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2 **Part 6210**
3 **Routine Maintenance and**
4 **Testing of Voting Systems,**
5 **Operational Procedures, and**
6 **Standards for Determining Valid Votes**

7
8 **Section 6210.1 Definitions**

9 Except to the extent set forth below, the definitions contained in section 6209 shall
10 apply in this section

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12 1. ~~Pre-qualification test is a test prescribed by the State Board, conducted~~

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13 immediately prior to the voting systems' use in an election in which a
14 predetermined set of votes are cast which will ensure that all voting positions for
15 each ballot ~~configuration~~ are tested. Such votes shall be entered into the voting
16 system in the same manner as they will be entered by voters during an election.

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17 If a voting system offers several methods for votes to be entered, such as touch-
18 screen, push-button, or other electronic mechanism, a key pad and/or pneumatic
19 switch for voters with disabilities, or alternate language displays, then ~~a~~ pre-
20 determined set of votes shall be entered separately using each method and
21 language display. The results of the casting of said votes and all voting system
22 logs shall be extracted from the system as though during normal use in an
23 election, and the results and logs shall be compared to the predetermined

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1 results of the test votes and vote totals prepared pursuant to regulations and
2 procedures of the State Board.

3 2. Printout means either the printed copy of zero totals, candidate names and
4 offices and other information produced by the voting equipment prior to the
5 official opening of the polls or the printed tabulation report of votes cast for each
6 candidate and question, the names of candidates and the offices for each
7 candidate and other information provided after the official closing of the polls.

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8 3. **Election Mode:** An operational setting and/or functional level of a voting
9 system that would allow the user, under the required conditions stated by law, to
10 make selections, and/or cast a ballot, and which also uniquely provides the
11 potential to have a marked ballot officially accepted for counting at the time of a
12 defined election. Note: This mode of operation may also be synonymous with the
13 term "live vote mode" or similar. This mode may also be run at any time, either
14 for the running of realistic simulations for testing, and/or after various
15 maintenance activities. This mode is specifically required to be run in the
16 conduct of an official election.

17 4. **Test Mode:** An operational setting and/or functional level of a voting system
18 that would allow the user to specify/select, access, and/or test various
19 levels/areas of the device, either, for example, during possible upgrades,
20 diagnostic testing, and/or specific maintenance activities that may not require full
21 functional simulation, or capabilities at that time. Note: This mode of operation is
22 a separate option from Election Mode, and is prohibited from being run in the

1 **Section 6210.2 Routine Maintenance and Testing of Voting Systems**

2 A. Testing of all voting systems shall be conducted by the county board before the
3 use of the system in any election and at such other times of the year as
4 prescribed by these regulations. Testing procedures shall be approved by the
5 State Board. The voting system shall be tested to determine that the system is
6 functioning correctly and that all system equipment, including but not limited to
7 hardware, memory, and report printers, are properly integrated with the system
8 and are capable of properly performing in an election. Testing, other than pre-
9 qualification testing, shall be conducted by casting manual votes and may
10 include the casting of simulated votes.

11
12 B. In addition to vendor-prescribed maintenance tasks and diagnostic tests, tests of
13 voting equipment shall be conducted by the county board, on each piece of
14 equipment owned by the county board. Such testing shall be administered
15 periodically and be completed during the following periods during each year that
16 the equipment is in use:

- 17 1) January 15 - April 15
- 18 2) April 16 - July 15
- 19 3) July 16 - September 15
- 20 4) September 16 - November 15

21
22 Whenever a voting system is to be tested for pre-qualification purposes, such

1 test must be conducted while the voting system is in 'election mode'. Votes cast
2 for pre-qualification test purposes shall be manually cast using all of the devices
3 available to voters on election day (i.e. audio, key pads and or pneumatic
4 switches, and/or alternate language displays).

5
6 C. Testing shall include the comparison of software installed on the delivered system
7 to certified software, via the use a Secure Hash Signature Standard (SHS)
8 validation program, as described in Federal Information Processing Standards
9 Publication 180-2 issued by the National Institute Standards Technology (This
10 publication is available electronically by accessing <http://csrc.nist.gov/publications/>.
11 Alternatively, copies of NIST computer security publications are available from: National
12 Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.)

