



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the February 12, 2020 Commission Meeting

TO: Members of the Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: **Clerk Guidance Concerning ‘A’ and ‘B’ Ballots for the 2020 Presidential Preference Primary**

Overview

This memorandum provides an overview of Wisconsin Elections Commission guidance in support of the state law that requires a ballot be sent to each voter with an active absentee request on file 47 days prior to the Presidential Preference Primary. The 47th day prior to the Presidential Preference Primary is February 20, 2020, which is only two days after the Spring Primary. This requirement is established by Wis. Stat. 7.15(1)(cm) which states:

“The clerk shall send or transmit an absentee ballot for the presidential preference primary to each elector who has requested that ballot no later than the 47th day before the presidential preference primary if the request is made before that day, or, if the request is not made before that day, within one business day of the time the request is received.”

This statutory provision was enacted in 2011 as part of 2011 Act 45. While this is the third Presidential Preference Primary for which the requirement was in effect, the focus of the 47-day deadline has previously been on providing absentee ballots to military and overseas electors in order to comply with the federal deadline of 45 days for those electors which was established by the MOVE Act of 2009. The Government Accountability Board was subject to a federal court consent decree in 2012 to report compliance with the federal deadline during the Presidential Primary. In 2016, the Board continued to focus on the federal deadline for military and overseas electors to receive absentee ballots and the state’s 47-day deadline was used as a tool to comply with the federal requirement.

Despite this past practice, the above statutory language for the 47-day deadline clearly applies to all absentee voters with a request on file for the Presidential Preference Primary. The Legislative Council memo summarizing the legislation which became Act 45 highlighted that it required county clerks to distribute Presidential Preference Primary ballots to municipal clerks 26 days earlier than under previous law and also required municipal clerks to distribute those ballots to each elector who requested one 26 days earlier than under previous law. The agency’s election calendar has also identified the 47-day deadline for all absentee ballots prior to the Presidential Preference Primary.

The process described below has been used on a smaller scale when partisan special elections were scheduled on the same day as regular nonpartisan elections. It is also in place for the special primary for

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Administrator
Meagan Wolfe

the 7th Congressional District being held on the same day as the Spring Primary. Inquiries related to that special election prompted Commission staff to review whether the 47-day deadline for all absentee ballot requests applied to the Presidential Preference Primary. After concluding that it clearly applied to that election, Commission staff had no choice but to issue guidance to clerks regarding compliance with the statute, recognizing some significant challenges will likely arise, especially for jurisdictions with a large number of absentee voters.

Election results for the Spring Primary will not yet be certified prior to the 47-day transmission deadline, so clerks will have to prepare and send a Presidential Preference Primary-only ballot to all voters with valid absentee requests on file to meet this requirement. Clerks will then send an official, or full, ballot to all voters once those ballots are available (at least 21 days prior to election day).

Guidance on Processing and Counting Ballots

In support of this statutory requirement staff provided a memo that outlined administrative procedures for issuing, organizing and counting ballots to all county and municipal clerks on February 5, 2020. For the purposes of this process an 'A' ballot is defined as a Presidential-only ballot and a 'B' ballot is the official, or full, ballot containing the presidential preference contest and all other state, county and local contests. These procedures are similar or parallel to current procedures used to review and sort absentee ballots prior to election day and were designed to minimize poll worker confusion, create efficiency in ballot processing, avoid counting multiple ballots for a single voter and give voters the maximum opportunity to return a voted official ballot.

They are also consistent with how state law outlines absentee ballot processing at the polling place ([Wis. Stat. § 6.88\(3\)](#)) and at a central count facility ([Wis. Stat. § 7.52\(3\)](#)). These statutes state that after the absentee ballot certificate has been examined and deemed sufficient the poll workers “shall take out the ballot without unfolding it or permitting it to be unfolded or examined” and the “inspectors shall then deposit the ballot into the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list in the same manner as if the elector had been present and voted in person.” These statutes support the earlier guidance provided to clerks that, in most instances, only the ballot that will be counted should be removed from the certificate envelope for processing. In addition, poll workers will not know if the ballot that is being processed has a vote for any specific contest, including the Presidential Preference contest. This process will make it difficult, if not impossible, for poll workers to try to control for undervotes in the Presidential Preference contest by comparing a voter's 'B' ballot to their 'A' ballot.

