

State of Wisconsin \ Government Accountability Board

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KEVIN J. KENNEDY
Director and General Counsel

DATE: June 9, 2010

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

SUBJECT: Revised Retention Policy -- Electronic Election Data

I am writing to inform you about the Government Accountability Board's Revised Retention Policy—Electronic Election Data, pursuant to §§ 7.23 (1) (f) and (g), Wis. Stats. Following the enactment of 2009 Wisconsin Act 397, there are now statutory retention period distinctions between Federal and state/local elections, as well as based upon the date that voting systems were approved for use by the Government Accountability Board. Data from memory devices for non-tabulating, ballot marking equipment (i.e. AutoMARK) are excluded from the retention requirements of electronic election data under §7.23, Wis. Stats., regardless of the election type.

This revised retention policy for electronic election data is effective for any election occurring on or after June 2, 2010.

ALL ELECTIONS WITH FEDERAL OFFICE ON BALLOT

Election officials are required to retain all election materials for 22 months for any election where a federal office is on the ballot, pursuant to 42 U.S.C. §1974 and §7.23(1)(f), Wis. Stats. (The 22 months retention period applies to all election materials, unless §7.23, Wis. Stats., provides a longer retention period. See §7.23, Wis. Stats., and Destruction of Materials Chart for specifics.)

Electronic election data from tabulating equipment memory devices may be transferred to another recording medium 14 days after a primary and 21 days after any other election pursuant to §7.23(1)(g), Wis. Stats., but subject to the below. Additionally, no device may be cleared or erased while a recount or appeal of a recount determination is pending, nor during the time when an appeal or petition for review may be filed, except by order of a court in which an appeal is pending.

The following retention policy for electronic election data applies to all elections with a federal office on the ballot:

1. For those election officials using electronic/computerized vote recording or tabulation

equipment utilizing memory devices such as a PROM or other similar memory storage devices, the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, plus the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. results tape.

2. As an alternate way to comply with §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, election officials using electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices may retain the actual devices for the period of 22 months. In addition, retain the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election.
3. Any voting systems approved for use after January 1, 2009, as well as election officials using the Premier AccuVote OS and AccuVote TSX, the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. § 1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election and all election programming and materials from each device, which can be downloaded to hard drive or disk before erasure and reprogramming.
4. For those elections officials who possess elections management software the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, is the following:
 - A) All election programming (programmable code,) and
 - B) For each memory device programmed by election officials for voting systems approved for use prior to January 1, 2009, the accumulation of election results will be incorporated into the election management system in order to obtain and retain aggregate election results.

This programming and results data can be downloaded to hard drive or disk before erasure and reprogramming of the memory devices.

ELECTIONS ONLY OF STATE AND/OR LOCAL OFFICE OR REFERENDUM ON BALLOT

Election materials retention periods for state and/or local offices and referenda vary by type of material and are detailed in §7.23, Wis. Stats. (See also the Destruction of Materials Chart.) Those retention periods specified in §7.23, Wis. Stats., apply for the materials identified, regardless of the below policy. The policy below applies only to electronic election data from detachable recording units and compartments from tabulating equipment. No device may be cleared or erased while a recount or appeal of a recount determination is pending, nor during the time when an appeal or petition for review may be filed, except by order of a court in which an appeal is pending.

1. Tabulating equipment approved for use on or after January 1, 2009:

Election officials are required to retain electronic election data from detachable recording units and compartments from tabulating equipment approved for use on or after January 1, 2009 for 22 months. This data may be transferred to another recording medium for storage 14 days after a primary and 21 days after any other election pursuant to §7.23(1)(g), Wis. Stats., to meet this retention requirement. Following transfer of this data, the detachable recording units and compartments may be cleared or erased.

2. Tabulating equipment approved for use prior to January 1, 2009:

Election officials may clear or erase the electronic election data from detachable recording units and compartments for use with tabulating equipment approved for use prior to January 1, 2009, but only 14 days after any primary and 21 days after any other election. There is no requirement to transfer and there is no other retention period for this data.

cc: Kevin J. Kennedy
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