



# Wisconsin Elections Commission

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## Report from Agency

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

The Elections Commission announces that it is submitting the following rule for legislative committee review, pursuant to Wis. Stat. § 227.19:

CLEARINGHOUSE RULE #: **24-032**

SUBJECT: **Conduct, Regulation, and Accommodation of Election Observers**

ADM. CODE REFERENCE: **EL 4**

APPROVED BY GOVERNOR: **October 3, 2024**

Dated this 4th day of October, 2024.

STATE OF WISCONSIN  
ELECTIONS COMMISSION

Meagan Wolfe  
Wisconsin Elections Commission Administrator

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

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Administrator  
Meagan Wolfe

## Notice of Submittal of Permanent Rule to Legislature

The Wisconsin Elections Commission adopts an order to **create** EL 4, relating to the conduct, regulation, and accommodation of election observers.

On October 4, 2024, the Wisconsin Elections Commission (EL) submitted CR 24-032, a proposed permanent rule in final draft form, to the chief clerk of each house of the legislature pursuant to s. 227.19 (2), Wis. Stats.

This rule was approved by the governor on October 3, 2024.

The statement of scope for this rule, SS 089-22, was approved by the Governor on October 20, 2022, published in Register No. 803A3 on November 21, 2022, and approved by the Wisconsin Elections Commission on February 2, 2023.

## ORDER OF THE WISCONSIN ELECTIONS COMMISSION CREATING RULES

The Wisconsin Elections Commission proposes an order to **create** Chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

### Analysis Prepared by the Wisconsin Elections Commission

**1. Statutes Interpreted:** Sections 5.02(6m), 5.25(4)(a), 5.35(4), 5.85, 7.41, 6.82, 6.87(5), 6.875(6)(c)1., 6.875(7) 6.34(3), 5.35(5), 7.37(2), 6.86(1)(b), 6.855, 6.88, 9.01(3), 7.52(1)(a), Stats.

**2. Statutory Authority:** Sections 7.41(5), 5.05(1), 5.05(1)(f), 7.08(3), 227.11(2)(a), Stats.

**3. Explanation of Agency Authority:**

Section 7.41(5), Stats., requires the Commission to promulgate rules concerning the conduct of election observers and their interactions with election officials.

Section 5.05(1), Stats., established the statutory authority and framework for regulation and administration of elections. It specifically states: “[t]he 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.”

Section 5.05(1)(f), Stats., allows the Commission to “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 227.11(2)(a), Stats., authorizes an agency to promulgate rules interpreting the statutes administered by the agency.

**4. Related Statutes or Rules:**

Because election observers will observe in person and absentee voting processes, many elections statutes are related. The most directly related statutes are sections 6.875(7), 7.52(1)(a), which directly extend the ability to observe the voting process to voting with Special Voting Deputies and processing of absentee ballots at a board of absentee ballot canvassers location, respectively. Section 9.01(3) explains the ability to observe at a recount. Section 5.25 (4) (a) requires all polling places to be accessible to individuals with disabilities.

**5. Plain Language Analysis:**

The Commission intends through this order to promulgate its required rule on election observers. The rule intends to clarify and bring uniformity to election observation for the benefit of voters, election officials, and observers. The rule will clarify who is able to observe elections, define the rights and limitations of what election observers may do, differentiate election observers from election inspectors, and create a more stream-lined and accessible set of instructions for election observers to follow during the election process.

Section EL 4.02 defines terms relevant to observing elections, which should allow the process to proceed from known standards.

Section, EL 4.03 establishes procedures for election officials so that they may designate areas for observers to observe election processes, make observation areas accessible, limit the number of observers, check in and provide information to observers, warn observers of disruptive or disallowed conduct, and remove observers from the location.

Section EL 4.04 describes the conduct of observers, explaining how to check in as an observer, move between observable locations, ask questions, challenge voters, take or not take images, and the general decorum expected of individuals observing voting.

Section EL 4.05 details requirements specific to the different kinds of locations that may be observed, namely polling places, clerk offices or alternate sites, and board of absentee ballot canvassers locations. Additionally, this section covers the observation of Special Voting Deputy served facilities, which is restricted to two individuals and is governed by s. 6.875 (7), Stats., and recounts, which is distinct from observing voting processes and is governed by s. 9.10 (3), Stats.

Section EL 4.07 explains opportunities for media members to arrange with election officials times for reporting on voting.

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

The Federal Government does not implement a specific approach to election observing and it instead vests broad power to the states to decide individually how to conduct their elections.

#### **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 open session meeting on the statement of scope on January 17, 2023. Eleven members of the public attended the public meeting, many of whom commented on negative experiences they had as an election observer. The comments included concerns on how to coordinate elections observers from certain parties and concerns on the recommended amount of space that election observers should be positioned away from voters. Additionally, some comments suggested that the Commission assemble an advisory committee of key stakeholders to share insights concerning the election observers scope statement. Additionally, a number of observers commented that they were not allowed to use chairs or bathrooms that were available in the location. Some suggested that observers be allowed to go to the polling place prior to the election to give feedback on the layout of the polling place set up. Generally, the comments were in favor of the Commission addressing the issues presented in rulemaking.

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

Illinois, Michigan, Iowa, and Minnesota all have different terms for their versions of election observers, and all have processes outlined in statute that differ from section 7.41, Stats.

Rather than election observers Illinois has “Poll-Watchers.” The qualifications and credentials needed to be a Poll-Watcher in Illinois are laid out in the state’s statutes as well as their rights and limitations, and there are strict qualifications to becoming a Poll-Watcher in Illinois.

Anyone, other than a candidate for elective office, can serve as a Poll-Watcher and may observe elections in Michigan. Michigan differentiates its Poll-Watchers from what it calls Election Challengers. Michigan

details its rules and parameters in a document provided by the Michigan Bureau of Elections and ratified by the State of Michigan's Secretary of State.

Minnesota sets out in statute how to become an appointed Election Challenger in addition to the rights, limitations, and appointment process to becoming one.

With a method similar to the state of Michigan, Iowa has its poll-watching parameters set in both statute and a guide prepared by the Office of the Iowa Secretary of State. This guide provides a corresponding Iowa statute that solidifies each of the suggested actions for poll-watchers as law. The guide labels a poll-watcher as a person who has official permission to be at the polling place on election day or in the room where absentee ballots are counted before the polls close. If a poll-watcher is acting as a challenger however, Iowa requires a different set of requirements to be allowed to challenge.

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

The Commission's proposed rule is based on information obtained during two advisory committee meetings. The Commission held a preliminary hearing on January 17, 2023, and gathered initial thoughts from members of the public, which focused on observers being able to see and hear and having access to chairs and restrooms. After the hearing, the Commission decided to form an advisory committee made up of clerks, poll workers, observers, political party representatives, and election-related organizations. The first advisory committee meeting was held on March 8, 2023, and Committee members provided comments on specific terms within the governing statute, s. 7.41, as well as comments concerning accommodations, challenges, and other observable locations. It also allowed members to present any additional comments. On April 28, 2023, the Commission voted to create a draft based on the first advisory committee meeting, including competing language for the commission to consider in cases for which the Commission received conflicting recommendations from the committee. The second advisory committee meeting was held on June 29, 2023, and discussed the Commission's initial draft and provided line by line feedback. The draft was revised with conflicting elements still present for the Commission's consideration. After the second meeting, the Commission met several times to discuss the draft language and to make changes to the document.

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

N/A

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

N/A

**12. Agency Contact Person:**

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

Written comments may be emailed to [brandon.hunzicker@wisconsin.gov](mailto:brandon.hunzicker@wisconsin.gov). While email is preferred, comments can also be mailed to P.O. Box 7984, Madison, WI 53703-7984. The deadline to submit

comments concerning the Economic Impact Statement was March 11, 2024. The comment period for the rule text was March 20 to April 24.

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## **RULE TEXT**

### **SECTION 1. Chapter EL 4 is created to read:**

#### **CHAPTER EL 4**

#### **ELECTION OBSERVERS**

**EL 4.01 Right to vote.** Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, or prevent a qualified voter from casting a lawful ballot or registering to vote.

**EL 4.02 Definitions.** In this chapter:

(1)

“Chief inspector” means the chief inspector at a polling place, appointed pursuant to s.7.30 (6) (b), Stats.

