

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis ☒ Original ☐ Updated ☐ Corrected	2. Date 08/08/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter EL 7 Approval of Electronic Voting Equipment	
4. Subject The proposed administrative rule will make two amendments to Wis. Admin. Code EL Ch. 7. First, the rule will create new EL § 7.04, which will promulgate the Commission's voting systems standards, testing protocols, and procedures pertaining to the use of communication devices in electronic voting systems. The rule will require the Commission to annually review and approve new versions of these standards, testing protocols, and procedures. Second, the rule will create new EL § 7.05, which will ensure the security, review, and verification of software components for electronic voting systems. The rule will require that all applications for certification of electronic voting systems contain completed testing from an accredited Voting System Testing Laboratory ("VSTL") so that the Commission can verify the security, review, and verification of the software components of the voting system.	
5. Fund Sources Affected ☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.510
7. Fiscal Effect of Implementing the Rule ☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs ☐ Decrease Costs ☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) ☐ State's Economy ☐ Specific Businesses/Sectors ☐ Local Government Units ☐ Public Utility Rate Payers ☐ Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
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)? ☐ Yes ☒ No	
11. Policy Problem Addressed by the Rule The proposed rule will promulgate existing Commission guidance regarding the voting systems standards, testing protocols, and procedures pertaining to the use of communication devices in electronic voting systems. The rule will also codify existing practices to ensure the Commission is meeting its statutory duty to ensure the security, review, and verification of software components for electronic voting systems.	
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, though it may seem as if the rule may impact electronic voting system vendors, the actual function of the rule is to codify existing guidance that those vendors are already following. As such, there will be little to no financial impact on local officials or small businesses.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local government units participated in the development of this draft EIA.	
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) None. Voting equipment vendors 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	

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The greatest benefit to implementing the rule is to codify existing Commission guidance to provide clarity, consistency, and certainty for voting equipment vendors. The alternative to implementing this rule would be to leave the communication device aspect of voting equipment unaddressed by rule, and to leave existing practices as norms instead of rules.

16. Long Range Implications of Implementing the Rule

Implementing this rule should lead to greater consistency concerning the treatment of communication devices in electronic voting systems and a guarantee that successful existing practices will be required and will continue to be carried out.

17. Compare With Approaches Being Used by Federal Government

The Help America Vote Act (“HAVA”) prescribes practices and associated documentation used to test and maintain voting systems. 52 U.S.C. § 21081. HAVA requires the U.S. Election Assistance Commission to develop and maintain a set of guidelines called the Voluntary Voting System Guidelines (“VVSG”), which are voluntary specifications for the functionality, accessibility, and security capabilities. HAVA also requires the Elections Assistance Commission (“EAC”) to provide for the testing, certification, decertification, and recertification of voting systems technology by accredited laboratories. 52 U.S.C. § 20971. The VVSG 1.0/1.1 contain voluntary requirements for, among other things, telecommunications requirements, data transmission, protection against external threats, wireless communications, controlling usage, protecting wireless path, and protecting the physical voting system.

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

While Illinois has extensive statutory and administrative regulations related to the approval process for voting systems, it does not have an explicit provision imposing additional requirements on voting systems with telecommunication components. See 10 ILL. COMP. STAT. 5/24–5/24C (2024), ILL. ADMIN. CODE TIT. 26 (2024). Illinois statutes do, however, explicitly ban the use of voting systems with Infrared Data Association communication ports. 10 ILL. COMP. STAT. 5/24A-16. The Illinois administrative code does require that the State Board of Elections apply all requirements of the Federal Elections Commission, the Elections Assistance Commission (“EAC”), or the Elections Assistance Commission Standards board, as well as the testing requirements of an approved independent testing authority. ILL. ADMIN. CODE TIT. 26 § 204.10.

While the proposed rule sets standards for voting systems with telecommunications components that are more explicit than the standards in Illinois law, they are also less strict than Illinois’s categorical ban on devices with Infrared Data Association communication ports. Additionally, the Illinois requirement that the State Board of Elections apply the requirements of the EAC or an approved independent testing authority likely imposes similar testing requirement to the proposed rule’s requirement that voting systems undergo testing from a VSTL accredited by the EAC.

Iowa also has extensive statutory and administrative regulations regarding testing standards for voting systems. The Secretary of State—who also serves as the State Commissioner of Elections—has the statutory authority to adopt rules prescribing testing methodologies and performance standards for voting systems. IOWA CODE § 52.5 (2024). The rules promulgated by the Secretary of State are required to at least meet the standards adopted by the Federal Elections Commission (“FEC”) in 2002. Id. Iowa’s administrative rules currently require voting systems to meet either the 2002 FEC guidelines or the EAC’s 2005 voluntary guidelines. IOWA ADMIN. CODE r. 720-22.2. Compliance with these guidelines must be certified by a test authority accredited by the National Association of Electronic Directors (“NASED”) or a test laboratory certified by the EAC. IOWA ADMIN. CODE rs. 720-22.1, 720-22.2. Neither Iowa’s statute nor administrative code set additional standards or testing protocols for voting systems containing telecommunication devices.

While Iowa administrative rules appear to be more lenient regarding certification than the proposed rule, the mention of NASED certification is largely anachronistic as the NASED itself no longer certifies voting equipment.

<https://www.nased.org/about-nased>. All modern electronic voting systems will only be approved in Iowa if they have been tested by an EAC certified lab. As a result, the proposed rule imposes more updated certification requirements than

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Iowa's rules. The proposed rule will also place more explicit standards on voting systems with telecommunication devices than those contained in Iowa statute or administrative code.

The Michigan board of state canvassers is responsible for approving all voting systems. MICH. COMP. LAWS § 168.795a(1). Michigan statutes require that all electronic voting systems either be certified by an independent testing authority accredited by NASED and the board of state canvassers, or have certification from the manufacturer that the system meets or exceeds the performance and test standards prescribed by the board of state canvassers. Id. Specific testing standards are prescribed by Michigan statute and elaborated upon on through administrative rules. See MICH. COMP. LAWS § 168.794a, MICH. ADMIN. CODE r. 168.773. No provisions specifically impose additional standards for voting systems which contain telecommunication devices.

As with Iowa, the reference to NASED accreditation in Michigan statute is largely anachronistic. As a result, all modern voting systems will require certification from their manufacturer that they meet the board of state canvassers requirements in order to be approved in Michigan. The proposed rule will impose a higher standard than the existing Michigan testing requirement and is more in line with federal guidance regarding testing certification. The proposed rule will also place higher standards on voting systems with telecommunication components than those contained in Michigan statute and administrative code.

The Minnesota Secretary of State reviews and approves all applications for new voting systems. MINN. STAT. § 206.57 subdivision 1. Voting systems must be certified by an independent testing authority accredited by the EAC or an appropriate federal agency that is responsible for testing and certification of compliance with federal guidelines. MINN. STAT. § 206.57 subdivision 6. Minnesota's administrative code contains additional pre-testing procedures but does not impose approval requirements exceeding those found in statute. MINN. R. 8220–8230. No provisions in Minnesota statute or administrative code impose additional standards for voting systems which contain telecommunication devices.

The proposed rule imposes certification requirements which are practically identical to Minnesota statute. While Minnesota allows for certification by testing authorities certified by additional appropriate federal agencies, at this time the EAC is the only appropriate federal agency. The proposed rule will place higher standards on voting systems with telecommunication components than those contained in Minnesota statute or administrative code.

19. Contact Name	20. Contact Phone Number
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ATTACHMENT A

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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

The Commission would not be able to certify any voting equipment that did not comply with these rules.

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

☐ Yes ☒ No
