submitted the enclosed statements of scope, dated September 15, 2023, regarding a proposed emergency and permanent rule revising Wis. Admin. Code Ch. EL 6.

Pursuant to Wis. Stat. § 227.135(2), the Department of Administration has determined that the Wisconsin Elections Commission has the explicit authority, under Wis. Stat. §§ 5.05(1), 6.869, and 227.11(2)(a), to promulgate the rules as proposed in the statements of scope.

Sincerely,

Sarah K. Larson
Legal Counsel

Enclosure

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

Rule No.: Wis. Adm. Code EL Chapter 6
Relating to: Mandatory Use of Uniform Instructions for Absentee Voting
Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect of the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin’s election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a), although the Commission has directed staff to simultaneously pursue permanent rules to ensure long-term compliance.

RULE ANALYSIS

Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):

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

The Commission is statutorily charged with prescribing Uniform Instructions for municipalities to provide to absent electors. Wis. Stat. § 6.869. The Uniform Instructions provide voters with detailed information on how to properly complete and return their absentee ballots. Copies of the Uniform Instructions are printed by municipal clerks and included with all absentee ballots that are sent to voters in Wisconsin. The proposed administrative rule would remove an ambiguity and require municipalities to use the Commission-approved version of the Uniform Instructions, without changes, when mailing out absentee ballots for the upcoming election cycles. This would ensure that all absentee voters receive consistent information regarding the process of completing and returning absentee ballots and would eliminate the possibility of different voters receiving conflicting 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.

Currently, there is no statute or administrative rule in place that clearly requires municipalities to include the Commission-approved version of the Uniform Instructions in absentee ballot mailings to voters. Existing statutory language in chapter 6 of the statutes contains inconsistent references to instructions

prescribed by the Commission and does not clearly instruct clerks to use only the version approved by the Commission.

The Commission expects continued scrutiny of Wisconsin's election administration in 2024, and requiring municipalities to use the same version of the Uniform Instructions will ensure that all absentee electors, regardless of voter type or municipality, are receiving instructions which are compliant with recent changes in the law. This rule would bring the added benefit of reducing confusion that is sometimes caused by differences in election administration and legal interpretations in different municipalities. This requirement would not impact a clerk's ability to provide other instructions that do not conflict with the Uniform Instructions or otherwise violate state law. For example, clerks may wish to add additional instructions regarding their hours of operation and clerk staffing for voting functions, and would be permitted to do so under the new proposed rule.

The main alternative would be to not promulgate the rule, which would leave clerks with the Commission's prescribed instructions, but ambiguity concerning whether clerks can alter the instructions and send out their own versions. The Commission could issue guidance to all clerks to advise that they use only the Commission's instructions. However, in the absence of an administrative rule, clerks would not be required to follow Commission guidance unless directed to do so in the context of an individual administrative complaint. If clerks issue their own instructions, the Commission could only review differing versions one-by-one in the context of a complaint submitted to the Commission.

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

General Authority pursuant to 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."

Specific Authority pursuant to 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."

Agency rulemaking authority pursuant to Wis. Stats. § 227.11(2)(a): "Agency rulemaking authority. 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 would take approximately 60 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 would primarily affect clerks and election officials, and it would be likely to provide necessary clarity, authority, and streamline the inclusion of the Commission-approved Uniform Instructions in absentee ballot mailings to voters. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with including Uniform Instructions as part of absentee ballot materials. The effect of the proposed rule, and subsequent processes, would not impact small businesses because all of the requirements would fall on municipal clerks. These processes have voter implications as well, but the proposed rule should minimize the risk that the ballot would be invalidated based of absentee voting or return 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:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted

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

Rule No.: Wis. Adm. Code EL Chapter 6
Relating to: Mandatory Use of Uniform Instructions for Absentee Voting
Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11

**RULE ANALYSIS
Pursuant to § 227.135(1):**

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

The Commission is statutorily charged with prescribing Uniform Instructions for municipalities to provide to absent electors. Wis. Stat. § 6.869. The Uniform Instructions provide voters with detailed information on how to properly complete and return their absentee ballots. Copies of the Uniform Instructions are printed by municipal clerks and included with all absentee ballots that are sent to voters in Wisconsin. The proposed administrative rule would remove an ambiguity and require municipalities to use the Commission-approved version of the Uniform Instructions, without changes, when mailing out absentee ballots for the upcoming election cycles. This would ensure that all absentee voters receive consistent information regarding the process of completing and returning absentee ballots and would eliminate the possibility of different voters receiving conflicting 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.

Currently, there is no statute or administrative rule in place that clearly requires municipalities to include the Commission-approved version of the Uniform Instructions in absentee ballot mailings to voters. Existing statutory language in chapter 6 of the statutes contains inconsistent references to instructions prescribed by the Commission and does not clearly instruct clerks to use only the version approved by the Commission.