13 Testing shall consist of the re-calibration of equipment, as appropriate, pursuant to
14 recommendations made in vendor's maintenance documentation, and the casting of
15 a 'test deck' by voting the minimum number of ballots, determined pursuant to the
16 requirements of Section 6210.8 of these regulations, to ensure that all voting
17 positions for each ballot configuration are tested. Votes cast for the purposes of
18 this section shall be cumulative ballots cast on each piece of equipment during
19 each of the prescribed periods outlined.

20 1) If the system does not accurately count the votes from the test deck cast
21 manually, simulated, or both, (aside from those that were deliberately
22 designed to fail), or the calibration test, the cause or causes for the error

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1 or errors shall be ascertained and corrected. The voting system shall be
2 re-tested until there are two consecutive error-free tests before the
3 system is approved for use in the count of actual ballots. The
4 commissioners of the county board or their designees shall certify that
5 they have reviewed and verified the results of said testing. The summary
6 results of all tests, including all inaccurate test results, their causes and
7 the actions taken to correct them, as well as the results of all errorless
8 counts, shall be entered upon the maintenance log. All documentation
9 and/or test decks, simulation cartridges and any test data, including but
10 not limited to copies of ballot programming used for required maintenance
11 tests, shall be maintained in secure, locked storage for two years after the
12 election, pursuant to Election Law Section 3-222.

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13 2) Maintenance logs are to be kept as a permanent record of the county
14 board.

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16 D. During the period including July 16 - September 15 (and in years when a
17 presidential primary is conducted, during the January 15 - April 15 period), the
18 test ballot format for each piece of equipment shall consist of each primary
19 ballot configuration as certified by the county board, if said equipment is to be
20 utilized in a primary election. The voting system shall be cleared of all votes and
21 a printed report shall be produced by the system, to verify the correct ballot
22 configuration and election configuration, and to confirm that all voting positions

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1 are at zero. Ballots cast for the purposes of this test shall be manually cast and
2 a printed tabulation report shall be provided. The system shall again be cleared
3 of all votes and a printed report shall be produced by the system to confirm that
4 all voting positions are at zero. Each officer or board charged with the duty of
5 preparing voting machines for use in any election shall give written notice, by
6 first class mail, to the State Board and to all candidates, except candidates for
7 member of the county committee, who are lawfully entitled to have their names
8 appear thereon, of the time when, and the place where, they may inspect the
9 voting machines to be used for such election. The candidates or their designated
10 representatives may appear at the time and place specified in such notice to
11 inspect such machines, provided, however, that the time so specified shall be
12 not less than two days prior to the date of the election.

13
14 E. For the period between ballot certification and seven days before the general
15 election, the test ballot format for each piece of equipment shall consist of each
16 general election ballot configuration as certified by the county board. The voting
17 system shall be cleared of all votes and a printed report shall be produced by
18 the system, to verify the correct ballot configuration and election configuration,
19 and to confirm that all voting positions are at zero. Ballots cast for the purposes
20 of this test shall be manually cast and a printed tabulation report shall be
21 produced. The system shall again be cleared of all votes and a printed report
22 shall be produced by the system to confirm that all voting positions are at zero.

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1 Each officer or board charged with the duty of preparing voting machines for use
2 in any election shall give written notice pursuant to NYS Election Law Section 7-
3 128 and Section 7-207, by first class mail, to the State Board and to all
4 candidates, except candidates for member of the county committee, who are
5 lawfully entitled to have their names appear thereon, of the time when, and the
6 place where, they may inspect the voting machines to be used for such election.
7 The candidates or their designated representatives may appear at the time and
8 place specified in such notice to inspect such machines, provided, however, that
9 the time so specified shall be not less than two days prior to the date of the
10 election.

11
12 F. In addition to any vendor provided training, the State Board shall provide training
13 on routine maintenance and testing of voting systems to county board personnel
14 responsible for voting systems. The State Board shall provide sample tests to
15 be utilized by each county board. The State Board may revise said testing
16 format, based upon its audit and review.