(2) “Clerk” has the same meaning as “municipal clerk” under s. 5.02 (10), Stats.

(3) “Commission” means the Wisconsin elections commission.

(4) “Communications media member” means an individual who communicates to the designated election official that the individual seeks to record or report information outside the voting area.

Except as provided in s. EL 4.07 (3), a communications media member is not an observer under this chapter.

(5) “Confidential information” means information that is not part of the public aspects of the voting process, including an operator’s license or identification card number issued by the Wisconsin department of transportation, a birth date, a social security number or any portion thereof, accommodation information on a voter registration form, information concerning a confidential voter, guardianship information, a voted ballot, and a communication by a voter to a person rendering voting assistance under ss. 6.82, 6.87 (5), or 6.875 (6) (c) 1., Stats. Confidential information does not

include the type of document that is submitted for photo identification as defined by s. 5.02 (6m) Stats. or for proof of residency as defined by s. 6.34 (3) Stats., but includes the information provided thereon.

(6) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.

(7) “Electioneering” has the meaning given in s. 12.03 (4), Stats.

(8) “Election official” has the meaning given in s. 5.02 (3m), Stats. An individual authorized by the commission to conduct any election related activities is an election official in this chapter.

(9) “Inspector” or “election inspector” means an individual appointed pursuant to s. 7.30, Stats., to conduct an election.

(10) “Member of the public” means an individual, excluding an election official, a candidate appearing on the ballot at that observable location, or a registered write-in candidate for an office voted on at that observable location.

(11) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, a central count location, or a recount location during those hours specified in this chapter as permitting observation.

(12) “Observe” means to see or hear and does not include physically handling election related materials or materials provided by the voter.

(13) “Observer” means a member of the public who has signed in as an observer at an observable location and is present at an observable location to observe an election or the absentee ballot voting process. An accessibility reviewer is an individual authorized by the commission who monitors

compliance with s. 5.25 (4) (a), Stats., and an accessibility reviewer is not an observer under this chapter.

(14) “Organization” means an organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.

(15) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.

(16) “Public aspects of the voting process” means the election activities that take place at an observable location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).

(17) “Representing the same organization” means individuals who were deployed, assigned, or who identify as representing the same organization.

(18) “Voting Area” is that area at an observable location where voters receive, prepare, or deposit their ballots, or where voters cast their votes on a voting machine.

#### **EL 4.03 Procedures for election officials.**

(1) The designated election official shall do all of the following:

(a) Establish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. The designated election official shall position an observer area to minimize contact between observers and voters and election officials.

(b) Ensure that an observation area is not less than 3 feet nor more than 8 feet from any of the following:

1. Each table at which voters announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters.
2. Each table at which voters may register to vote.
3. Each table at which election inspectors remake any ballots.



(c) Ensure that an observation area is accessible to observers with disabilities and includes sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.

(2) OBSERVER CHECK-IN PROCESS

(a) The designated election official shall maintain an observer log and shall require a member of the public intending to exercise the right to observe an election under s. 7.41, Stats., to enter the required information under s. EL 4.04 (1) into the observer log and shall ensure that the photo identification presented reasonably resembles the observer and the name entered.

(b) After completing the log, the designated election official shall offer to an observer a summary of the rules governing election observers at the observable location, and inform an observer of all of the following:

1. To whom at the observable location the observer may direct questions during the day.
2. How the observer may move between observation areas throughout the day.
3. The location where a ballot may be remade, if applicable.

(c) After the requirements of pars. (a) and (b) have been met, the designated election official shall provide an observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials and direct the observer to an area of the observable location established by the designated election official as an observation area.

(d) The designated election official shall return an observer log to the municipal clerk after the election activities at an observable location have concluded.

(3) The designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.

(4) The designated election official may reasonably limit the number of observers representing the same organization who are present at any one time at an observable location due to physical limitations or the orderly administration of elections, or both. If the designated election official acts

under this subsection, the designated election official shall limit observers from all organizations in a uniform manner and shall document the actions taken and the reasons therefore on a copy of an inspectors' statement or other incident log.

(5) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (1) shall record the reason the requirements were not met and shall send a copy of that record to the commission within 60 days of the election for which the observable location was active.

(6) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

(7) In a manner established by the designated election official, election officials shall allow an observer to observe absentee ballot certificate envelopes that have been set aside to be rejected.

(8) An election official shall permit an observer to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36 (4) and 6.79 (6), Stats., at such times as election officials determine that doing so does not interfere with or distract voters under s. 5.35 (5) Stats., and does not interfere with the conduct of the election under s. 6.45 (1m), Stats.

(9) No election official may permit an observer to handle an original version of any official election document.

(10) No election official may permit an observer to observe any confidential information.

(11) If an observer violates a provision of this chapter or any applicable election statute, the designated election official shall, verbally or in writing, warn an observer one time to cease the offending conduct. Following a warning, the designated election official shall, if necessary, carry out the following procedures:

(a) If an observer does not cease the offending conduct following a warning under this section, the designated election official may order an observer to depart from the observable location. If the designated election official is a person other than the chief inspector or municipal clerk, the designated election official shall notify the chief inspector or municipal clerk.

(b) If the offending observer who is ordered to depart under par. (a) declines or otherwise fails to comply with the designated election official's order to depart, the official may summon law enforcement to remove the offending observer consistent with s. 7.37 (2), Stats. The designated election official shall provide a written order to the observer which includes the reason for the order and the signature of the designated election official.

(c) If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats., the designated election official shall offer an election official representing the opposite political party than the designated election official, if he or she is available on a timely basis, the opportunity to sign the written order and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of that official to review the order in a timely fashion, does not affect the enforceability of that order.

(d) If an observer is ordered to leave an observable location, an election official shall record the incident and the designated election official shall, within 60 days of the incident, provide to the commission a copy of the order and any other documentation of the incident. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

#### **EL 4.04 Conduct of observers.**

(1) A member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location and shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification showing the observer's name to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any, on the observer log. An observer is not required to be affiliated with or represent an organization. The photo identification does not need to conform to the requirements of s. 5.02 (6m), Stats.

- (2) An observer shall comply with the designated election official's commands or shall be subject to removal from the observable location pursuant to s. EL 4.02 (14) (a).
- (3) If more than one observation area is established within an observable location, an observer may move between such areas in a manner established by the designated election official.
- (4) An observer may direct questions to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log pursuant to s. EL 4.03 (2) (a) 1.
- (5) An observer who is an elector shall direct any challenges for cause against a voter to an election official in accordance with ss. 6.925, 6.93, and 6.935, Stats., and ch. EL 9.
- (6) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.
- (7) No observer may create or transmit photographs, videos, or audio recordings of any observable location except as expressly permitted by this chapter.
- (8) An observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to voters and election officials.
- (9) No observer may engage in electioneering, as defined in s. 12.03, Stats., or post or distribute any election-related material as defined in s. 12.035, Stats.
- (10) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum position appearing on the ballot, or display text which describes, states, or implies that the observer is an election official.
- (11) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (12) No observer may use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.

(13) No observer may initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by sub. (15), the observer may briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and is not an election official. A brief wave or greeting to an individual known to the observer does not constitute a violation of this section.

(14) An observer may communicate with the designated election official and any other election officials at the discretion of the designated election official.

(15) Nothing in this chapter shall be construed to prevent an observer from assisting a voter in accordance with s. 6.82, 6.87 (5), or 6.875 (6) (c) 1., Stats., provided that the voter requests the observer's assistance.

#### **EL 4.05 Location specific requirements.**

##### **(1) POLLING PLACE.**

(a) The designated election official shall permit an observer to observe beginning at 7 a.m. or whenever machines are zeroed out on election day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., or after the last voter who was in line has voted, whichever is later, an observer may remain at the polling place to observe canvassing under Wisconsin's open meetings law. If any observer is allowed access outside of the time frame provided herein, all observers shall be allowed the same access.

(b) No observer may create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

##### **(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.**

(a) The designated election official shall permit an observer to observe the in-person issuing and voting of absentee ballots under s. 6.86 (1) (b), Stats., during the hours such activities may occur

at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. This chapter does not cover the return of voted by-mail absentee ballots to a municipal clerk's office or alternate site by the United States postal service unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.

(b) The designated election official shall permit an observer to observe the initial enclosing and securing of an absentee ballot required under s. 6.88, Stats., that is received under par. (a).