The Commission expects continued scrutiny of Wisconsin's election administration in 2024, and requiring municipalities to use the same version of the Uniform Instructions will ensure that all absentee electors, regardless of voter type or municipality, are receiving instructions which are compliant with recent changes in the law. This rule would bring the added benefit of reducing confusion that is sometimes caused by differences in election administration and legal interpretations in different municipalities. This requirement would not impact a clerk's ability to provide other instructions that do not conflict with the Uniform Instructions or otherwise violate state law. For example, clerks may wish to add additional instructions regarding their hours of operation and clerk staffing for voting functions, and would be permitted to do so under the new proposed rule.

The main alternative would be to not promulgate the rule, which would leave clerks with the Commission's prescribed instructions, but ambiguity concerning whether clerks can alter the instructions and send out their own versions. The Commission could issue guidance to all clerks to advise that they use only the Commission's instructions. However, in the absence of an administrative rule, clerks would not be required to follow Commission guidance unless directed to do so in the context of an individual administrative

complaint. If clerks issue their own instructions, the Commission could only review differing versions one-by-one in the context of a complaint submitted to the Commission.

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

General Authority pursuant to 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.”

Specific Authority pursuant to 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.”

Agency rulemaking authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. 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 would take approximately 60 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 would primarily affect clerks and election officials, and it would be likely to provide necessary clarity, authority, and streamline the inclusion of the Commission-approved Uniform Instructions in absentee ballot mailings to voters. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with including Uniform Instructions as part of absentee ballot materials. The effect of the proposed rule, and subsequent processes, would not impact small businesses because all of the requirements would fall on municipal clerks. These processes have voter implications as well, but the proposed rule should minimize the risk that the ballot would be invalidated based of absentee voting or return 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:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary
Anne L. Hanson, Chief Legal Counsel

SENT VIA E-MAIL

September 19, 2023

Governor Tony Evers
Office of the Governor
115 East State Capitol
Madison, WI 53702

Re: Statement of Scope relating to ballot access and election petition challenge procedure (Wis. Admin. Code §§ EL 2.05, 2.07, 2.09, 2.11 – emergency and permanent rule).

Dear Governor Evers:

The Wisconsin Elections Commission submitted the enclosed statements of scope, dated September 15, 2023, regarding a proposed emergency and permanent rule revising Wis. Admin. Code §§ EL 2.05, 2.07, 2.09, and 2.11.

Pursuant to Wis. Stat. § 227.135(2), the Department of Administration has determined that the Wisconsin Elections Commission has the explicit authority, under Wis. Stat. §§ 5.05(1), 8.07, and 227.11(2)(a), to promulgate the rules as proposed in the statements of scope.

Sincerely,

Sarah K. Larson
Legal Counsel

Enclosure

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

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect of the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a).

The Commission has already begun to receive public comments regarding candidates likely to seek ballot access for elections in 2024.

**RULE ANALYSIS
Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):**

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

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

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.

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend § 2.07 to remove cross-references to

other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout § 2.07, and would also update the relevant provisions of §§ 2.05, 2.09, and 2.11 so that they are consistent with the new amended rule § 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

The alternative would be to not promulgate this rule, leaving several issues in place that could complicate the very short timelines available for candidates seeking office and challengers raising concerns.

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

General Authority pursuant to 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.”

Specific Authority pursuant to Wis. Stat. § 8.07 – “Validity of nomination papers. The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. 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 would take approximately 80 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 would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to streamline the ballot access challenge processes. The proposed rule would do so mainly by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission and local filing officers would hear and decide nomination paper challenges.

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:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted

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

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11(2)

**RULE ANALYSIS
Pursuant to § 227.135(1):**

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

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

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.

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend § 2.07 to remove cross-references to other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout § 2.07, and would also update the relevant provisions of §§ 2.05, 2.09, and 2.11 so that they are consistent with the new amended rule § 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

The alternative would be to not promulgate this rule, leaving several issues in place that could complicate the very short timelines available for candidates seeking office and challengers raising concerns.

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

General Authority pursuant to 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.”

Specific Authority pursuant to Wis. Stat. § 8.07 – “Validity of nomination papers. The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. 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 would take approximately 80 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 would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to streamline the ballot access challenge processes. The proposed rule would do so mainly by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission and local filing officers would hear and decide nomination paper challenges.

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:

Angela O’Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

Tony Evers, Governor
Kathy Blumenfeld, Secretary
Anne L. Hanson, Chief Legal Counsel

SENT VIA E-MAIL

September 19, 2023

Governor Tony Evers
Office of the Governor
115 East State Capitol
Madison, WI 53702

Re: Statement of Scope relating to ballot access and election petition challenge procedure (Wis. Admin. Code §§ EL 2.05, 2.07, 2.09, 2.11 – emergency and permanent rule).

Dear Governor Evers:

The Wisconsin Elections Commission submitted the enclosed statements of scope, dated September 15, 2023, regarding a proposed emergency and permanent rule revising Wis. Admin. Code §§ EL 2.05, 2.07, 2.09, and 2.11.

Pursuant to Wis. Stat. § 227.135(2), the Department of Administration has determined that the Wisconsin Elections Commission has the explicit authority, under Wis. Stat. §§ 5.05(1) and 227.11(2)(a), to promulgate the rules as proposed in the statements of scope.

Sincerely,

Sarah K. Larson
Legal Counsel

Enclosure

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

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect of the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a).