17
18 G. All results of each routine maintenance test and/or pre-qualification test,
19 including the final errorless test, shall be certified as accurate by the county
20 board commissioners or their designees, and such certification shall be entered
21 upon the maintenance log for each such piece of equipment, together with any
22 other information prescribed in said log by the State Board.

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- H. The county board shall certify to the State Board, the completion of each ~~routine~~ maintenance test ~~and/or pre-qualification test~~. All documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law Section 3-222. Such certification shall be on a form prescribed and furnished by the State Board, and shall be accompanied by copies of each maintenance log.

- I. Each county shall keep a detailed log of maintenance performance and testing procedures. Such logs shall be in a format provided by the State Board and the same shall have been reviewed by the vendor.

- J. Such logs shall be provided quarterly to or as requested by the State Board, for their review and inspection, and shall be made available to the public.

- K. The State Board may, upon review of the maintenance logs, require further testing of any such piece of equipment or may remove a piece of equipment from use in an election until further examination and testing has been completed, or may rescind certification pursuant to Part 6209.8 of the State Board Regulations.
 - 1) The State Board may reinstate the certification if the equipment passes

1 these further tests, and a review of the maintenance logs supports such
2 reinstatement.

3 2) County boards shall make the system or equipment available to the State
4 Board for any such additional testing and shall provide such assistance
5 as may be deemed necessary.

6

7 L. During the initial time period in which such system or equipment is used, to
8 include a primary election and a general election, the State Board shall assist in
9 the routine maintenance, testing and the operation of the voting machines or
10 systems. Such assistance shall include but not be limited to:

- 11 1) election configuration and ballot configuration related to voting system
12 testing and use
- 13 2) pre-qualification and post-election tests
- 14 3) election day support, via phone, email, facsimile or on-site, as necessary
- 15 4) post-election support, to include recanvass, challenges, and audit
16 conducted pursuant to Election Law Section 9-211
- 17 5) staff training
- 18 6) defining personnel requirements and tasks
- 19 7) defining procedures for pre-qualification, post-election, and maintenance
20 tests
- 21 8) defining procedures for canvassing and recanvassing votes cast in an
22 election

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M. During successive years, the State Board, whenever it deems necessary, or at the request of a county board, may assist in any or all aspects of the operation of the system.

Section 6210.3 Submission of Procedures for Unofficial Tally of Results of Election

County boards which adopt procedures pursuant to Election Law Section 9-126(3) shall file such procedures with the State Board of Elections.

Section 6210.4 Demonstration Models

A. During the first five (5) years after purchase, any county which purchases voting equipment systems shall provide a model, diagram, ~~video or other electronic instruction (example CD ROM)~~ of such voting system's equipment for each polling place in its jurisdiction.

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B. ~~Any~~ such model, diagram, ~~video or other electronic instruction~~ must be approved by the State Board and must meet the following specifications:

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- 1) may not contain the name of any party or independent body which has been continuously used in New York State.
- 2) display a ballot layout which shall consist of at least two party rows and eight voting positions including at least one multiple-candidate office (vote

1 for two).

2 3) Demonstrate how a voter can,

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3 a) vote for a candidate, question or proposition.

4 b) verify in a private and independent manner the votes selected by
5 the voter on the ballot before the ballot is cast and counted.

6 c) in a private and independent manner to change the ballot or
7 correct any error before the ballot is cast and counted, including
8 the opportunity to correct the error through the issuance of a
9 replacement ballot if the voter was otherwise unable to change the
10 ballot or correct any error.

11 d) cast a write-in ballot.

12 e) cast the ballot.

13 f) be notified on the effect of the voter casting multiple votes for an
14 office or proposal in excess of the number permitted.

15 g) be notified on the effects of an undervote.

16 h) utilize the accept ballot/reject ballot feature, if any is available on
17 such voting machine or system.

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19 C. If a model is used, each model must:

20 1) be no less than 11 inches by 14 inches

21 2) be operated by electricity and/or a battery power source

22 D. If a diagram is used it shall be no smaller than 11 inches by 17 inches.

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Section 6210.5 Voting System Operations

A. All voting systems used in New York State shall be used in a manner consistent with New York State Election Law, these Regulations and the United States Election Assistance Commission's 2005 Voluntary Voting System Guidelines and any conditions specified in the State Board's certification of the voting system for use in New York elections.