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

(a) The designated election official shall permit an observer to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, and observation shall not start later than the zeroing of election equipment.

(b) An observer may create or transmit photographs, videos, or audio recordings of the observable location. However, an observer may not create or transmit any photographs, videos or audio recordings of any individual returning an absentee ballot or correcting, under s. 6.87 (9), Stats., an absentee ballot certificate envelope.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

(a) Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality in the last general election may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.

(b) The designated election official shall permit an observer to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.

(c) An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.

(d) The designated election official shall permit an observer to observe the process of absentee ballot distribution in the common areas of the home or facility, but shall not permit an observer to enter a voter's private room. A voter may opt to close his or her door or otherwise secure his or her voting privacy

(e) The special voting deputies may not permit any person other than a special voting deputy or relative of the voter assisting the voter in marking the ballot to hear any discussion regarding the electoral choices of the voter. special voting deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

(5) RECOUNT.

(a) The designated election official shall permit an observer to observe during all hours when a recount is occurring.

(b) The petitioner, all opposing candidates, interested persons and their counsel, as described in s. 9.01 (3), Stats., are not subject to this chapter, however, they must state to the designated election official that they are either the petitioner, an opposing candidate, an interested person, or counsel for any such individual.

(c) The designated election official shall establish at least one area in which observers may observe the proceedings.

(d) An observer may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

(a) The designated election official shall permit an observer to observe all counting of ballots occurring at a central counting location.

(b) An observer may create or transmit photographs, videos, or audio recordings of the observable location.

**4.06 Post-observation practices.**

After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless such action is disruptive or interferes with the administration of the election.

**4.07 Communications Media.**

- (1) A communications media member shall identify him or herself and any organization the communications media member represents to the designated election official upon arriving at the observable location. At the discretion of the designated election official, a communications media member may place and use video and still cameras only outside of the voting area, provided the cameras are not used in a manner that allows the recording of any confidential information, including voted ballots, or that disrupts or interferes with voting or the orderly conduct of the election.
- (2) The designated election official may limit the amount of time any communications media member may use video and still cameras. The designated election official shall uniformly apply any limitations, rules, and regulations imposed on communications media members .
- (3) A communications media member may act as an observer, but when so doing is subject to the provisions of this chapter.

**SECTION 2. 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), Stats.



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 3/20/24
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Proposed Chapter EL 4 - Election Observers	
4. Subject The conduct, regulation, and accomodation of election observers	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis Stat. 20.510 Elections Commission
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	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ 0	
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	
11. Policy Problem Addressed by the Rule Currently, there are no administrative rules regarding election observers, and municipalities use Commission guidance instead to help administer election observation. The proposed rule would add clarity and bring uniformity to the processes around election observation, including checking in as an observer, conduct of observers, election officials selecting observer areas, providing information to observers, and managing observers alongside other election responsibilities.	
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. Members of the Commission's advisory committee on election observers and all Wisconsin municipal clerks were contacted for comments.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. Clerk McMenamain of the City of Racine submitted a comment disagreeing with the Commission's draft EIA concerning a fiscal impact of allowing observers the same access to restrooms as is provided to election officials, and requested to coordinate with the Commission on the final EIA. Clerk McMenamain appeared during the March 20, 2024 Commission meeting and presented her disagreement and suggestions to the Commission. The Commission considered the comments but did not change its opinon concerning the economic impact of the proposed rule.	
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) There will be little to no economic and fiscal impact on buisnesses, buisness sectors, public utility rate payers or the state's economy as a whole due to the implementation of this proposed rule. Local government units, specifically all municipal clerks, will need to use these rules to train election officials concerning election observation, and take the time to establish observer areas and prepare observer materials. However, as election observation and training of election inspectors already occurs, this rule should merely standardize and clarify existing processes, rather than require additional resources. Municipal clerks do not need to hire any new staff to implement the procedures.	

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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

The main benefit of implementing this rule is that all Wisconsin municipalities would be bound by its provisions, bringing a common understanding to the process of election observation, and reducing the differences that may exist in practices across different municipalities. Having election observation be relatively uniform statewide should allow voters, election officials, and observers to know what to do and what to expect. Everyone having an opportunity to know what the rules are should facilitate smooth elections. There is no clear alternative to implementing this rule other than not implementing it and remaining with the status quo, in which all clerks may use Commission guidance, but must make their own decisions about how to carry out the very general requirements of section 7.41, Stats.

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16. Long Range Implications of Implementing the Rule

These rules will allow each municipality to create uniform practices for election observation. There should be increased confidence that observing elections looks the same across the state, and that election officials know what they need to do and observers know what they are able to do. This should add stability to the process and may increase confidence in elections due to the knowledge that there is a fair method to observe how voting was carried out locally.

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17. Compare With Approaches Being Used by Federal Government

The Federal Government does not implement a specific approach to election observing as they vest those powers to the states to decide individually.

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

The qualifications and credentials needed to become an Election Observer in Illinois, Iowa, and Minnesota are outlined in statutes that differ greatly from section 7.41, Stats. In addition to putting both the rights and needed qualifications in statute, the state of Iowa has its "poll-watching" parameters set both in statute and a guide prepared by the Office of the Iowa Secretary of State while Michigan details its rules and parameters strictly in a document provided by the Michigan Bureau of Elections and ratified by the State of Michigan's Secretary of State. Michigan and Minnesota differentiate the qualifications and duties for being able to poll-watch from the ability to challenge an election.

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19. Contact Name Brandon Hunzicker	20. Contact Phone Number 608-267-0714
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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**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)

There should be no economic or fiscal impact on small businesses from the implementation of this proposed rule.

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

N/A

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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:

None of these methods were considered since nothing in the rule places any burden on small businesses.

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

N/A

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5. Describe the Rule's Enforcement Provisions

N/A

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

- Yes    No
-



# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **24-032**

AN ORDER to create chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

Submitted by **ELECTIONS COMMISSION**

03-21-2024 RECEIVED BY LEGISLATIVE COUNCIL.

04-10-2024 REPORT SENT TO AGENCY.

MSK:PH

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO



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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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**Scott Grosz**  
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### CLEARINGHOUSE RULE 24-032

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 1. Statutory Authority

a. In the agency’s analysis for the proposed rule, the agency identifies s. 227.11 (2) (a), Stats., as one of the statutes that provides rulemaking authority to the agency. The authority cited in s. 227.11 (2) (a), Stats., grants authority to all agencies, including the Wisconsin Elections Commission, to promulgate rules interpreting statutes administered by each agency. Consider clarifying that the statute is a general grant of authority that is not limited to the commission. For example, rather than stating “authorizes the commission”, the description could be revised to state that the provision “authorizes an agency”.

b. In the agency’s analysis for the proposed rule, the relevance of citing s. 7.08 (3), Stats., as a source of statutory authority is unclear. The proposed rule does not make reference to an election manual. Consider explaining the relevance of this rule to an election manual or deleting this citation.

c. The provision relating to challenging an elector, s. EL 4.04 (5), mentions that a challenge may be brought by a “qualified observer”. That term is not defined and there is nothing in the statutes or in ch. EL 9 that requires an observer to be “qualified” in order to challenge an elector. Does the agency mean an observer who has met the basic standards of conduct in s. 7.41, Stats., and s. EL 4.04? Or an observer who has signed the election log and shown photo identification under s. EL 4.04 (1)? The agency should review the use of the term “qualified observer” and clarify its meaning.

d. It is not entirely clear that s. EL 4.07 falls into the realm of regulating election observers, as authorized by s. 7.41 (5), Stats. The provision does not regulate the conduct of an election observer, which is the subject matter of the proposed chapter. The relationship to the regulation of election observers should be explained. For example, is media access viewed as a form of the public’s right to access? Or that the role of media is similar to an observer’s, in observing and reporting on an election?