The Commission has already begun to receive public comments regarding candidates likely to seek ballot access for elections in 2024.

**RULE ANALYSIS
Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):**

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

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access. The proposed rule would create an administrative process for individuals to bring challenges against the Declarations of Candidacy that are filed by all candidates for local, state, and federal office in Wisconsin so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

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.

All candidates for local, state, and federal office in Wisconsin, except presidential electors, are required to file a Declaration of Candidacy with the appropriate filing officer. Wis. Stat. § 8.21(1). The Declaration of Candidacy must be sworn before a notary or other officer authorized to administer oaths. Wis. Stat. § 8.21(2). In the Declaration of Candidacy, each candidate states that he or she either meets, or will at the

time he or she assumes office meet, any applicable requirements for holding office. Wis. Stat. § 8.21(2). Section 8.30 is the companion statute to § 8.21. The Commission and local filing officers have statutory authority to refuse to place a candidate's name on the ballot if any of the specified situations in § 8.30(1)(a), (b), or (c) apply, or if the Declaration of Candidacy is not timely filed. Wis. Stat. § 8.30(4).

There is currently no clear administrative or statutory process for an individual to challenge the validity or sufficiency of a candidate's Declaration of Candidacy, which includes challenges to the candidate's sworn certification that he or she meets or will meet the applicable requirements for holding office. In the administrative code, Rule EL 2.07 only explicitly applies to challenges to nomination papers. Not all candidates for office in Wisconsin are required to file nomination papers. *See, e.g.*, Wis. Stat. § 8.12.

The proposed rule would create a clear administrative process for an individual to challenge any aspect of a candidate's sworn Declaration of Candidacy, but not their nomination papers. The challenge to the Declaration of Candidacy would be brought to the Commission, or to the local filing officer. The proposed rule would identify the legal grounds for bringing these types of challenges by incorporating or cross-referencing the appropriate provisions in § 8.21, § 8.30, or both. The proposed rule would also describe the procedures by which the Commission or filing officer hear and decide these complaints, as well as the ability of an individual to seek review of the Commission's or filing officer's decision on their complaint.

The alternative would be to not promulgate this rule, leaving the Commission and local filing officers in the difficult position of using the current Chapter EL 2 to administer challenges that concern the requirements of the declaration of candidacy far more directly than the nomination papers. It also would leave the Commission specifically with cross references that do not clearly relate to the time-limited requirements of ballot access challenges.

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

General Authority pursuant to 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."

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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 would take approximately 100 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 would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to and streamline the ballot access

challenge processes. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission, or local filing officers, would hear and decide challenges outside of the sufficiency of nomination papers.

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:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted

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

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11(2)

**RULE ANALYSIS
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The proposed rule would create a clear administrative process for an individual to challenge any aspect of a candidate's sworn Declaration of Candidacy, but not their nomination papers. The challenge to the Declaration of Candidacy would be brought to the Commission, or to the local filing officer. The proposed rule would identify the legal grounds for bringing these types of challenges by incorporating or cross-referencing the appropriate provisions in § 8.21, § 8.30, or both. The proposed rule would also describe the procedures by which the Commission or filing officer hear and decide these complaints, as well as the ability of an individual to seek review of the Commission's or filing officer's decision on their complaint.

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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:

Angela O’Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov

Meagan R.M. Wolfe

Meagan Wolfe
Administrator, Wisconsin Elections Commission
September 15, 2023
Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

September 28, 2023

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement emergency and permanent of scope by the Elections Commission, submitted September 15, 2023, relating to mandatory use of uniform instructions for absentee voting (Wis. Admin. Code ch. EL 6); and
- A statement of emergency and permanent scope by the Elections Commission, submitted September 15, 2023, relating to ballot access and election petition challenge procedure (Wis. Admin. Code ch. EL 2); and
- A statement of emergency and permanent scope by the Elections Commission, submitted September 15, 2023, relating to ballot access and election petition challenge procedure (Wis. Admin. Code ch. EL 2); and
- A statement of emergency and permanent scope by the Office of the Commissioner of Insurance, submitted September 19, 2023, relating to the Wisconsin Insurance Plan (Wis. Admin. Code ch. Ins 4).

On this day, I approved the following proposed administrative rule pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Department of Safety and Professional Services, submitted September 22, 2023, relating to military medical personnel (Wis. Admin. Code ch. Med 26).

Please direct any questions about this letter to my policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers".