B. Only the county board shall have care, custody and control over all resources for the purposes of conducting elections, including but not limited to vote counting, preparation and custody of ballots, system maintenance and all testing. If it becomes necessary to transfer control of any equipment to a vendor for repairs, or to other political subdivisions for use by them in their elections, such voting systems and/or equipment shall not be used in a live election by the county board until such time as such equipment is returned to the care, custody and control of the county board and acceptance testing of each such system or equipment is performed pursuant to Section 6209.10 of the State Board Regulations.

Section 6210.6 Personnel

It is the responsibility of the county board to provide sufficient and appropriate

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 <#>a) . be no less than 11 inches by 14 inches[]
 b) . be operated by electricity and/or a battery power source []
 c) . enable the voter to vote for a candidate[]
 d) . enable the voter to negate or change a vote[]
 e) . enable the voter to cast the ballot.[]
 f) specify how and where to cast a write-in ballot.[]
 g) . enable the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted[]
 h) . provide the voter an opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error. []
 4) . If a diagram is used, it shall provide the voter with instructions on: []
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 b) . how to

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 c) . if the voter selects votes for more than one candidate for a single office:[]
 .i) . notice to the voter on the effect of the voter selecting more than one candidate for a single office on the ballot[]
 .ii) . notice to the voter on the effect of casting multiple votes for an office or proposal in excess of the number permitted; and[]
 .iii) notice to the voter on the effects of an undervote[]
 d) . how to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted[]
 e) . how the voter may, in a private and independent manner, change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.[]

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1 staff to perform the functions required for successful use of the voting system. All tasks
2 shall be defined in written procedures, and personnel assigned shall be thoroughly
3 trained to carry out their responsibilities.

4

5 **Section 6210.7 Ballots**

6 A. For the production of paper ballots or ballot faces for DRE voting systems, the
7 county board shall contract with a printer or use in-house print services that
8 have the requisite expertise, staff, and equipment for printing ballots of the
9 complexity and in the volume required for the conduct of elections in that county,
10 and that ensures delivery of finished ballots in time to comply with the relevant
11 provisions of the State election law and the election calendar.

12

13 B. Detailed specifications for production of ballots shall be supplied to the county
14 board by the voting system vendor. These shall include but not be limited to
15 particulars of the system's ballot such as weight, grain and color of stock;
16 dimensions of ballot faces, ballots and ballot cards; corner cuts; perforations,
17 both for ballot boundaries and for stub boundaries, when appropriate; ballot
18 positions, sensitive areas and voting targets; pre-marks for imprinting of ballot
19 configuration information; printing registration and tolerances; ink; use of drying
20 powder; and packaging of printed ballots for shipment and for storage until time
21 of use. The county board shall transmit these specifications to the printer
22 chosen to produce its ballots.

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C. In the first year that the voting system is in use, a copy of the final form and arrangement of each ballot configuration shall be filed with the State Board

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D. Ballots shall be identified by ballot configuration, using marks which are machine readable and human readable text.

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E. Ballots to be used with poll site optical scan voting systems, shall be in a form consistent with Election Law Section 7-106. Each ballot shall have a numbered stub which can be separated from it along a perforated boundary. Such ballot shall be detached from the numbered stub prior to the election inspector giving the ballot to the voter and be retained by the county board in a manner consistent with election-related document retention requirements.

- 1) The ballot stubs shall be sequentially numbered, and shall include the date of the election, the political subdivision in which the ballot is valid, and in a primary election, the name of the party conducting the primary, and further, stubs may be color coded, to correspond to same.
- 2) Ballot stubs shall include spaces for inspectors to indicate with their initials, whether the ballot was used for affidavit or emergency purposes.
- 3) Ballots shall be bound in booklets of 100, or in such other increments as a county board may, by written procedure, deem appropriate. Binding shall be by staples, to help ensure ballot accountability.

