

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 05/02/2024</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter EL 6.05, Mandatory Use of Uniform Instructions</p>	
<p>4. Subject The proposed administrative rule will prohibit Wisconsin municipalities from providing their electors with any version of uniform instructions for absentee voting that has not been prescribed by the Wisconsin Elections Commission. The proposed rule provides an exception for municipalities to provide electors with additional administrative and logistical instructions, provided they do not conflict with the uniform instructions prescribed by the Wisconsin Elections Commission. The proposed rule specifies three existing statutory mechanisms for enforcement of the rule. Finally, the proposed rule contains an effective date of June 10, 2024.</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.510</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule This proposed rule will ensure that all absentee voters in the state receive the same version of uniform instructions for absentee voting. Some municipalities edit or revise the uniform instructions prescribed by the Commission to add additional information or to provide clarification. The proposed rule will provide an enforcement mechanism for the Commission's consistent directive that municipalities should only be sending voters versions of the uniform instructions that have been prescribed by the Commission. The rule will not impact a municipality's ability to provide its voters with administrative or logistical details relating to absentee voting, provided that those additional instructions do not conflict with the substance of the uniform instructions prescribed by the Commission.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None, the proposed rule will affect clerks and election officials, although it is likely to provide necessary clarity and authority with respect to the absentee voting instructions voters receive across the state. The proposed rule will do so by codifying existing practices and will require minimal compliance outreach and training to clerks because of their familiarity with the Commission's consistent directive that use of the Commission-prescribed uniform instructions is mandatory. As such, there will be little to no financial impact on local officials or small businesses.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local government units participated in the development of this EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</p>	

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None. Local clerks and elections officials have likely already been performing these or similar functions, and this codification of the process will not result in additional economic burden.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The greatest benefit to implementing the rule is assurance that voters throughout the state will receive the same uniform instructions that have been prescribed by the Commission, regardless of which municipality they live in. The Commission is granted express authority to prescribe uniform instructions pursuant to s. 6.869. Ahead of an important election year, it is critical that all voters in the state receive the same information regarding how to complete and return their absentee ballot. The Commission has developed and prescribed its versions of the uniform instructions after multiple months of staff research, design, and usability testing. The Commission has consistently told municipalities that use of the uniform instructions is mandatory, and this administrative rule will give that directive the force of law. The alternative to rulemaking would be continued guidance statements that municipalities could choose to not to follow, resulting in voters receiving inconsistent instructions for how to complete and return their absentee ballots in a presidential election year.

16. Long Range Implications of Implementing the Rule

The proposed rules do not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact.

17. Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal statutes or regulations intended to address the proposed rule that state Wisconsin municipalities are prohibited from providing their electors with any version of uniform instructions for absentee voting that has not been prescribed by the Wisconsin Elections Commission.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois election authorities (local officials who perform election duties) are required to provide electors voting by mail with an instruction document that is written and approved by the State Board of Elections. 10 ILCS 5/19-4, 19-5. The substance of the instructions differs from what is required under Wisconsin law, but the requirement that local officials utilize a version of instructions that has been prescribed by the state-level election officials is the same as the proposed rule.

Iowa County Auditors serve as Commissioners of Elections and serve as the local officials who perform election duties. Iowa utilizes a standard State of Iowa Official Absentee Ballot Request Form that contains a section titled “Absentee Ballot Request Form Instructions.” This form is required by statute to be prescribed by the Secretary of State, who oversees elections at the state level. IOWA CODE § 53.2(2)(a). The substance of the instructions differs from what is required under Wisconsin law, but the requirement that local officials utilize a version of instructions that has been prescribed by the state-level election officials is the same as the proposed rule.

Michigan law requires an absent voter ballot application to include specific instructions for how an elector can vote and return their absentee ballot. Mich. Comp. Laws § 168.759(8). Michigan voters are not limited to using the absent voter ballot application and may also request an absent voter ballot by written request or by federal postcard application. For the latter type of voter, it is not clear whether an election official is required to furnish the voter with the instructions specified by § 168.759(8). However, it can be assumed that most Michigan voters do utilize the absent voter ballot application, either by paper or online, in which case anyone printing or distributing that application must include a copy of the instructions prescribed by the Michigan Legislature.

Minnesota law requires the county auditor or municipal clerk to include “a copy of the directions for casting an absentee ballot to each applicant whose application for absentee ballots is accepted...” Minn. Stat. § 203B.07, subdivision 1 (2023). An administrative code provision further specifies the content and form of the absentee voting directions required by § 203B.07, subdivision 1. Minn. R. 8210.0500 (2024). That administrative code provision is captioned “Required Instructions,” which implies that no other version of absentee voting instructions is permitted. The substance

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of Minnesota's absentee voting directions differs from what the Commission has prescribed, but the requirement that local officials utilize a version of instructions that has been approved by state level officials is the same.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

N/A

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

This rule may be enforced pursuant to an administrative complaint brought under ss. 5.06 or 5.05. This rule may be enforced through an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in s. 5.06(1) provided that the condition in s. 5.06(2) is also satisfied.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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