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, policy director (katherine.dominal@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Angela O'Brien, Elections Commission (angela.obrien@wisconsin.gov)
Nathan Houdek, OCI (nathan.houdek@wisconsin.gov)



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the October 25, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Initial Review and Written Edits on the Second Draft Election Observer Rule

Introduction:

This brief memo is intended as an overview of changes made to the Observer Rule draft since the Commission's first review on September 7 as well as an invitation for Commissioners to provide written feedback to staff. This item on the October 25 agenda is intended to only last a few minutes and consist of Commissioners emailing feedback on the draft to staff. Commissioners are encouraged to read the second draft of the observer rule and to provide any written comments, which can be individual textual edits on the word document or more general feedback on the rule as a whole or certain parts of the rule. Staff will take that written feedback, apply it to the draft, and send another version to Commission on October 27 in advance of the Commission meeting on November 2. This intermediate step may save significant time on November 2 as well as allowing Commissioners to make precise textual edits to the document. **Due to public meeting requirements and the fact that information on the same topic is being provided to and requested from each Commissioner, please wait until the meeting begins on October 25 to send feedback directly to Staff Attorney Hunzicker.**

Discussion:

Following the Commission meeting on September 7, staff applied numerous edits to the draft observer rule, and the rule is hopefully significantly closer to being ready to publish in the Administrative Register as an official draft rule. Following this memo is a redline draft, showing each change made to the rule. Following the redline version is a clean copy that can be used by Commissioners to provide feedback. Using track changes on the word document version provided to Commissioners by email may be the easiest way to provide feedback, but any kind and amount of feedback is welcome.

First, this memo will highlight the most significant changes made after the last Commission meeting. Because the Commission was not asked to vote on each issue, it is possible that some things were changed that Commissioners would prefer to keep, or to change in a different way. Anything that has been changed can be changed back or changed again.

- 1. EL 4.02(5) & 4.07, Communications Media:** To resolve the issues discussed concerning communications media, staff have created a distinction in sections EL 4.02(5) and 4.07. In this draft,

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

communications media are not observers, meaning that they neither have the rights of observers to be physically close to voting activities nor the restrictions against video and audio recording. The distinction is based on Wis. Stat. § 5.35(4), which states, “[o]nly the proper election officials, persons observing the proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors receiving, preparing or depositing their ballots or casting their votes on the machines are permitted in the voting area.” This statute, as well as Wis. Stat. § 7.41 governing observers generally, indicates that there is one class of observer, and that observers have a special right to be physically close to voting procedures. It is very difficult to see a way to distinguish between media observers and other observers given the uniform statutes. However, § 5.35(4), above, refers to a “voting area” which is clearly different from and narrower than a polling place or other observable location.

This draft allows media individuals either to sign in as observers and be bound by the uniform observer rules, or to notify the designated election official that the individual intends to record audio or visual information. The designated election official would retain full discretion to allow media members to remain outside of the voting area and to record information provided such activities are not disruptive. This option is likely the closest to the historical practices in Wisconsin of media members working with clerks and election officials to report on voting without disrupting voting. Media members would have a right to observe with other observers and could be allowed the privilege to record information from further away by the designated election official.

2. **EL 4.02(6), Confidential Information:** The definition of confidential information was altered to define the confidential aspects as the text on particular documents rather than the documents themselves. However, a sentence that could indicate that observers had a particular right to view any documents has been removed. The intent is that any observer can look to see what kind of document is being handed over, but they do not have a specific right to ask for a document type from election officials. Regarding registration, that information can be obtained through a public records request submitted to the local municipal clerk.
3. **EL 4.02(13), Observe:** The word “inspect” was removed from the definition. Inspection likely created confusion since it is generally associated with touching something, which was already prohibited in the September 7 draft. Seeing and hearing covers what observers have always been able to do at observable locations and is not intended as a change from the status quo.
4. **EL 4.02(18), Representing the Same Organization:** The Commission appeared to indicate a preference for the more permissive option of this definition, and only that option was retained for this draft.
5. **EL 4.03(2), (4) Remaking ballots:** There was agreement on the Commission that remaking ballots did not need to be specifically announced, but also agreement that such processes should be clear and able to be witnessed by observers. The section requiring an individual announcement was removed, and replaced by a requirement to tell observers in the introduction where ballots may be remade throughout the day. The section requiring an observer area within 3–8 feet of where ballots are being remade remains in this draft.

6. **Behind the Election Officials and Electronic Poll Books:** There appeared to be consensus among Commissioners that this specific arrangement should not be required by rule, and that section was accordingly removed. The Commission may still consider future guidance on the optimal setup of observer areas.
7. **Width of Observer Area:** After reviewing the draft language and Commissioner comments, this section was removed as it likely did not accomplish anything. Clerks will need to define a width and the sections on how observers may be limited are likely the more important sections concerning this question.
8. **Moving between observer areas:** There appeared to be a consensus among Commissioners that the designated election official should establish, during the introduction in section 4.03(2), how observers may move between observer areas. That section was retained but moved to 4.04(3) as it related to actions of observers rather than actions of election officials.
9. **Viewing absentee certificate envelopes set aside to be rejected:** There appeared to be a consensus among Commissioners that observers should be able to view these envelopes, but also hesitation on prescribing a specific method or the availability of election officials to permit this viewing. Thus, the definition allows this activity but only as time permits under the discretion of the designated election official.
10. **EL 4.04, language:** Staff altered this section to prefer clear “shall” and “shall not” language, as well as preferring the singular form of the word observer.
11. **EL 4.05, Time of day sections:** There appeared to be a consensus among Commissioners that observers must be able to witness the zeroing of any election machines, and must be able to observe all voting, but that the setup of observable locations is not necessarily observable. These sections were altered accordingly.
12. **EL 4.05, Specific number requirements:** There appeared to be a consensus among Commissioners that limitations of observers must be in the discretion of the designated election official. Again, the sections concerning how to limit observers may be where this issue can be dealt with. Staff removed the sections according to the preference for local discretion.