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1 4) Ballot booklets shall have a cover, on which shall be printed the date of
2 the election, the political subdivision in which the ballot booklet shall be
3 valid, the range of sequential ballot stub numbers contained therein, and
4 such other administrative information as the county board may deem
5 necessary. In primary elections, booklet covers shall include the name of
6 the party conducting a primary, and may be color coded, to correspond to
7 same.

8 5) When more than one ballot booklet is to be used in any election district, a
9 transmittal sheet shall accompany the booklets, which shall specify how
10 many booklets are included in the inspector supply bag, the complete
11 range of sequential ballot stub numbers for that district, and shall further
12 provide a space or spaces for inspectors to confirm receipt of all ballots.

13 6) Ballot booklet(s) and any transmittal sheet, shall be delivered to
14 inspectors with other election day supplies, in a separate, secure, sealed
15 and labeled envelope or pouch.

16 7) Only one ballot booklet at a time should be on the inspector table, and the
17 remaining booklets shall be kept in their secure envelope or pouch, in the
18 inspector supply case.

19 8) When all ballots in a booklet have been used, leaving only the cover and
20 the stapled pad of stubs, such booklet shall be returned to the ballot
21 booklet envelope/pouch and the next appropriately numbered ballot
22 booklet shall be removed for use.

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1 | 9) After the close of polls, the transmittal sheet shall be completed by the
2 | inspectors, indicating which booklets were completely used, partially
3 | used, or not used. The ballot booklet envelope/pouch shall be sealed
4 | and returned to the county board with all other election day supplies.

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6 | F. The county board shall cause ~~its~~ respective printer(s) to certify to the county
7 | board, upon delivery of ballots ordered:

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- 8 | 1) the actual number of ballots printed
- 9 | 2) the number of ballots delivered, and
- 10 | 3) that all other ballots printed have been destroyed.

11 |
12 | The county board shall inventory all ballots and ensure the security of any and
13 | all ballots while they are in the possession of the county board.

14 |
15 | G. For Central Count Paper-Based voting systems, ballots printed for absentee
16 | voting, and those printed for emergency, special and affidavit purposes shall be
17 | tabulated by batch, and be subject to all appropriate provisions of these
18 | Regulations. The county board shall provide a means by which affidavit,
19 | emergency, and special ballots shall be distinguished from absentee ballots.

20 |
21 | **Section 6210.8 Test Deck Procedures**

22 | Each county board shall prepare a test deck to be used to verify that the voting

1 system's election configuration and ballot configuration is correct and that the voting
2 system will accurately cast and count votes within each individual ballot configuration.

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4 A. The ballots shall be voted with a pre-determined number of valid votes for each
5 candidate, each write-in position, and each voting option on every proposal that
6 appears on the ballot as certified by the county board in order to verify that the
7 vote system is programmed to correctly count the ballots. The deck includes
8 one or more ballots that are intended to fail, have been improperly voted, or
9 which are voted in excess of the number allowed by law, and one or more ballots
10 on which no votes are cast, in order to test the ability of the system to recognize
11 and/or notify of an under or over vote. If there is more than one ballot

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12 configuration for an election, a separate test deck is created for each ballot
13 configuration. In election districts that will utilize a single voting system for two
14 or more ballot configurations, required testing shall consist of a different test
15 deck for each ballot configuration to be utilized on such voting system, to ensure
16 that the addition of multiple ballot configurations has not affected the accurate
17 casting and counting of votes within individual ballot configurations.

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19 B. Test decks which include sub-decks are created once election configuration and
20 ballot configuration tasks have been completed, and ballot configurations have
21 been verified, utilizing detailed procedures for preparation of a test deck
22 prescribed to the county board by the State Board. Using a tool or tools, (ie

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1 | Excel) make a test scrip~~t~~ for each specific ballot within the test deck, such that
2 | when all test ballots within the test deck are completely cast it will accurately test
3 | all positions, undervotes, overvotes, write-in positions, propositions and ballots
4 | that are deliberately designed to fail.

- 5 | 1) To create a test deck on an optical scan voting system, test ballots must
6 | be marked, following the pattern determined to sufficiently test the ballot
7 | programming, logic, and accuracy.
 - 8 | a) For optical scan voting systems, the test deck includes one or more
9 | ballots on which two or more votes are cast for a candidate whose
10 | name appears on the ballot more than once for the same office in
11 | order to test the ability of the system to count only the first of such
12 | votes for the candidate.

