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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 12-020

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]**

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

a. The rule summary contains a section with the heading “Accuracy, Integrity, Objectivity and Consistency of Data.” This heading is not required by the Manual or s. 227.14 (2), Stats. The department might consider putting the content of the paragraph following that heading under the heading, “Summary of Factual Data and Analytical Methodologies,” instead.

b. In the introductory clause of the rule, the order of the enumeration of provisions treated should conform to s. 1.02 (1) (b) of the Manual.

c. The word “section,” when referring to the sequentially numbered sections of the rule should be in small caps (SECTION). [s. 1.04, Manual.]

d. It is unusual for an agency to include drafting notes in the rule text. While the notes are useful, it may be more appropriate to place them in the agency’s plain language summary of the rule. Notes that are intended to remain in the rule text should not be italicized.

e. The rule should use the procedures for amending rule text specified in s. 1.06 (1) to (3) of the Manual. For example, in s. ETF 10.10 (1), the department changed “the” to “these” by adding the letters “s” and “e” to the end of the word “the.” Similar errors are in s. ETF 10.10 (2) and (8) (b). Additionally, the order of strike-throughs and underscores at the beginning of sentences should be reviewed throughout the rule.

f. In s. ETF 10.10 (1m), the department should insert the new definitions by following the procedure in s. 1.03 (5) of the Manual. For example, “ballot” should be inserted as paragraph (am).

g. Throughout the rule, the department uses the plural form of words when the singular form would be more precise. [s. 2.01 (11), *LRB Bill Drafting Manual*.] In s. ETF 10.10 (13), for example, the sentence beginning, “Candidates receiving,” would be more precise as follows: “The candidate who receives the largest number of votes shall be elected.” Likewise, in s. ETF 10.10 (9), “Persons...shall cast their votes” should be “A person shall cast his or her vote...”.

It appears that this problem may have been caused, in part, by the existing rule’s confusion of the plural and singular forms. For example, in at least one place, the current rule incorrectly mixes the plural and singular in one sentence: “Annuitants or participating employees shall be eligible to vote if they are an annuitant or participating employee...”. [s. ETF 10.10 (3).]

h. In s. ETF 10.10 (8), the department has not followed the procedure for amending rule text. For example, the rule inserts new language without underscoring it and fails to strike existing language that is omitted. The department might consider repealing and recreating this subsection instead because the new rule organizes existing language into several new paragraphs.

i. In s. ETF 10.10 (12) (a), punctuation at the end of sentences should be revised in accordance with s. 1.03 (4) of the Manual.

j. In SECTIONS 11 to 13 of the rule, the department should review s. 1.067 of the Manual, to determine whether the renumbering prescribed by those SECTIONS is appropriate

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

a. In s. ETF 10.10 (1m), the definition of “ballot” is grammatically unclear. “Paper” and “electronic” appear to be used here as adjectives, but it is not clear what they modify. The only word they could modify in this definition is “methods”, but this is grammatically and logically problematic for two reasons. First, a list of adjectives must be immediately followed by the noun modified; “a combination of” is neither a third adjective in the list nor the noun modified by paper and electronic. Second, a ballot is a physical object; a method is not. Defining a physical object as a way of doing something would not make sense.

b. The definition of “signature” in s. ETF 10.10 (1m) is also confusing. “Signature”, when used in its conventional sense, is clear enough that a definition would not be required. However, the rule’s definition muddies this meaning; it would not necessarily be apparent to someone asked to provide a “handwritten...verification indicating a signatory’s claim of authenticity” that he or she was simply being asked to sign his or her name. Because a conventional signature is handwritten, clarification about how an electronic document may be signed is likely necessary, but what constitutes an electronic signature is not clear from the definition in the rule. The department might consider instead defining “electronic signature” or “electronically sign” and amending the rule accordingly.

c. In the first paragraph of s. ETF 10.10 (4), the phrase “any other required forms for a candidate” is awkward and broad. Is it possible to specify the other required forms? Alternatively, would meaning be lost if the words “for a candidate” were deleted? In the same paragraph, “such date” should be changed to “this date”. [s. 1.01 (1), Manual.]

d. In s. ETF 10.10 (4) (a), the word “conclusively” is superfluous. In the same paragraph, the department should insert a comma between “signatures based” and between “signed and”.

e. The rule incorrectly uses the abbreviation for paragraph in the singular when referring to multiple paragraphs. For example, in s. ETF 10.10 (5), “the requirements of par. (4) (a) through (c)” should be “the requirements of pars. (4) (a) through (c)”. [s. 2.04 (1) (d), *LRB Bill Drafting Manual*.]

f. It appears there is an article missing in the first paragraph of s. ETF 10.10 (7) between the words “has” and “record”.

g. The use of semicolons in s. ETF 10.10 (7) (b) is unnecessary and confusing. The department should replace the semicolons with commas.

h. In the first paragraph of s. ETF 10.10 (8) are the words “as directed by the secretary” necessary? In the first sentence of par. (b) of that subsection, the word “can” should be changed to “may”. [s. 1.01 (2), Manual.]

i. Is the word “including” necessary in s. ETF 10.10 (9)? “Including” means the list that follows is not exhaustive. Are there other means by which the secretary may conduct an election other than by paper ballot, electronic ballot, or a combination of the two? In addition, the phrase “any appropriate means” in that paragraph is extremely broad. Finally, in par. (a) of that subsection, why is the word “secure” underscored?

j. Why does the first sentence of s. ETF 10.10 (10) begin with the conditional, “if”? “When” appears to be more appropriate. In that same paragraph, the use of the word “respective” is confusing. The department might consider deleting “If an election is held” and amending that sentence to begin as follows: “The board for which an election is being held shall appoint an election committee...”.

k. In s. ETF 10.10 (11) (h), it appears that “a manner” should be “the manner”. Additionally, this paragraph mixes use of the plural form with use of the singular form. The preceding paragraphs all refer to a singular item, e.g., “the ballot is not signed”, and “the ballot was not submitted”. However, par. (h) refers to “votes” in the plural.

l. There appears to be an article missing in the title to s. ETF 10.10 (12) (b). Additionally, in subd. 1. of that paragraph, the two uses of the word “will” should be replaced by “shall”. [s. 1.01 (2), Manual.] Further, the wording of subd. 2. is confusing. The department might consider changing the sentence as follows: “If an election is not held because the number of candidates is equal to or less than the number of positions to be filled, but there are multiple candidates for the available positions, positions will be selected...”.

m. In s. ETF 10.10 (13), the department should insert “the secretary’s” before the word “designee”. That same change should be made in s. ETF 10.10 (16).

n. Although the department has stated the effective date in the rule summary, it must include an effective date clause in the rule itself. [s. 1.02 (4), Manual.]