Second, this memo notes sections of the observer rule that are most in need of comments by Commissioners. Some of these sections were not covered during the September 7 meeting, while others were touched on but not fully resolved.

1. **Do we need a definition of voting area?** The media sections now rely on a distinction of a voting area where observers may observe and an area further away where media may record information. A definition may be difficult to apply to all types of observable locations, but the lack of a definition may also cause disagreement. The current draft leaves this option up to a clerk’s discretion.

2. **Should accessibility reviewer be moved into the definition of Commission?** Staff recommend keeping them separate because there are far more accessibility reviewers than commission staff, even if the definition of Commission now fully includes accessibility reviewers.
3. **EL 4.03(1), Limiting observers “if there are no alternatives.”** This language was discussed on September 7, but staff does not believe that a majority of Commissioners agreed on whether or how the rule should establish that the designated election official can limit the number of observers. The current language establishes a high bar, but opinions may differ on what could be an acceptable “alternative” to allow a larger number of observers. Simply removing this phrase and beginning with “due to physical limitations” may more directly place the emphasis on available space, though there is likely no way to remove the possibility of disagreement over whether space permits a larger number of observers.
4. **EL 4.03(4), 3-foot distance preference:** Staff do not believe there was a consensus on retaining or removing the last sentence of this section, stating, “[t]he 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.” This, like the preceding paragraph, puts an emphasis on opinions of physical space which could create conflict. However, it also would guarantee to observers that they will not be placed further away arbitrarily rather than for reasons of space and election administration.
5. **EL 4.03(14), Removing Observes:** This section was modified significantly for clarity. Additionally, Wis. Stat. § 7.41(3) appears to give chief inspectors and municipal clerks the ability to remove observers from the observable location. However, Wis. Stat. § 7.37(2) allows any election official to remove an individual from a polling place. Given this ability, it may be reasonable for the Commission to give the designated election official the ability to remove an observer and notify either the clerk or the chief inspector.
6. **EL 4.04(1), Observer sign-in:** This draft clarifies that an observer may show any photo ID so long as the ID also contains the observer’s name. Since observers do not need to be Wisconsin residents nor qualified to vote at an observable location, the Wisconsin ID statute of § 5.02(6m) would be too restrictive. The Commission may wish to consider if there could be any parameters on these IDs, though this may be better as guidance than rule, given the large number of possible IDs. This draft also removes the public records sentence, leaving the responsibility to respond to a request for the observer log to the municipal clerk. It is highly unlikely that a clerk would be able to provide any copies on election day.
7. **EL 4.04(4), Timely answers to questions:** Should this section contain a requirement that observer questions be answered in a timely manner? Without this section, observers may feel ignored, though the section could also raise the possibility of complaints against clerks regarding different assessments of what “timely” means in a given context.
8. **EL 4.05(2), return of voted absentee ballots to a municipal clerks office or alternate site:** There are still two versions of when such a site may be observed. One allows observing whenever ballots are being voted at such sites, the other allows observing whenever voted ballots may be returned to such sites. This was discussed, but the staff does not feel that a clear consensus emerged and recommend that commissioners provide specific feedback on these options.

9. **EL 4.05, Photographs, video, and audio recordings:** This draft still prohibits photographs, video, and audio recordings at locations where voters are present, but allows them at locations where voters are not generally present, boards of absentee ballot canvassers, central count, and recounts. Staff seek the opinion of Commissioners concerning whether these three locations should permit photos, videos, and audio recordings.

Conclusion:

Staff hope that Commissioners will use the material provided in the memo and in the revised draft to offer specific and general written feedback for staff to apply before the November 2 Quarterly Meeting, when a full discussion on this topic will be noticed to occur. Feedback in advance of the discussion may allow many issues to be resolved, and to allow staff to clearly explain which issues remain and may require votes before a final draft can move to the next stage of the promulgation process.

EL 4.01 Right to vote. Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, or prevent a qualified elector from casting a lawful ballot or registering to vote.

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by Commission who monitors compliance with s. 5.25(4)(a), Stats. Accessibility reviewers are not observers under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission. Individuals authorized by the Commission to conduct any election related activities at an observable location are not observers under this chapter.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), ~~Stats,~~ or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats, ~~or the official designated by the clerk or director to carry out the election responsibilities under this chapter.~~
- (5) “Communications media” means ~~newspapers, periodicals, radio stations, and television stations~~ individuals who identify themselves to the designated election official as seeking to record or report information at observable locations outside of the voting area. Communications media individuals are not observers under this chapter.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process including but not limited to ~~driver’s operator’s~~ license or identification card numbers issued by the Wisconsin Department of Transportation, birth dates, social

security numbers or any portion thereof, accommodation information on a voter registration form, information on photo IDs as defined by ~~Wis. Stat. §§. 5.02(6m) Stats.~~, information on proof of residency documents as defined by ~~Wis. Stat. s. 6.34(3) Stats.~~, information concerning confidential electors, guardianship information, voted ballots, and communications by a voter to a person rendering voting assistance under ~~§§. ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats.~~ ~~The type of proof of residence document presented to the election official is not considered confidential information within this subsection.~~

(7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities ~~of under~~ this chapter ~~related to election observers~~. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.

