

## **Modifications From Agency**

The statement of scope for this rule, SS 008-22, was approved by the Governor on February 3, 2022, published in Register No. 795A2 on March 14, 2022, and approved by the Wisconsin Elections Commission on April 20, 2022.

### **MODIFIED ORDER OF THE STATE OF WISCONSIN ELECTIONS COMMISSION AMENDING RULES**

The Wisconsin Elections Commission adopts an order to **amend** EL 12.01 (2), 12.02 (7), and 12.03 (1) relating to the certification and training of municipal clerks.

### **Analysis Prepared by the Wisconsin Elections Commission**

- 1. Statutes Interpreted:** Sections 7.15(1m) and 7.315(2), Stats.
- 2. Statutory Authority:** Sections 5.05(1)(f), 7.315(2), and 227.11(2)(a), Stats.
- 3. Explanation of Agency Authority:**

Section 5.05(1)(f), Stats., established the statutory authority and framework for regulation and administration of elections by the Commission. It states that:

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.

Section 7.315(2) requires the Commission to:

by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15 (1m). The commission may provide such training directly or arrange for such training to be provided by other organizations. The rules shall provide a method for notifying the relevant municipal governing body if a municipal clerk fails to attend required training.

Section 227.11(2)(a), Stats., authorizes an agency to promulgate rules interpreting the statutes administered by the agency, it states that:

[e]ach 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.

#### **4. Related Statutes or Rules: N/A**

#### **5. Plain Language Analysis:**

The Commission seeks to revise Ch. EL 12, Wis. Adm. Code, to:

- Correct the definition of election cycle.
- Establish how municipality governing bodies are contacted by commission staff to notify them if municipal clerks have not met required training standards.
- Require municipal clerks to complete initial certification before administering an election

Chapter EL 12, Wis. Adm. Code, establishes standards and procedures for the certification and training of municipal clerks. Section 7.15(1m) established that clerk training periods “begin[] on January 1 of each even-numbered year and end[] on December 31 of the following year.”

#### **6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

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

#### **7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:**

The commission held a virtual preliminary public hearing on the statement of scope on March 23, 2022. Thirteen members of the public attended the preliminary public hearing. No attendees provided testimony at the hearing. Comments were accepted through March 23, 2022. No written comments were received.

#### **8. Comparison with Similar Rules in Adjacent States:**

Illinois: The election cycle is defined as January 1 after a general election to the day of the next general primary or the day after a general primary to December 31 after the general election. The general election is the first Tuesday after the first Monday of November in even years. County clerks are required to have a training course for election judges in Illinois, upon completion a certificate is granted. One judge from each major political party in each precinct must be certified, if this is not the case all judges in the precinct must be notified of this and the uncertified judges must undergo the training to be appointed. If they do not undergo the training, they are subject to removal from their position.

Michigan: The election cycle is the first day after the last general election to the next general election. The general election is the first Tuesday after the first Monday in November in an even numbered year, odd year general elections are held on the same day in odd years. The director of elections must conduct election training schools for clerks in each county, if a clerk fails to have these school in their county the director of elections must conduct them in that county.

Minnesota: The election cycle is January 1 following a general election to December 31 of the next year. The general election is the first Tuesday after the first Monday in November in even years in some

counties and in odd years in other counties. A municipal clerk must successfully complete election administration training during each election cycle, the clerk must provide proof to the county auditor of completion of this training in order to be certified.

Iowa: The general election is the first Tuesday after the first Monday in November of even years. Commissioners are required to provide training courses for all election personnel and at least two personnel members must attend. Within 20 days following the general election the commissioner must file a document certifying that the training requirements were met.

## **9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:**

In October 2021, the Legislative Audit Bureau (LAB) published a report, 21–19, based on its evaluation of election administration containing recommendations for the Commission to consider during rule promulgation. On pages 9–13, the LAB recommended updating Wis. Admin Code Ch. EL 12 to reflect statutory changes made to municipal clerk training terms, to update the administrative rule to include the name of the statewide voter registration system, “WisVote,” and to specify how municipalities will be notified when clerk training requirements are not met. These proposed amendments are meant to conform with the recommendations from the LAB.

Following a review by the Joint Committee for the Review of Administrative Rules, the Commission agreed to modify the rules to include email in the notification of a municipal governing body that a municipal clerk has not met a training requirement and to require an initial certification to be completed before a municipal clerk administers an election.

## **10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:**

Redefining the election cycle will have no economic impact nor an effect on small business. The proposed rule amendment to provide notice of training deficiencies will have no impact on small business and a negligible economic impact as it would simply require municipalities to provide official mailing addresses to the Commission and read notices of training deficiencies.

## **11. Effect on Small Business (initial regulatory flexibility analysis):**

The effect of the proposed rule amendments, and subsequent processes, will have no impact on small businesses. The administrative rule amendments pertaining to training cycles will simply bring the code into compliance with the training cycles that have already been implemented, thus having no impact upon clerks and elections inspectors, as well as local businesses or secondary parties. There are no increased commitments in time or training. The remaining changes will be implemented to ensure clerks are up to date in their training responsibilities.

## **12. Agency Contact Person:**

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**13. Place where comments are to be submitted and deadline for submission:**

Written comments could have been emailed to brandon.hunzicker@wisconsin.gov or mailed to P.O. Box 7984, Madison, WI 53703-7984. The deadline to submit comments concerning the Economic Impact Statement was May 8. The notice of a public hearing provided a deadline of June 12, 2024, to submit comments concerning the rule text.

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**RULE TEXT**

**SECTION 1. EL 12.01 (2) is amended to read:**

**EL 12.01 (2)** “Election cycle” begins on January 1 of an ~~odd-numbered~~ even-numbered year and continues through December 31 of the following ~~even-numbered~~ odd-numbered year.

**SECTION 2. EL 12.02 (7) is amended to read:**

**EL 12.02 (7)** The commission shall notify the governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the commission. The commission shall request each municipality to submit to the commission its official municipal mailing address and an e-mail address for its top elected official. Each municipality shall provide the requested information within 21 calendar days of the request and within 21 calendar days of any change to the information. For an initial certification, the commission shall notify the top elected official in each municipality of a training deficiency by first class mail and e-mail prior to an election day. For a renewal certification, the commission shall notify the top elected official in each municipality of a training deficiency by first class mail and e-mail within 30 days of an election cycle’s end.

**SECTION 3. EL 12.03 (1) is amended to read:**

**EL 12.03 (1)** To qualify for initial certification, individuals shall attend or view a core curriculum training course conducted under the direction of the commission staff. Initial certification shall be completed by a municipal clerk prior to the first administration of an election by the municipal clerk. If a clerk submits a written request for a waiver under s. EL 12.05 regarding an initial certification and the administrator of the commission grants the request, the waiver shall be valid for only one election. The expiration date for initial certification shall coincide with the end of the

election cycle during which the initial certification was obtained.

**SECTION 4. EFFECTIVE DATE.**

This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.