## 2. Form, Style and Placement in Administrative Code

a. In the agency's analysis for the proposed rule, an entry should be inserted to describe the factual data and analytical methodologies used in preparing the proposed rule. The description should provide a narrative summary of the steps taken and sources considered in preparing the proposed rule.

b. Throughout the proposed rule, the agency should review and update the format of cross-references to statutes and rules. In particular, a number of cross-references to statutes and other sections in the Elections Commission rules should be revised to include the abbreviation "s.". Also, in citations to statutes and rules, spaces should be inserted between each unit within a reference. For example, in s. EL 4.03 (2) (intro.), the format for the reference to "EL 4.04(1)" should be revised to "s. EL 4.04 (1)".

c. In the rule text, a chapter title should be added for the proposed chapter. [s. 1.10 (2) (a) 2. and (b) 1., Manual.]

d. The following comments apply in s. EL 4.02:

(1) The definitions should be placed in alphabetical order. In particular, the definitions for "chief inspector" and "clerk" should appear before "commission".

(2) In sub. (6), the agency name "Department of Transportation" should not be capitalized. Also, "Social Security" should not be capitalized. [s. 1.06 (2), Manual.]

(3) In sub. (11), a quotation mark should be inserted before the word "Member".

e. In s. EL 4.03 (2) (intro.), the abbreviation "ID" should be spelled out.

f. The structure of s. EL 4.03 (2) should be revised. Either the introduction should be revised to introduce and indicate the applicability of pars. (a) and (b), or the introduction should itself be numbered as a paragraph. [s. 1.11 (2) and (5), Manual.]

g. In s. EL 4.03 (14) (intro.), add an introductory statement to indicate the applicability of the subunits. The introductory statement should end in a colon and include a phrase such as "any of the following:". [s. 1.11 (2) and (3), Manual.]

h. The following comments apply in s. EL 4.04 (5):

(1) The word "and" should be inserted before the reference to "6.935".

(2) The abbreviation "Ch." should be revised to lowercase "ch.".

(3) The source designation "Wis. Admin. Code" should be removed. [s. 1.15 (2) (a) 2., Manual.]

i. In s. EL 4.04 (15), the plural abbreviation "ss." should be revised to the singular abbreviation "s.". [s. 1.15 (2) (d), Manual.]

j. In s. EL 4.05 (2) (b), the format for the cross-reference at the end of the sentence should appear as "par. (a)".

k. In s. EL 4.05 (4) (f), the format for the cross-reference should appear as "par. (d)".

l. In s. EL 4.06, the designation for sub. (1) should be removed as there are no other subsections in the provision.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the agency's analysis for the proposed rule, consider adding s. 5.25 (4) (a), Stats., as a related statute or rule, as it is cited in s. EL 4.02 (1).

b. Under the analysis for the proposed rule, in the agency's description of related statutes or rules, consider explaining the different statutory requirements for observers of special voting deputies and observers for recount procedures.

c. In s. EL 4.02 (9), consider cross-referencing the existing definition for "election official" given in s. 5.02 (3m), Stats.

d. In s. EL 4.04 (13), the cross-reference to sub. (13) is referencing back to itself. Is this instead intended to cross-reference to sub. (15)? Also, the word "subsection" should be revised to the abbreviation "sub."

e. In s. EL 4.05 (5) and (6), it is not entirely clear which of the requirements from ss. EL 4.03 and 4.04 apply to election officials and observers in a recount. For example, s. EL 4.05 (5) (c) requires the designated election official to establish at least one observation area but it is not clear whether the siting requirements are the same as for polling places. It is unclear whether observers need to sign in, acquire a badge or name tag, are subject to removal, etc. Consider either specifying that all of the rules in ss. EL 4.03 and 4.04 apply "except as provided in" the relevant sections that are site-specific, or cross-referencing in s. EL 4.05 (5) and (6) the rules that do apply.

f. In s. EL 4.07 (3), it appears the cross-reference to "this rule" should be revised to require a communications media member to comply with "this chapter". [s. 1.15 (2) (c) (Examples Table), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the agency's plain language analysis for the proposed rule, the third sentence of the first paragraph has a typographical error: remove the word "the" after "clarify".

b. In the agency's plain language analysis for the proposed rule, the third paragraph could be rewritten to correct typographical errors and to clarify that the rule establishes procedures for election officials, rather than addresses the conduct of election officials. Section 7.41 (5), Stats., requires the commission to promulgate rules relating to the conduct of election observers, not officials. For example, the description could be phrased as:

Section EL 4.03 establishes procedures for election officials so that they may designate areas for observers to observe election processes, make observation areas accessible, limit the number of observers, check in and provide information to observers, warn observers of disruptive or disallowed conduct, and remove observers from the location.

c. In the agency's plain language analysis, the description for s. EL 4.07 should be updated to revise the plural word "Sections" to the singular "Section".

d. In the agency's summary of comments received during the preliminary comment period, the phrase "Election Observer" is capitalized; it is not capitalized elsewhere in the proposed rule.



e. In the agency's comparison of neighboring states' rules, the description could be rewritten so that each state has its own paragraph.

f. Throughout the text of the proposed rule, the word "Commission" should not be capitalized. While the word "Commission" is capitalized in the proposed rule, other Ethics Commission administrative rules do not capitalize the phrase. In administrative rules, an agency name should not be capitalized. Compare, for example, current rule s. EL 12.01 (1). [s. 1.06 (2), Manual.]

g. The text of the proposed rule in some instances uses the term "elector", and in some instances "voter". Consider whether reader understanding would be improved by using one term consistently, particularly for consistency within a provision. For example, in s. EL 4.04, subs. (5) and (13) refer to a "voter", but subs. (8) and (15) refer to an "elector".

h. The text of the proposed rule uses passive voice in several instances, which can cause ambiguity. Consider rewriting the rule to ensure that each provision assigns a particular action or requirement to a specific actor. For example, s. EL 4.03 (2) (a) could be written to say "The designated election official [or an election official] shall offer to an observer a summary of the rules . . .". Additional instances are noted below, but consider reviewing the rule in its entirety to ensure that the rule uses the active voice.

i. Consider moving the definition of "accessibility reviewer", and its exclusion from the definition of "observer", to the section that defines "observer".

j. In the definition of "chief inspector", consider revising the word "under" to the phrase "appointed pursuant to".

k. The definition of "clerk" is confusing and not entirely consistent with the statutes. Consider changing the definition to read: "'Clerk' has the same meaning as 'municipal clerk' under s. 5.02 (10), Stats.'".

l. In the last sentence of the definition of "confidential information", consider changing "a proof of residency document" to "proof of residency", to avoid redundancy.

m. In the definition of "member of the public", consider deleting the material relating to a candidate or a registered write-in candidate and creating a separate section stating that a candidate or registered write-in candidate may not serve as an observer at a polling place where he or she appears on a ballot. Alternatively, it may not be necessary to define "member of the public".

n. Consider changing the title of s. EL 4.03 to "Procedures for election officials".

o. In s. EL 4.03, sub. (1) could be moved to a later subsection so that the rule tracks the timeline for election officials more closely. Additionally, the provision could be rewritten for clarity and to eliminate the passive voice. For example, the provision could be phrased as:

A designated election official may reasonably limit the number of observers representing the same organization who are present at any one time at an observable location due to physical limitations or the orderly administration of elections, or both. If a designated election official acts under this subsection, he or she shall limit observers from all organizations in a uniform manner. The designated official shall document the actions taken and the reasons therefore on a copy of an inspectors' statement or other incident log.

p. In s. EL 4.03 (2) (a) (intro.), revise the passive voice to active voice. Second, the phrase “of all” should be inserted before “of the following:”. Third, subs. 1. and 2. should each be revised to end in a period. [s. 1.11 (2) and (3), Manual.]

q. In s. EL 4.03 (1) (b), revise the passive voice and consider moving the last sentence to a separate subsection.

r. In s. EL 4.03 (4) to (9), the duties of the designated election official in establishing observation areas are mixed with other rights and duties relating to observers. Consider combining subs. (4), (6), and (7) and creating an introduction. For example, the provisions could be combined under sub. (4) along the following lines:

(4) Except as provided in sub. (9) [would need to be renumbered], the designated election official shall do all of the following:

(a) Establish at least one observation area to ensure observers may readily observe all public aspects of the voting process during the election without disrupting the voting process. To the extent practicable, the official shall position an observation area in a manner that minimizes contact between observers, voters, and election officials.