(8) “Electioneering” has the meaning given in s. 12.03(4), Stats.

(9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.

(10) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election.

(11) “Member of the public” means any individual, excluding election officials and any candidate appearing on the ballot at that observable location or a registered write-in candidate for an office voted on at that observable location.

(12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a

board of absentee ballot canvassers, a facility served by special voting deputies, ~~or a~~ central count location, or a recount location during those hours specified in this chapter as permitting observation.

- (13) “Observe” means to see or; hear; ~~or inspect~~; and does not include physically handling election related materials or any materials provided by the voter.
- (14) “Observer” means any member of the public who has signed in as an observer at the observable location and is present at any observable location to observe an election or the absentee ballot voting process.
- (15) “Organization” means any organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.
- (16) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observation location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).
- ~~(18) —“Representing the same organization” means individuals who are members of the same organization.~~
- ~~(19)~~(18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations and the orderly administration of elections, the designated election official may reasonably limit the number of observers

representing the same organization who are present at any one time at an observable location. If the designated election official acts under this subsection, all organizations shall be limited in a uniform manner.

- (2) The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered. The designated election official shall then inform the observers to whom at the observable location they may direct questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, explain where a ballot may be remade, if applicable, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.
- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish at least one ~~or, if necessary to meet the requirements of this paragraph, multiple~~ observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less

than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.

~~(5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.~~

~~(6)~~(5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

~~(7) The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic registration form used to register voters.~~

~~(8) The designated election official shall comply with the distance requirements described in sub. (4) and shall have the discretion to define the width of the observation area, but the width determined by the designated election official shall not prevent observers from readily observing all election processes.~~

~~(9) If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process.~~

~~(10) — If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official.~~

~~(11)~~(6) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.

~~(12)~~(7) All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.

~~(13)~~(8) The designated election official shall permit observers access to any available chairs within the observable location and with the same access to restrooms available to election officials at the observable location.

~~(14)~~(9) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the requirements were not met and shall send a copy of that record to the Commission within ~~7-60~~ days of the election for which the observable location was active.

~~(15)~~(10) ~~As time permits, e~~Election officials shall ~~permit-allow~~ observers to observe absentee ballot certificate envelopes that have been ~~set aside to be~~ rejected in a manner established by the designated election official.

~~(16)~~(11) Election officials shall permit observers to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., ~~as long as~~ ~~as at such times as election officials determine that~~ doing so does not interfere with or distract electors under s. 5.35(5) and does not interfere with the conduct of the election

under s. 6.45(1m), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day.

~~(17)~~(12) Election officials shall not permit observers to handle an original version of any official election document.

~~(18)~~(13) Election officials shall not permit observers to observe any confidential information.

~~(19)~~(14) ~~The designated election official shall~~If an observer violates a provision of this chapter or any applicable election statute: the designated election official shall ~~W~~warn an observer one time to cease offending conduct ~~when the observer violates a provision of this chapter or any applicable election statute.~~

a) ~~If an observer does not cease offending conduct following a warning under this section, the designated election official may~~ Order an observer to depart from the observable location ~~when an observer does not cease offending conduct following a warning under sub. (a). If the designated election official has been designated by a Chief Inspector or municipal clerk,~~If the designated election official is a person other than the Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk, who shall proceed under this subdivision~~section.~~

b) If the offending observer who is ordered to depart under sub. (a) declines or otherwise fails to comply with the designated election official's order to depart, the official may summon ~~local~~ law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer

which includes the reason for the order and the signatures of the designated election official.

a)c) _____ ~~as well as another~~ If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) stats. an election official representing the opposite political party than the designated election official, if timely available, shall be offered the opportunity to sign the written order, and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of that official to review the order in a timely fashion, does not affect the enforceability of that order. The Chief Inspector, municipal clerk, or both special voting deputies shall have sole authority to order the removal of an observer, but the other election official may note concurrence or disagreement with the decision on the order.

b)d) _____ If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within ~~seven~~ 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. ~~Commission staff shall submit a summary to the Commission of all reported incidents in which observers were ordered to leave an observable location pursuant to this chapter.~~ The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

(1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. An observer shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification showing the observer's name Stats., to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any on the observer log. The photo identification does not need to conform to the requirements of s. 5.02(6m), Stats. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.

(2) An Observers shall comply with the designated election official's ~~lawful~~ commands or shall be subject to removal from the polling place following a warning underpursuant to EL 4.02(~~1417~~)(a).

(2)(3) If more than one observation area is established within an observable location, an observer may move between such areas in a manner established by the designated election official.

(3)(4) ~~All~~ An observer shall direct any questions ~~shall be directed~~ to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log. All questions shall be answered by the designated election official in a timely manner.