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- 13 | 2) To create a test deck for DRE systems, the creation of a test script is
14 | required, so that the pattern of votes can be followed, to facilitate the
15 | manual casting of same.
 - 16 | a) For DRE Systems, the test deck includes one or more ballots in
17 | which an attempt is made to cast two or more votes for a candidate
18 | whose name appears on the ballot more than once for the same
19 | office in order to test the ability of the system to accurately cast the
20 | voters choice(s) for such office.
- 21 | 3) Assign each ballot in the script a unique ballot number.
- 22 | 4) Calculate the number of ballots required to conduct each test. This

1 calculation is the minimum number of ballots that must be cast on each
2 voting machine or system where such ballot configuration is programmed,
3 pursuant to Section 6210.2 C of these regulations.

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5 C. Upon creation of a test deck and prior to use in pre-qualification testing, the test
6 deck must be validated by casting the ballots in the test deck on a voting
7 machine or system, printing out the tabulation report and comparing same to the
8 predetermined expected results for that test deck to ensure accuracy. Any
9 corrections to the test deck must be made prior to its use in pre-qualification
10 testing.

11
12 D. Once a test deck has been validated, test decks are run by a bi-partisan team on
13 each voting system for which that particular ballot configuration is valid. The
14 team shall enter at least one ballot from each sub-deck using each feature
15 intended for people with disabilities, and enter at least one ballot from each sub-
16 deck using each language provided on the unit. While one team member casts
17 votes for the test, the other member shall monitor that votes are cast correctly.

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18 1) The test shall be documented by the bi-partisan team, on a log to be
19 prescribed by the State Board, and the team shall affix their signatures to
20 the log. The log shall include but not be limited to:

- 21 a) The date the test was executed.
- 22 b) The names of the persons who performed the test and recorded

1 the results.

2 c) The serial number of the machine on which the test was executed.

3 d) The protective counter number of the machine on which the test
4 was executed as it appeared both at the beginning and conclusion
5 of testing.

6 e) The name or description of the test performed.

7 f) The version number of the software under test.

8 g) The test result, either 'pass' if the results match the expected
9 results exactly, or 'fail' if there is even one discrepancy

10
11 E. The bi-partisan team shall compare the accuracy of the results reported by the
12 voting system to the expected results and determine if the machine passed or
13 failed. Any discrepancies indicate a failure and must be investigated.

14 1) If a test deck is run on a DRE, and the pre-determined vote count does
15 not compare to the results reported by the voting system, the bi-partisan
16 team shall document the problem, and then compare the paper audit trail
17 transactions to the unique test ballot scripts, to be sure votes were cast
18 correctly. Any corrections to the test deck itself, or to the casting of the
19 test deck shall be made, and the test deck shall be re-run until two error-
20 free test results are produced, pursuant to Section 6210.2 (C)(1) of these
21 regulations.

22 2) If a test deck is run on an optical scan voting system, and the pre-

1 determined vote count does not match the computer generated tabulation,
2 then the bi-partisan team shall document the problem and compare the
3 unique ballot script pattern with the test deck pattern to ensure that the
4 test deck was made correctly and that all ballots were run. Any
5 corrections to the test deck itself, or to the casting of the test deck, shall
6 be made and the test deck shall be re-run until two error-free test results
7 are produced, pursuant to Section 6210.2 (C)(1) of these regulations.

8 3) If the test deck and voting system fail to produce two consecutive error-
9 free results, the system shall not be used until such time as the problem is
10 resolved in a manner consistent with vendor documentation and State
11 Board procedure.

13 F. For DRE systems, the paper audit trail records with the accumulation report shall
14 be signed by the testing team, then bound and placed in secure storage. For
15 optical scan voting systems, the results report shall be signed by the bi-partisan
16 team, and placed in secure storage. After all voting systems upon which a
17 particular ballot configuration is valid have been tested, the test deck shall be
18 stored with all corresponding reports, audit trails, log sheets and system logs
19 required to be produced and reviewed pursuant to Party 6210.8(E)(3).

