

STATEMENT OF SCOPE

Wisconsin Elections Commission

Rule No.: EL 15

Relating to: Polling Place Emergency Planning

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

The objective of this proposed rule is to require municipalities to create a plan to employ if a public health crisis, natural disaster, or other catastrophic event impacts polling places. An unforeseen crisis can alter the suitability or availability of polling places after the statutory deadline has passed for a governing body or board of election commissioners to establish polling places. This rule seeks to allow municipal clerks who must run an election after a crisis has impacted polling places within 30 days of that election to remain statutorily compliant even if circumstances demand last-minute changes.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The existing policy is detailed in Wis. Stat. § 5.25(1)–(3). The statute requires each election to be held at polling places established by, as relevant, the board of election commissioners or a municipality's governing body at least 30 days before the election. The new policy proposed is for municipalities to also approve backup polling places, alternate uses of primary polling places, and an emergency plan that a municipal clerk may employ as needed while also remaining compliant with all other laws affecting polling places, such as the notice requirements of Wis. Stat. § 10.01(2)(d) and the accessibility requirements of Wis. Stat. § 5.25(4) and 52 U.S. § 20102. Municipalities would retain the discretion to choose how many and what kind of backup polling places to approve as well as to define the scope and requirements of the emergency plan, including specifying how municipal clerks determine when to employ aspects of the plan. Additionally, the rule will require efforts to publicize the existence of the emergency plan, and for clerks to notify impacted voters if such a plan is used. Alternatives that share the goal of polling place emergency planning would differ primarily in what responsibilities are placed on either the municipal clerk or the entity choosing the polling places. The overall policy alternatives are to either require municipalities develop a plan for emergency situations that impact polling places, or to not require municipalities to have a plan in place.

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

Subject to the other requirements of Chapter 227 of the Wisconsin Statutes, under Wis. Stat. 227.11(2)(a): “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” Wis. Stat. § 5.05(1) states: “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.” Specifically, Wis. Stat. § 5.05(1)(f) provides that the Commission may: “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.” This proposed rule interprets and helps to more effectively implement Wis. Stat. § 5.25. Additionally, under Wis. Stat. 7.08(3) the Elections Commission shall: “Prepare and publish separate from the election laws an election manual written so as to be easily understood by the general public explaining the duties of the election officials”

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

It will take WEC staff approximately 40 hours to develop this rule and will not require any additional resources.

5. List with description of all entities that may be affected by the proposed rule :

This rule would affect each municipal government in Wisconsin. Specifically, it would direct municipal governing bodies or boards of election commissioners to work with municipal clerks to develop emergency plans for polling places. Additionally, voters would be affected if a plan is employed, though this impact should be less severe than the impact on voters if a municipality lacked an emergency plan.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The Elections Commission is not aware of any federal laws or regulations that address emergency plans and backup locations for polling places. However, the Election Assistance Commission does have guidance pertaining to this issue. U.S. Election Assistance Commission, *6 Tips for Contingency and Disaster Planning* 1–5 (2014). The guidance covers identifying disasters, creating contingency scenarios, ensuring contingency plans are comprehensive, planning for communication failures, planning for relocating polling places, planning for staffing shortages, planning for ballot and supply shortages, and planning for technology failures.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The overall economic impact of implementing this proposed rule would be minimal to nonexistent. Any economic impact of this rule would be all or nearly all confined to government officials putting in the time and using the resources needed to develop their emergency plans. Once an initial plan is established, updates should require very little additional time or resources. This rule is not likely to affect small businesses.

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