(4)(5) Any challenges brought by a qualified observer against a voter for cause shall be directed to an election official in accordance with ss. 6.925, 6.93, 6.935 Stats., and ch. EL 9 Wis. Admin. Code.

(5)(6) ~~No observer may~~ An observer shall not engage in any loud, boisterous, or otherwise disruptive behavior, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings as allowed by this chapter, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.

(6)(7) An Observers shall keep conversation to a minimum and shall ~~try to~~ conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.

(7)(8) ~~No observer may~~ An observer shall not engage in electioneering as defined in s. 12.03, Stats., or the posting or distribution of election-related material as defined in s. 12.035, Stats.

(8)(9) ~~No observer may~~ An observer shall not display the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or display text which describes, states, or implies that the observer is a governmental official.

(9)(10) An observer shall not ~~No observer may~~ engage in any conversation concerning a candidate, party, or question appearing on the ballot.

(10)(11) An observer shall not ~~No observer may~~ use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.

~~(11)~~(12) An observer shall not~~No observer may~~ initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer may briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election ~~and cannot communicate with voters~~and is not an election official. A brief wave or greeting to an individual known to the observer shall not constitute a violation of this section.

~~(12)~~(13) An O~~bservers~~ may communicate as needed with the designated election official and any other election officials at the discretion of the designated election official.

~~(13)~~(14) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

a. An o~~bservers~~ shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, ~~and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m.,~~ an ~~observers~~ may remain at the polling place to observe canvassing under Wisconsin's open meetings law.

~~b. Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place on election day, including the zeroing of the voting machines. After 8 p.m., or when the last voter who was in line to vote by 8 p.m.~~

~~has finished voting, observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.~~

~~e. Observers representing the same organization shall not be limited to less than one per ward served by the polling place.~~

~~d.~~ b. An observer shall not create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

a. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855 Stats.

b. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855 Stats. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.

~~e. Observers representing the same organization shall not be limited to less than two observers per municipal clerk's office located in a public building or alternate site.~~

~~d.~~ An Observers shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.

~~e.c.~~ Observers shall be permitted to observe at all alternate absentee ballot sites established s. 6.855, Stats.

~~f.d.~~ An Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

a. An Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, ~~but and~~ observation shall not start later than the zeroing of election equipment.

~~b.~~ Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.

~~e.~~ Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.

~~d.b.~~ An Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

~~e.c.~~ An Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. An observer ~~Observers~~ shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. An observer ~~Observers~~ shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer ~~Observers~~ shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer ~~observers~~ shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).
- f. An observer ~~Observers~~ shall not create or transmit photographs, videos, or audio recordings of the observable location.

(5) RECOUNT.

a. An observer ~~Observers~~ shall be permitted to observe during all hours when a recount is occurring.

b. The petitioner, all opposing candidates, and associated counsel shall be allowed to observe and may not be limited in number under Sec. 4.03(1).

~~a.c.~~ The designated election official shall establish at least one area in which observers may observe the proceedings.

~~b.~~ ~~Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.~~

~~e.d.~~ An observer ~~Observers~~ may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

a. An observer ~~Observers~~ shall be permitted to observe all counting of ballots occurring at a central counting location.

~~b.~~ ~~Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.~~

~~e.b.~~ An observer ~~Observers~~ shall not create or transmit photographs, videos, or audio recordings of the observable location.

~~d.c.~~ An observer ~~Observers~~ may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 ~~Media observers and post~~ Post-observation practices.

(1) After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio

recordings does not apply unless it is disruptive or interferes with the administration of the election.

4.07 Communications Media

- (1) ~~Observers from e~~Communications media individuals organizations shall identify themselves and ~~the any~~ organization they represent to the designated election official upon arriving at the observable location ~~and shall sign the observer log as provided by section EL 4.04(1). At the discretion of the designated election official, c~~Communications media ~~observers shall may be permitted to~~ use video and still cameras ~~at the discretion of the designated election official outside of the voting area~~ provided the cameras are not used in a manner that allows ~~the observer to see or the~~ recording any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. Communications media may not enter the voting area unless they are voting, assisting a voter, or observing under this chapter. The Commission may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Commission.

EL 4.01 Right to vote. Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, or prevent a qualified elector from casting a lawful ballot or registering to vote.

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by Commission who monitors compliance with s. 5.25(4)(a), Stats. Accessibility reviewers are not observers under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission. Individuals authorized by the Commission to conduct any election related activities at an observable location are not observers under this chapter.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats.
- (5) “Communications media” means individuals who identify themselves to the designated election official as seeking to record or report information at observable locations outside of the voting area. Communications media individuals are not observers under this chapter.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process including but not limited to operator’s license or identification card numbers issued by the Wisconsin Department of Transportation, birth dates, social security numbers or any portion thereof, accommodation information on a voter registration form, information on photo IDs as defined by s. 5.02(6m) Stats., information on proof of residency documents as defined by s. 6.34(3) Stats., information concerning confidential electors, guardianship information, voted ballots, and communications by a

voter to a person rendering voting assistance under ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats.

- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.
- (8) “Electioneering” has the meaning given in s. 12.03(4), Stats.
- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.
- (10) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election.
- (11) “Member of the public” means any individual, excluding election officials and any candidate appearing on the ballot at that observable location or a registered write-in candidate for an office voted on at that observable location.
- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, a central count location, or a recount location during those hours specified in this chapter as permitting observation.
- (13) “Observe” means to see or hear and does not include physically handling election related materials or any materials provided by the voter.

- (14) “Observer” means any member of the public who has signed in as an observer at the observable location and is present at any observable location to observe an election or the absentee ballot voting process.
- (15) “Organization” means any organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.
- (16) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observation location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).
- (18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations and the orderly administration of elections, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time at an observable location. If the designated election official acts under this subsection, all organizations shall be limited in a uniform manner.
- (2) The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered. The designated election official shall then inform the observers to whom at the observable

location they may direct questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, explain where a ballot may be remade, if applicable, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.

- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.
- (5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

- (6) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.
- (7) All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.
- (8) The designated election official shall permit observers access to any available chairs within the observable location and with the same access to restrooms available to election officials at the observable location.
- (9) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the requirements were not met and shall send a copy of that record to the Commission within 60 days of the election for which the observable location was active.
- (10) As time permits, election officials shall allow observers to observe absentee ballot certificate envelopes that have been set aside to be rejected in a manner established by the designated election official.
- (11) Election officials shall permit observers to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., at such times as election officials determine that doing so does not interfere with or distract electors under s. 5.35(5) Stats. and does not interfere with the conduct of the election under s. 6.45(1m), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day.
- (12) Election officials shall not permit observers to handle an original version of any official election document.

- (13) Election officials shall not permit observers to observe any confidential information.
- (14) If an observer violates a provision of this chapter or any applicable election statute the designated election official shall warn an observer one time to cease offending conduct.
- a) If an observer does not cease offending conduct following a warning under this section, the designated election official may order an observer to depart from the observable location. If the designated election official is a person other than the Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk, who shall proceed under this section.
 - b) If the offending observer who is ordered to depart under sub. (a) declines or otherwise fails to comply with the designated election official's order to depart, the official may summon law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer which includes the reason for the order and the signature of the designated election official.
 - c) If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats. an election official representing the opposite political party than the designated election official, if timely available, shall be offered the opportunity to sign the written order, and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of

that official to review the order in a timely fashion, does not affect the enforceability of that order.

- d) If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

- (1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. An observer shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification showing the observer's name to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any on the observer log. The photo identification does not need to conform to the requirements of s. 5.02(6m), Stats.
- (2) An Observer shall comply with the designated election official's commands or shall be subject to removal from the polling place pursuant to EL 4.02(14)(a).
- (3) If more than one observation area is established within an observable location, an observer may move between such areas in a manner established by the designated election official.
- (4) An observer shall direct any questions to the designated election official or other election officials as determined by the designated election official and communicated to observers

when they sign the observer log. All questions shall be answered by the designated election official in a timely manner.

- (5) Any challenges brought by a qualified observer against a voter for cause shall be directed to an election official in accordance with ss. 6.925, 6.93, 6.935 Stats., and ch. EL 9 Wis. Admin. Code.
- (6) An observer shall not engage in any loud, boisterous, or otherwise disruptive behavior, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings as allowed by this chapter, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.
- (7) An Observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.
- (8) An observer shall not engage in electioneering as defined in s. 12.03, Stats., or the posting or distribution of election-related material as defined in s. 12.035, Stats.
- (9) An observer shall not display the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or display text which describes, states, or implies that the observer is a governmental official.
- (10) An observer shall not engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (11) An observer shall not use communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.

- (12) An observer shall not initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer may briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and is not an election official. A brief wave or greeting to an individual known to the observer shall not constitute a violation of this section.
- (13) An observer may communicate as needed with the designated election official and any other election officials at the discretion of the designated election official.
- (14) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

- a. An observer shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., an observer may remain at the polling place to observe canvassing under Wisconsin's open meetings law.
- b. An observer shall not create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats.
- b. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.
- c. An observer shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.
- d. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

- a. An observer shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, and observation shall not start later than the zeroing of election equipment.

- b. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.
- c. An observer may create or transmit photographs, videos, or audio recordings of the observable location.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. An observer shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.

- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).
- f. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.

(5) RECOUNT.

- a. An observer shall be permitted to observe during all hours when a recount is occurring.
- b. The petitioner, all opposing candidates, and associated counsel shall be allowed to observe and may not be limited in number under Sec. 4.03(1).
- c. The designated election official shall establish at least one area in which observers may observe the proceedings.
- d. An observer may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

- a. An observer shall be permitted to observe all counting of ballots occurring at a central counting location.
- b. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.
- c. An observer may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 Post-observation practices.

- (1) After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless it is disruptive or interferes with the administration of the election.

4.07 Communications Media

- (1) Communications media individuals shall identify themselves and any organization they represent to the designated election official upon arriving at the observable location. At the discretion of the designated election official, communications media may use video and still cameras outside of the voting area provided the cameras are not used in a manner that allows the recording any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election.

Communications media may not enter the voting area unless they are voting, assisting a voter, or observing under this chapter.