



Wisconsin Elections Commission

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DATE: For the November 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: Recount Considerations for the Post-Election Voting Equipment Audit

The post-election voting equipment audit has been temporarily delayed at the direction of WEC staff pending the possible filing of a recount petition for the President and Vice President contest. The purpose of this memo is to briefly detail the selection and notification process and to outline the means by which these municipalities may satisfy the procedural requirements of the voting equipment audit while still also participating in the statewide recount.

Selection:

On November 4, 2020, WEC staff held a public Zoom meeting in which reporting units throughout the state were randomly selected to participate in the post-election voting equipment audit. The selection process was conducted via an automated tool developed by staff that randomly selected municipalities in accordance with the criteria approved by the Commission at their September 16, 2020 meeting.

190 reporting units were selected to participate in the audit during this meeting. Additionally, the contests subject to audit were also selected at random. With the exception of the top-of-ticket contest, which historically has always been subject to audit, the three additional contests selected were Representative in Congress, Representative to the Assembly, and State Senator (with an alternate option of County Clerk for jurisdictions that did not have a State Senate contest on the ballot).

Following the random selection process, the chosen municipalities were notified via email of their selection on the same day. This email contained basic information about the selection, audit procedures, and links to all the training and materials that would be necessary to conduct the audit. On Friday, November 6, following internal staff discussion, a subsequent email was sent to all the participating municipalities/their respective counties advising that the audit be temporarily delayed until such time as it became clear whether there would be a statewide recount. This decision was made to preserve the integrity of the ballots in the event of a recount and to minimize additional scrutiny of the recount procedures.

Next Steps and Recount Consideration:

With a potential statewide recount looming, staff have developed a potential approach for municipalities to complete the audit prior to the certification deadline on December 1, 2020. This procedure has multiple paths by which a selected municipality may satisfy the requirements of the audit in a timely manner while still

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participating in the recount. Each path is predicated on how the county in which the municipality is located has elected to administer the recount.

Option A:

Counties that have opted to do a full hand recount of all ballots will satisfy the audit requirement for their selected municipalities. Staff will confirm that these municipalities conducted a full hand recount and a reporting form will still be requested for any reporting unit that was selected for the audit.

Per the summaries of procedures and anticipated costs submitted by the counties in preparation of a potential recount, 44 counties plan to do a full hand recount of all ballots. Of the reporting units selected for the post-election audit, 98 are located within these 44 counties.

Option B:

Counties that have opted to do a full machine recount of all ballots may be open to the idea of separating the ballots from selected reporting units to be hand-counted instead. While the majority of ballots will be recounted on voting equipment, separating out the ballots subject to audit and hand counting them will satisfy the procedural requirement of both the recount and the voting equipment audit.

Per the summaries of procedures and anticipated costs submitted by the counties in preparation of a potential recount, some counties have indicated their interest in pursuing this method. Specifically, Brown and Dane Counties have indicated that they will hand count the ballots in their respective reporting units that were selected for the audit. (It is unclear at this time if other counties will pursue a similar procedure) Of the reporting units selected for the post-election audit, 13 are within Brown and Dane Counties.

Option C:

Counties that have opted to do a full machine recount of all ballots, including the ballots in the reporting units selected for audit, will not satisfy the requirements for the voting equipment audit. Ballots from selected reporting units in these counties will need to be subsequently hand counted and tallied following the initial machine recount to ensure compliance with the audit procedures. Audit documentation will need to be transmitted to WEC for review no later than 2:00 p.m. on November 30, 2020.

At this time, and barring additional clarification from counties as to whether they'd pursue option B for reporting units selected for the post-election audit, this leaves 79 reporting units that will be required to conduct the audit following the conclusion of the recount.

While the above framework is predicated on how a county has elected to pursue their own respective recount/audit procedures, a common suggestion to counties in all three scenarios would be to address the ballots from the jurisdictions selected for audit prior to recounting ballots from the rest of the county. This will maximize the time selected municipalities will need to finalize their reporting forms and other pertinent audit documentation to be submitted to WEC staff by the deadline of November 30, 2020. This will also allow municipalities in counties conducting a full machine recount as much time as possible to conduct and finalize their audits prior to the deadline.

Previously, the deadline for municipalities to submit their audit documentation to WEC was set at November 25, 2020. However, this was an administrative timeline set under non-recount circumstances and, as such, the deadline has been extended to November 30, 2020.

In keeping with the guidance issued for the 2016 post-election voting equipment audit, a full hand-count of the ballots via a statewide recount would satisfy the procedural requirements of the audit in the selected reporting units. This approach also allowed for the hand recount municipalities to only audit the top-of-ballot contest and exempted them from having to audit the three other contests. However, this dispensation is only granted to municipalities who do a full hand recount of the ballots and selected reporting units in counties that are opting for a full machine recount will still be subject to a full audit of all four contests.

In the event of a partial recount, i.e., a recount in certain counties or jurisdictions but not on a statewide scale, all reporting units selected for the audit that are not subject to a recount should begin preparations for conducting their audits immediately.

In the two counties subject to the recount petition filed on November 18, 2020 requesting a partial recount, Dane and Milwaukee, there are 18 reporting units that were selected for the post-election audit. These 18 reporting units all utilize ES&S voting equipment.

Attached please find a list of the type of voting equipment (vendor, model) that has been selected for the audit.

Recommended Motion:

The Commission approves the procedures outlined for the three options listed above and instructs staff to communicate these standards to the impacted counties and municipalities.