(b) Ensure that an observation area is not less than 3 feet nor more than 8 feet from any of the following:

1. Each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters.

2. Each table at which electors may register to vote.

3. Each table at which election inspectors remake any ballots.

(c) Ensure that an observation area is accessible to observers with disabilities and includes sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.

s. In s. EL 4.03 (14) (a), both instances of the term “Chief Inspector” should not be capitalized.

t. Section EL 4.03 (14) (c) could be rewritten to assign the duty to offer an opportunity to sign a written order to a specific person. Additionally, the language is confusing. Consider revising to read something like:

If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats., the chief inspector or municipal clerk shall offer the opportunity to sign the written order to an election official representing the opposite political party than the designated election official, if he or she is available on a timely basis, and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of an

official to review the order in a timely fashion, does not affect the enforceability of that order.

u. Section EL 4.03 (14) (d) could be rewritten to assign the duty to record an incident to the designated election official or to another person.

v. Consider changing the language in s. EL 4.04 (9) to something like: “No observer may engage in electioneering, as defined in s. 12.03, Stats., or post or distribute any election-related material as defined in s. 12.035, Stats.”.

w. The proposed rules relating to audio and video recordings are confusing and seemingly inconsistent. Consider placing all of the requirements and restrictions on audio and video recordings into a separate section of ch. EL 4 by creating a separate section that encompasses ss. EL 4.04 (12), 4.05 (1) (b), (3) (b), (5) (d), and (6) (b), and 4.06.

x. Consider placing the prohibition on candidates and write-in candidates being election observers at the end of s. EL 4.04.

y. Section EL 4.05 (1) (a) could be simplified to state that an observer may remain at a polling place until all election-related activities are concluded. The reference to the open meetings law is confusing and may not be necessary. Additionally, the term “Election Day” should not be capitalized.

z. In s. EL 4.05 (2) (a), the agency name “Postal Service” should not be capitalized.

aa. In s. EL 4.05 (2) (a) and (b), (4) (b) and (d), (5) (a), and (6) (a), consider changing each instance of the phrase “An observer shall be permitted to” to either “An observer may” or “An election official shall permit an election observer to”.

bb. In s. EL 4.05 (4) (e), each instance of the term “Special Voting Deputies” and “Special Voting Deputy” should not be capitalized.

cc. Consider eliminating s. EL 4.05 (4) (f) and rewriting (4) (d) to state “An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility, but may not enter a voter’s private room. A voter may opt to close his or her door or otherwise secure his or her voting privacy.”.

dd. In s. EL 4.07 (title), a period should be inserted at the end of the title.

ee. In s. EL 4.07 (1), what does it mean to “use video and still cameras outside of the voting area”? Does this mean that the recording equipment must be placed outside of the voting area, but may capture videos or images of actions within the voting area, so long as there is no disruption or interference, or recording of confidential information? Or does it mean that the physical placement of equipment and the images of actions must both be outside the voting area? It may be helpful to differentiate between the location of physical equipment and the location of the actions being captured.

ff. In s. EL 4.07 (2), consider rewording the last sentence to the active voice.

**Report From Agency**

**STATE OF WISCONSIN  
ELECTIONS COMMISSION**

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**IN THE MATTER OF RULEMAKING :  
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE  
ELECTIONS COMMISSION : CR 24-032**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS: N/A**

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

The basis and purpose of the proposed rule is to create Wisconsin Administrative Code ch. EL 4. The Commission is required to promulgate rules concerning election observers but does not yet have rules in place. Wis. Stat. § 7.41(5). The rule would advance statutory purposes by putting the rules in place and bringing consistency and clear directions to clerks, election inspectors, voters, and observers. With these rules, all parties would have one standard set of instructions for observing elections covering the full process from the sign-in to the location of observers, and election inspector and observer conduct throughout the day. The rules would clarify areas of uncertainty and allow for training that can be used by clerks and observers statewide.

**V. SUMMARY OF PUBLIC COMMENTS AND THE COMMISSION'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Elections Commission held a public hearing on April 24, 2024. The Commission received 54 pages of written comments during the comment period and 6 oral comments during its April 25, 2024, public hearing, which were recorded in minutes. Some individuals submitted both oral and written comments and some submitted multiple written comments. Individuals who appeared for the organization have the name listed in parenthesis.

The following individuals appeared or submitted comments mostly or entirely for the proposed rule: Eileen Newcomer (League of Women Voters of Wisconsin), Lori Stottler (Janesville Clerk), Caroline Hutton (Democratic Party of Wisconsin), Lisa Hassenstab (Disability Rights Wisconsin), Jay Heck (Common Cause Wisconsin), Diane Coenen (City of Oconomowoc Clerk), Scott Bolstad, and Julissa Velazquez (Milwaukee Area Labor Council).

The following individuals appeared or submitted comments mostly or entirely against the proposed rule: Julie Sounders Seegers, John Landwehr, Kathryn Bartelli, Ken Dragotta (True the Vote), Lane Ruhland (Center for Election Confidence), Peter Bernegger, Annette Kuglitsch (Republican Party of Waukesha County), Brian Jensen, and Jeffrey Manlove.

The following individuals appeared or submitted comments mostly asking for changes to the rule text but that were neither explicitly for or against the proposed rule as a whole: Sandy Juno (Election Integrity Network and Republican Party of Brown County), Kurt Goehre (Republican National Committee), Ardis Cerny, Molly Koranda, Sharon Foley, Debbie Morin, Joanne Leonard, Natalie Snyder (Town of Caledonia Clerk), Rose Eucke, Leslie Lauersdorf, Dawn Johnson, Brad Tangen, Diane Hall, Harry Keepthechange, John McCauley, Mary Anne Carlson, Elizabeth Bruders, Paul Driftmier, and Jacalyn Szehner.

Below, the Commission provides a high-level summary of the oral and written public comments. Comments that merely stated unspecified opposition to the rule, or proposed revisions that would be contrary to law, or that were not related to the topic of election observers are not included in the summary below. Likewise, comments offering support of the rule as written, either in general or specifically, are not summarized in detail.

#### **Comments Relating to the Distance and Location of Observation Spaces:**

This was the most common public comment received (11 different comments). These comments generally included requests to copy the statutory language of 7.41 to affirm that though observation areas must be between 3 and 8 feet away, they must be positioned so that observers can readily observe all public aspects of the voting process. Many comments included specific objections to only one observation area, as that may cause issues in polling places that have multiple tables set up throughout a large space with election activity occurring at each one.

Commission Response: The rule draft as written addresses these concerns. The rule contains the statutory language in Section EL 4.03(1)(a), which states that the designated election official must “[e]stablish at least one observation area to enable observers *to readily observe all public aspects of the voting process* during the election without disrupting the voting process” (statutory language from Wis. Stat. § 7.41(2) italicized). The rule language clearly contemplates that more than one observation area may be necessary in order to ensure that the public may readily observe all aspects of the process. Additionally, Section EL 4.03(1)(b) refers to *each* table at which voters announce their names, voters register to vote, election officials announce the names of absentee voters, and election officials remake ballots. If a polling place is spread out so that one observer area could not be within 3 to 8 feet of each of these tables, additional areas would be required until the rule language is met.

#### **Comments Relating to Observers Representing the Parties or Organizations:**

This was the second most common public comment received (6 different comments). These comments generally included requests to further clarify “organizations” that observers can represent as it’s possible an observer could be there independently, but also was trained by a political party. One comment also requested that the rule affirm that observers can be there by themselves without any party or organization affiliation. One

comment also included a request not to limit observers representing the same number of organizations if that means that any aspect of voting cannot be fully observed. Two comments also requested to further define “reasonably limit” the number of observers as that is subjective, and the rule should provide that as many interested observers can watch so long as there is space and they are not disruptive.

Commission Response: In response to the comment that Section EL 4.02(17) applies to individuals “trained by” the same organization, and that individuals who merely attend a training may have no further or lasting affiliation with the organization the Commission has deleted the term “trained by.” Representing an organization requires at least some affiliation, and the remaining terms better capture that meaning. Nothing in the rule requires an observer to represent an organization, and Section EL 4.04(1) only requires that an observer print “the name of the organization the observer represents, *if any*” (emphasis added) which clearly shows that a name is only required if the observer is representing an organization, and can otherwise be left blank. To add clarity on this point, the Commission has added a sentence stating that: “[a]n observer is not required to be affiliated with or represent an organization.” If a polling place is large enough to need more than one observation area, it is likely large enough to accommodate at least one individual representing the same organization in each area. However, this would be fact specific, and would likely need to be resolved on a case-by-case bases depending on what is reasonable in the circumstances. The rule text, and the governing statute, represent a compromise between the right of an organization to send observers and the physical limitations of observable locations. The Commission believes that these interests are properly balanced in the text.