Staff guidance instructed municipalities to organize and alphabetize ballots into several different categories and further sort those ballots based on reporting unit and how they should be adjudicated on election day. An additional goal of these procedures is to ensure that more than one ballot is not counted for a voter who has returned both an 'A' and 'B' ballot. State law requires the number of ballots cast to be reconciled with the number of voters recorded on the poll list when votes are tallied. [Wis. Stat. § 7.51\(2\)](#) provides that any time the number of ballots exceeds the number of voters local board of canvassers members should draw down, or select ballots to be removed at random, until the numbers reconcile. This process requires separating likely absentee ballots from ballots voted at the polling place, with the ballots removed from the pool containing the extra ballots. The result of a draw down is unlikely to identify the exact extra ballots that should not have been counted and oftentimes result in the removal of ballots due to election official error. Similar reconciliation procedures are outlined for municipalities that centrally count their absentee ballots ([Wis. Stat. 7.52\(4\)](#)).

1. Sort by ballot type ('A' ballots and 'B' Ballots)
2. Further sort by voter type (permanent overseas ballots v. regular, military and temporary overseas ballots)
3. Identify ballots that can be counted v. ballots which need to be held until after 8:00 pm on election day for processing

In addition, the suggested order for processing ballots was identified for use by poll workers using the below guidelines. The categories and timelines were identified to ensure any voter with an outstanding 'B' ballot or a voter who has returned a 'B' ballot with an insufficient certificate envelope has every opportunity to return a voted absentee 'B' ballot for counting. These standards also acknowledge voters who returned an 'A' ballot by mail, but not their 'B' ballot still have the opportunity to vote a 'B' ballot in person on election day.

Process any time throughout the day:

1. 'A' ballots from permanent overseas voters with sufficient certificate envelopes
2. 'B' ballots from military, temporary overseas and regular voters with sufficient certificate envelopes

Hold for processing after 8:00 pm

1. 'A' Ballots from military, temporary overseas and regular voters who have not yet returned their 'B' ballot
2. 'A' Ballots from voters who returned a 'B' Ballot
3. 'B' Ballots from military, temporary overseas and regular voters with insufficient certificate envelopes

These procedures may also have the effect of delaying the final tabulation of unofficial election night results and the transmission of those results to the counties. There may be a significant number of ballots that should be held for processing until after the polls closed and the majority of the 'A' ballots must be remade before being processed on the optical scan equipment. These ballots will be remade using the statutorily required processes for remaking ballots that are outlined in WEC training materials.

Clerk and Poll Worker Training

In addition to the guidance that has already been provided to clerks, staff is preparing additional resources for clerks and poll workers to support these procedures. A live webinar is scheduled for February 13, 2020 that will outline administrative procedures for issuing, managing and processing 'A' and 'B' ballots in the clerk's office, at the polls on election day and in the statewide voter registration system. The webinar will be recorded and posted to the agency website or online learning center along with a document that provides answers to participant questions that are not answered live. Staff is also working on creating specific instructions, based on the guidance provided in the February 5, 2020 memo, for clerks when issuing and organizing ballots prior to processing on election day. An additional set of instructions is being created to outline the step-by-step procedures poll workers can use when processing and counting ballots on election day. An additional webinar focused on clerk preparations for this process is also being considered.

Revised Instructions for Voters

WEC staff has updated the instructions for voters that clerks are encouraged to provide with the ballots before mailing those to the voters. Staff has conducted usability sessions on the new instructions to ensure they have the effect of minimizing voter confusion. Instructional inserts have been provided for clerk use for both the 'A' ballots to set expectations that most voters should anticipate the arrival of a second ballot and a separate insert to accompany the 'B' that explains the purpose of the second ballot and plainly states they are eligible to vote in the Presidential Preference contest even if they have returned a voted 'A' ballot.