### **Comments Relating to Observation Location in Residential Care Facilities**

Another common comment (5 different comments) included requests that the rule affirm that observers have the right to be permitted to observe the voting process even in the private room of a voter residing in a residential care facility who is voting with the assistance of a special voting deputy. One comment specifically argues that because a residential care facility is treated as a polling place under Wis. Stat. 6.875(6)(b), any part of the facility must be observable as a polling place is observable.

Commission Response: The Commission discussed and voted on the language of section EL 4.05(4) several times and considered these concerns in detail. The Commission discussed and determined that a voter in a residential care facility must be able to secure their own privacy, and the privacy of their vote, when voting in their own room. Observers may still observe who votes and who does not vote from the common areas, even if a voter decides to affirmatively close the door.

### **Comments Relating to Expulsion of Disruptive Observers**

Another common comment (4 different comments) received included requests that the rule define “loud” and “boisterous” for disruptive conduct or limit it to the statutory definition in § 7.41. A specific request asked that the rule limit election inspector discretion to eject observers for disruptive conduct, which should in turn be limited to overt acts. Another specific request asked that election inspectors be required to provide a specific provision of law or code that a disruptive observer is violating. A couple of

comments expressed apprehension or frustration at what they claim is “unchecked” discretion of election inspectors to eject observers, made worse by the current rule language being very subjective.

Commission Response: Section EL 4.04(6) again must apply to all polling places, and some discretion is required of local election officials. In general, dictionary definitions, as well as common sense, can be used to help determine when behavior is “loud” or “boisterous,” but the circumstance will necessarily be fact specific, and further definition may not help in making a determination based on the specific circumstance. Regarding overt acts, the rule requires first a warning to cease the offending conduct, and then, only if the conduct does not cease, the official may order the observer to leave. The official then must record the “incident” on the inspectors’ statement and provide a copy to the Commission. Therefore, the conduct must be specified, and therefore specific, and the Commission will have the opportunity to monitor whether the removal provision is being abused. An observer could also file a complaint with the Commission if they believe they have been improperly ordered to leave, and the Commission could then examine the factual circumstances as well as the observer’s argument, and potentially issue a corrective order.

### **Comments Relating to Scope of Observable Activity**

A number of comments weighed in on different provisions to generally conclude that the current rule does not permit sufficient election activity to be observed by observers. Three comments included a request that the rule reiterate the public’s right to observe the return of voted by-mail ballots “on any day that absentee ballots may be cast” at the clerk’s office, instead of during the same hours as issuing and voting of ballots. One comment suggested specifically defining the words “cast” and “vote” in order to accomplish this goal.

Other comments provided more specific requests of the type of activity that should be covered by the observer rule. The most common activity commentors wanted included in observable activity are other types of election administration and processing related to the processing of ballots beyond the tabulation of ballots at central count. Another common request was expanded visual access to absentee ballot certificate envelopes and specifically to the addresses and signatures, including two requests to project them as images so they can be more easily seen. Other commenters wanted greater access to what could be observed with respect to electronic voting equipment, including the deposit of ballots into the tabulator, the data transmission of vote totals, source code of voting machines, and the ability to take pictures of the tape of the final tally results. One comment asserted that observers should have the same observation, access, and recording rights that the rule currently gives to media, both inside and outside of the polling place or voting location. Other comments stated that observers should be able to observe a voter’s ID.

Commission Response: The Commission discussed the meaning of the word “cast” and when the observer rule would apply to clerk’s offices and alternate sites regarding the return of absentee ballots. The Commission debated this issue and voted on the language in the current rule, and believes that the text allows observation within a clerk’s office or alternate site as directed by Wis. Stat. § 7.41(1). The rule text allows the observation of

each table at which election inspectors process absentee ballots, and allows, in Section EL 4.03(6), for requests to repeat a name and address. The governing statute clearly explains where the observer areas shall be, and that all other activity remain observable. The current rule protects the right to observe without placing extra burdens on election officials. Observers under this rule have greater and more protected access than media members. Only if a media member signs in as an observer and follows this rule entirely are they allowed into an observer area. Otherwise, a media member must independently coordinate with a designated election official in order to record a limited amount of information, and must remain outside of the observer area, unless they have signed in and are following the observer rule.

### **Comments Specific to Election Observation at Board of Absentee Ballot Canvasser Locations**

A subset of comments related specifically to observer procedures at board of absentee ballot canvassers locations (almost always called “central count” in the comments, though this technically refers to a different type of location). Many commenters had personal experience observing at such locations, and the most common suggestion was expanding the rule to include more observable activity. This includes general requests like being able to observe set up and tear down of the central count location, as well as being able to see when ballots come in and any processing steps that are performed before election inspectors start processing ballots. One comment specifically requested that observers should be permitted to see how many ballots are taken to the tabulators from each ward, and then be permitted to view the electronic number on the tabulators after the ward is done. One comment opposed the restriction on observers taking pictures or videos of election inspectors depositing ballots or correcting absentee certificate envelopes, and one comment was in favor of this restriction.

Commission Response: Observers will have a greater ability to record information, including pictures and videos, at board of absentee ballot canvasser locations under Section EL 4.05(3)(b). The only prohibition is against filming a voter or lawful agent dropping off or correcting a ballot. To clarify this section, the Commission changed the word “depositing” to “returning” to distinguish activities done by voters and lawful agents, which may not be recorded, from election officials, which may be recorded. Additionally, the start time for observation may begin no later than when the tabulators are zeroed. Observers must be able to observe all opening, announcing, and remaking of ballots within 3 to 8 feet from the table at which the election officials are working, and the remaining activities should still be viewable from those locations under the current rule text.

### **Comments Concerning Observation and the Use of Electronic Poll Books (Badger Books)**

A subset of comments related specifically to observer procedures at polling places using electronic poll books (Badger Books). The comments included requests that the rule better integrate and address how observers may observe the voting process in polling places that use electronic poll books like Badger Books. A comment also suggested that the Commission could define what on an e-poll book an observer would be allowed to observe.



Commission Response: The Commission considered this concern during the drafting process, and the definition “confidential information” in Section EL 4.02(5) balances the right of observers to be within 3 to 8 feet of the tables at which Badger Books are used (they may be used at the check in or the registration tables) with the need to protect the private information of voters, such as birth dates and ID numbers.

### **Comments Concerning Clerks’ Role in Interacting with Observers**

A subset of comments focused on the role of the clerk, or their election inspectors, with respect to interactions with observers. These requests were very specific, so staff have produced a list of them below in lieu of synthesizing them.

- Request to eliminate the requirement for clerks to notify Commission if they cannot accommodate observers within 3 to 8 feet as that makes it sound as if observing is optional or at the discretion of the clerk.
- Several requests to include a parallel section concerning the process if an election official violates the rules to provide specific recourse for observers.
- Request to clarify inconsistent provisions, such as positioning observer areas to limit contact between observers and election officials, but then directing observers explicitly to communicate with election officials in some circumstances.
- Request that the rule require observers to be informed at check in who the designated official in charge is if it’s someone other than the chief inspector or the clerk.
- Request to provide detailed training on the rule, once passed, for all clerks in Wisconsin.
- Request to prohibit observers from interacting with election inspectors or chief inspectors on election day, and should instead be directed to the election day manual if they have questions because answering observer questions is distracting and disruptive. This request would include an exception for an observer to challenge a voter.
- Request to have observers sign out in addition to signing in so that it is clear when a specific observer was present.

Commission Response: Allowing observers and following these rules would not be optional for clerks and election officials. The requirement to notify the Commission does not excuse a failure to follow the rule or prevent an observer from filing a complaint or the Commission from taking corrective action. The purpose of the section is for the Commission to be made aware of issues so that they may be addressed, and it does not make any requirement optional. If an election official violates a section of the rule, or otherwise abuses his or her discretion, an observer who is an elector of that official’s jurisdiction may file a Wis. Stat. § 5.06 complaint with the Commission detailing that allegation and asking the Commission to address it. Minimizing contact does not exclude all communication but merely reduces the chance that observers and officials will get in each other’s way during an election. In Section 4.03(2)(b)1. the designated election official must inform observers how they can ask questions during the day, and will necessarily need to introduce themselves. Additionally, all election inspectors’ names and titles, including the chief inspector, are public information. The Commission fully intends to create and implement training once the rule takes effect. Observers are required to sign in on election day, and may be removed if they cause a disturbance. Both the governing statute and the rule require a certain amount of interaction. Again, a balance must be struck between allowing observers to ask relevant questions and officials to conduct the election. Election officials are given discretion under this rule to determine the way

observers may ask questions. The Commission discussed a sign-in and sign-out possibility, but determined it could be difficult to manage. Clerks may still provide the option of a sign out, and ask observers to mark when they sign out.

#### **Other Miscellaneous Comments**

Other specific comments included:

- Request that political parties should be notified of the removal of their affiliated observers and given the option to provide a substitute.
- Request to remove the alternative start of observable activity (“or whenever machines are zeroed out on Election Day”) because that could occur much earlier than 7 a.m., and poll workers need to focus on setting up and opening the polls by 7 a.m.

Commission Response: Political parties and organizations may be notified by the removed observer and provide a replacement under the current text, and that could be incorporated into political party or organization trainings. The Commission discussed when precisely election observation should begin, and the consensus was that if the machines have been zeroed observers should be able to observe them.

#### **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment:** 1.a. Clarify that Wis. Stat. § 227.11(2)(a) is a general statute granting rulemaking authority to agencies, rather than just the Commission.

**Response:** The Commission accepted this recommendation in whole.

**Comment:** 1.b Clarify or remove the citation of authority that discusses the election manual.

**Response:** The Commission accepted this recommendation in whole and removed the reference to Wis. Stat. § 7.08(3) from the rulemaking authority section. Though the Commission would be almost certain to update its election manual following promulgation of this rule, that section complements but does not authorize this rulemaking.

**Comment:** 1.c. Clarify what is meant by “qualified observer” in regard to challenging electors.

**Response:** The Commission accepted this recommendation in whole and removed the undefined word “qualified” and replaced it with the phrase “an observer who is an elector.” Anyone may be an observer, but only electors (US citizens over 18 who are not otherwise unqualified) may challenge a vote. Some addition to the term observer is warranted in this section because challenging electors is available only to the subset of observers who are also electors as defined in Ch. 6 of the Wisconsin Statutes.

**Comment:** 1.d. “It is not entirely clear that s. EL 4.07 falls into the realm of regulating election observers, as authorized by s. 7.41 (5), Stats. The provision does not regulate the conduct of an election observer, which is the subject matter of the proposed chapter. The

relationship to the regulation of election observers should be explained. For example, is media access viewed as a form of the public's right to access? Or that the role of media is similar to an observer's, in observing and reporting on an election?"

**Response:** The Commission rejected this recommendation in whole. The Commission discussed and voted on this provision to ensure that observers and election officials understand how media fit into the election observation landscape, and this language adds needed clarity concerning when someone is or is not acting as an observer. This rule provision clarifies when a media member is an observer, and thus subject to the benefits and restrictions of this rule, and when they are not. Unless a media member, as described in subsection (3), signs in as an observer and is bound by these rules, which allow close access but limit filming, the media member must be located outside the voting area, and may film a limited amount of information only at the discretion of the municipal clerk. This rule will largely codify the status quo, in which media members contact clerks to determine whether and how they may record information on election day. This section clarifies that media members do not have an exemption to the rule, but may choose to be observers or discuss recording information outside of the voting area with a municipal clerk. This section creates an important line that municipal clerks will need in order to effectively carry out these rules. Requiring a media member to identify him or herself initially allows a designated election official to understand that someone may or may not be acting as an observer, and to follow the proper procedure if they are and to exclude them from the voting area if not.

**Comment:** 2.a. Add a section describing the factual data and analytical methodologies used in preparing the proposed rule by adding a narrative describing steps taken and sources considered in preparing the proposed rule.

**Response:** The Commission accepted this recommendation in whole and added this information to the rule order.

**Comment:** 2.b. Revise the cross-references in the rule to reflect the correct format, including adding "s." and leaving spaces between sections and subsections, etc.

**Response:** The Commission accepted the recommendation in whole and updated the references.

**Comment:** 2.c. Add a chapter title.

**Response:** The Commission accepted the recommendation in whole and added "Election Observers" as the title of the chapter.

**Comment:** 2.d. Place the definitions in alphabetical order, change agency names to lowercase, and add missing quotation marks.

**Response:** The Commission accepted the recommendations in whole.

**Comment:** 2.e. Spell out "ID" instead of using an abbreviation.

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 2.f. Revise the structure of s. EL 4.03 (2) so that the introduction is either a numbered paragraph or clearly introduces and indicates the applicability of pars. (a) and (b).

**Response:** The Commission accepted the recommendation in whole to change the introduction to a numbered paragraph because the language contained the first step in the check-in process. The section was then titled “Observer check-in process.”

**Comment:** 2.g. Add an introductory statement to s. EL 4.03 (14) (intro.)

**Response:** The Commission accepted the recommendation in whole and added, “Following a warning, the designated election official shall, if necessary, carry out the following procedures:.”

**Comment:** 2.h. Regarding s. EL 4.04(5), add the word “and” before 6.935, make Ch. lowercase, and remove “Wis. Admin. Code.

**Response:** The Commission accepted the recommendations in whole.

**Comment:** 2.i. Regarding s. EL 4.04 (15), revise “ss.” to “s.” due to the disjunctive “or.”

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 2.j. Regarding s. EL 4.05 (2) (b), change the format to “par. (a).”

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 2.k. Regarding s. EL 4.05 (4) (f), change the format to “par. (d).”

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 2.l. Regarding s. EL 4.06, remove the designation for sub. (1).

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 4.a. Add s. 5.25 (4) (a) as a related statute as it is cited in s. EL 4.02 (1).

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 4.b. Add a description of the different requirements for observers for SVD voting and for recounts.

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 4.c. Regarding s. EL 4.02 (9), cross reference the definition of election official given by statute.

**Response:** The Commission accepted the recommendation in whole and added “has the meaning given in s. 5.02 (3m), Stats.”

**Comment:** 4.d. Regarding s. EL 4.04 (13), fix the cross reference and abbreviate “subsection.”

**Response:** The Commission accepted the recommendations in whole. The correct cross reference was sub. (15).

**Comment:** 4.e. “In s. EL 4.05 (5) and (6), it is not entirely clear which of the requirements from ss. EL 4.03 and 4.04 apply to election officials and observers in a recount. For example, s. EL 4.05 (5) (c) requires the designated election official to establish at least one observation area but it is not clear whether the siting requirements are the same as for polling places. It is unclear whether observers need to sign in, acquire a badge or name tag, are subject to removal, etc. Consider either specifying that all of the rules in ss. EL 4.03 and 4.04 apply “except as provided in” the relevant sections that are site-specific, or cross-referencing in s. EL 4.05 (5) and (6) the rules that do apply.”

**Response:** The Commission rejected this recommendation in part and accepted it in part. The word observer is used in both sections, and therefore all sections applying to observers apply in those locations to the extent the elements of the rule are present. Section EL 4.05(6), like 4.05(1)–(4) is merely adding specifications for the central count location to the overall observer rule. Some aspects of the rule would not apply because elements of the statute and rule are not present. For example, a central count location (as distinguished from a board of absentee ballot canvassers location for which key elements are present) will not have any tables at which voters sign in or register to vote, or at which election officials announce names, and thus there would be no locations subject to the 3 to 8 foot rule because there would be no tables from which to measure. The rule would therefore simply require that all public aspects of the process be observable. All elements of the rule which are present, such as having a sign-in sheet, would need to be carried out. As for recounts under Section 4.05(5), subsection (b) excludes those parties named in Chapter 9 from the entirety of this observer rule, but any other individual would be bound by the rule. To address this comment, the Commission removed “the limitations of” and added “however, they must state to the designated election official that they are either the petitioner, an opposing candidate, an interested person, or counsel for any such individual.” This language should create a clearer line and explain who is and who is not covered by these provisions.

**Comment:** 4.f. Regarding s. EL 4.07 (3), change “this rule” to “this chapter.”

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.a, c, d, e, f, j, l, n, p, q, s, z, bb, dd, ff. These recommendations involve minor points such as active and passive voice, punctuation, capitalization, word choice, and paragraph structure.

**Response:** The Commission accepted the recommendations in whole.

**Comment:** 5.b. Revise the third paragraph of the plain language analysis to fix errors and clarify that the rule concerns procedures for election officials, rather than the conduct of election officials.

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.g. Choose either the word “voter” or the word “elector,” and then standardize the use of the term within the rule.

**Response:** The Commission accepted the recommendation in whole. The Commission opted to use the generic word “voter” as that word would likely contribute more to reader understanding without losing meaning. It is also the more common word used in the Commission’s various training and guidance documents. The Commission kept the word “elector” in s. EL 4.05 (5) because the word elector there is being used in a technical sense to refer to someone who is eligible to vote but who may not be registered to vote.

**Comment:** 5.h., u., aa. Change sections that use passive voice to active voice.

**Response:** The Commission accepted the recommendation in whole and revised many sections to use active voice.

**Comment:** 5.i. Move the definition of “accessibility reviewer,” and its exclusion from the definition of “observer” to the section that defines “observer.”

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.k. Change the definition of clerk to reference the statutory definition.

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.m., 5.x. “In the definition of ‘member of the public,’ consider deleting the material relating to a candidate or a registered write-in candidate and creating a separate section stating that a candidate or registered write-in candidate may not serve as an observer at a polling place where he or she appears on a ballot. Alternatively, it may not be necessary to define “member of the public.” “Consider placing the prohibition on candidates and write-in candidates being election observers at the end of s. EL 4.04.”

**Response:** The Commission rejected this recommendation in whole and believes that this language is best kept in the definition section. This language carries out the statutory prohibition against a candidate being an observer and also adds that election officials are excluded from the definition, meaning that an election official may carry out their duties without being classified as an observer. This is particularly important for accessibility reviewers who are recording whether or not selected polling places are meeting their accessibility requirements. The Commission intends to including training that will

reinforce who is an election observer and who is not using this definition, and believes that keeping this information together as part of the definition of “member of the public” is the clearest way to do so.

**Comment:** 5.o. Regarding s. EL 4.03 (1), move the subsection down to better track the timeline for election officials, and eliminate passive voice.

**Response:** The Commission accepted the recommendation in whole and eliminated passive voice as well as moving along with a general reordering of EL 4.03 as recommended in 5.r. below.

**Comment:** 5.r. Combine s. EL 4.03 (4), (6), and (7) for greater clarity.

**Response:** The Commission accepted the recommendation in whole and generally reorganized section 4.03 to follow a chronological order.

**Comment:** 5.t. Rewrite s. EL 4.03 (14) (c) to assign the duty to offer an opportunity to sign a written order to a specific person, and to clarify the language.

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.v. Clarify the language and fix the grammar of s. EL 4.04 (9).

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.w. “The proposed rules relating to audio and video recordings are confusing and seemingly inconsistent. Consider placing all of the requirements and restrictions on audio and video recordings into a separate section of ch. EL 4 by creating a separate section that encompasses ss. EL 4.04 (12), 4.05 (1) (b), (3) (b), (5) (d), and (6) (b), and 4.06.”

**Response:** The Commission rejected this recommendation in whole. Section EL 4.04(7) contains a general prohibition against creating and transmitting photo, video, or audio recordings, which are qualified or lifted by the subsections of Section EL 4.05 dealing with specific locations. Section EL 4.04(12) contains a general rule against “live” audio or visual communication device use which is distinct from the other cited sections, and is intended primarily to limit disturbances, primarily extra noise, which is distracting for other observers, voters, and election officials. The referenced sub sections of Section 4.05 were considered individually by the Commission and apply to those specific types of locations due to important differences in the locations. The key difference is the presence of voters and voted ballots which may be visually tied to a specific voter, and the limitation is designed to prevent identifying how a voter voted, intimidating a voter by recording their actions, or identifying a confidential voter. Locations for which these concerns are not present (recounts and central count) lift the prohibition, locations for which the concerns are limited (board of absentee ballot canvassers) lift the prohibitions except when individuals are returning ballots or correcting envelopes, locations for which the concerns are present up until a specific time name that time (polling places), and locations for which the concerns are always present (municipal clerk offices and alternate

sites and residential care facilities) contain no additional qualification, and the general prohibition in Section EL 4.04(7) always applies. Restrictions on audio and video vary based on location, and are best placed within the location specific sections of Section EL 4.05.

**Comment:** 5.y. “Section EL 4.05 (1) (a) could be simplified to state that an observer may remain at a polling place until all election-related activities are concluded. The reference to the open meetings law is confusing and may not be necessary. Additionally, the term “Election Day” should not be capitalized.”

**Response:** The Commission rejected this recommendation in part, and it accepted it in part concerning capitalization. The Commission believes that this section requires this level of detail and that it clarifies an important and potentially confusing transition. The Commission does not believe that this rule or Wis. Stat. § 7.41 applies to the canvassing of the votes once the election inspectors become canvassers after voting has concluded, even though those activities are entirely election related. However, many of the same people who were observers may wish to remain at the location to observe the public meeting of the board of canvassers. This rule, and Commission guidance following it, needs to clarify when this transition occurs even if, in practice, an observer might not need to be aware of the difference because they may simply remain where they are and continue to observe the public meeting.

**Comment:** 5.cc. Consolidate s. EL 4.05 (4) (f) and (d).

**Response:** The Commission accepted the recommendation in whole.

**Comment:** 5.ee. “In s. EL 4.07 (1), what does it mean to “use video and still cameras outside of the voting area”? Does this mean that the recording equipment must be placed outside of the voting area, but may capture videos or images of actions within the voting area, so long as there is no disruption or interference, or recording of confidential information? Or does it mean that the physical placement of equipment and the images of actions must both be outside the voting area? It may be helpful to differentiate between the location of physical equipment and the location of the actions being captured.”

**Response:** The Commission accepted this recommendation in whole and added the words “place” and “only” to clarify that the equipment itself must be placed outside of the voting area if the individual is not signed in as an observer. Such equipment may capture anything except what is described, which may include some things in the voting area, such as election officials sitting at tables, but not others, such as voters handing their IDs to those officials.

## **VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A**





# Tony Evers

Office of the Governor | State of Wisconsin

October 3, 2024

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Cosmetology Examining Board, submitted August 30, 2024, relating to education and approved formal training (Wis. Admin. Code chs. Cos 1, 2 & 4-6); and
- A statement of scope by the Elections Commission, submitted May 17, 2024, relating to election officials (Wis. Admin. Code ch. EL 16); and
- A statement of scope by the Department of Justice, submitted September 17, 2024, relating to changes to ch. Jus 11 to correct outdated statutory references (Wis. Admin. Code ch. Jus 11).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed emergency rule by the Department of Children and Families, submitted September 26, 2024, relating to the extension of kinship care and long-term kinship care payments to like-kin and the definition of out-of-home care in child welfare rules (Wis. Admin. Code chs. DCF 21, 37, 50, 55 & 58); and
- A proposed emergency rule by the Department of Agriculture, Trade and Consumer Protection, submitted September 23, 2024, relating to creating a commercial nitrogen optimization pilot program (Wis. Admin. Code ch. ATPC 52); and
- A proposed emergency rule by the Department of Agriculture, Trade and Consumer Protection, submitted September 24, 2024, relating to providing crop insurance rebates for planting cover crops (Wis. Admin. Code ch. ATPC 52); and
- A proposed rule by the Elections Commission, submitted September 16, 2024, relating to the conduct, regulation, and accomodation of election observers (Wis. Admin. Code ch. EL 4); and
- A proposed rule by the Medical Examining Board, submitted July 29, 2024, relating to telemedicine and telehealth (Wis. Admin. Code ch. Med 24); and

- A proposed rule by the Department of Financial Institutions, submitted August 5, 2024, relating to eliminating obsolete provisions, correcting cross-references, eliminating rules that are redundant with statutes, correcting errors, and modifying the structure of existing rules in nonsubstantive ways (Wis. Admin. Code ch. DFI-CSP 1).

Please direct any questions about this letter to my policy director, Katie Domina.

Sincerely,



Tony Evers  
Governor

cc: Mel Barnes, chief legal counsel ([mel.barnes@wisconsin.gov](mailto:mel.barnes@wisconsin.gov))  
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