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21 G. For Central Count Paper-Based systems, after entering all election ballot codes
22 and creating header cards, if required by the software, the following verification

1 procedures shall be performed:

- 2 1) place one ballot from the appropriate ballot configuration behind each
3 header card.
- 4 2) process the complete set of header cards containing the single ballots
5 against the absentee counting system and ballot counting program.
- 6 3) if the software rejects a header or ballot card, the cause of the error shall
7 be ascertained and corrected.
- 8 4) re-process all cards which generated errors to verify correction.
- 9 5) At the discretion of and mutual agreement of a county board's
10 commissioners, a resolution may be adopted for a specific election, which
11 may provide that ballots be canvassed manually, rather than by using the
12 Central Count Paper-Based voting system. Such resolution shall be filed
13 with the county board's official minutes, and notice of the resolution and
14 decision shall be provided in writing, to the State Board and to all party
15 chairs and candidates, whose names appear on the ballots to be counted
16 manually. The county board shall give written notice, by first class mail,
17 to the State Board and to all party chairs and candidates who are lawfully
18 entitled to have their names appear on the ballots, of such resolution.

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19
20 **Section 6210.9 Vote Tabulation**

- 21 A. Preparation of ballots for tabulation by Central Count Paper-Based Systems.
- 22 1) Ballots shall be reviewed pursuant to the provisions of Section 6210.13 of

1 these regulations, to determine if the ballot is machine-readable or if the
2 ballot requires that it be manually counted, then recorded in the official
3 canvass of the votes for the election.

4 2) Ballots shall be assembled in separate batches by election district unless
5 otherwise directed by the county board to preserve the secrecy of the
6 ballot.

7 a. Each batch shall be identified by a header card and at the end of
8 all batches there shall be an end- or trailer- card, if required by the
9 software. Header and trailer cards shall be visually distinct from
10 ballots. Such distinction may be made, for example, by using a
11 different color card stock, or different edge marking, or by other
12 appropriate means.

13 b. The bi-partisan team of county board personnel shall place header
14 cards, in order that the votes recorded on each ballot shall be
15 attributed to the correct election district. When placing header
16 cards, as each is placed by one person, the other person shall
17 verify that the header card is the correct one for the batch of ballots
18 which follows it and that it is correctly oriented in the batch.

19 3) Ballots shall then be fed into the Central Count Paper-Based voting
20 system. Following the counting of all ballots, a tabulation report shall be
21 printed. Two back-up copies of the tabulation report shall be locked in
22 secure storage.

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1 4) Where the number of ballots to be canvassed is small, the county board
2 may provide for canvassing of the ballots by larger units of
3 representation.
4

5 B. Testing During Ballot Tabulation by Central Count Paper-Based Systems.

6 The system shall be so designed and constructed that, at the discretion of the
7 county board, it shall be possible to halt the ballot tabulation at a point when a
8 portion of the election districts have been counted, and run the test deck to
9 demonstrate, as in the tests listed in Section 6210.2 of these regulations, the
10 accuracy and dependability of the count without interrupting or affecting any
11 official tabulation of results that may be on the equipment at that time.
12

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13 C. Testing Following the Machine Tabulation of Ballots by Central Count Systems.

14 Immediately following the machine tabulation of the ballots from all the election
15 districts and the production of the county-wide totals of votes, the pre-count tests
16 listed in Section 6210.2, shall be run so as to demonstrate the accuracy and
17 dependability of the count.
18

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19 **Section 6210.10 Ballot Accounting**

20 A. Following the counting of all votes in an election, a full accounting of paper
21 ballots shall be made, and shall be reported on a form to be provided by the
22 State Board, which shall include:

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1) For each entire election and for each ballot configuration used in it, the number of paper ballots shall equal the sum of paper ballots issued to voters and paper ballots not issued to voters, returned but not sent for tabulation because the voter voted at the polls, ballots spoiled, and paper ballots not returned. In each category of ballots issued, the report shall specify how many, if any, and in what category any emergency or affidavit ballots were used.

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2) For each entire election and for each ballot configuration used in it, the number of paper ballots not issued to voters shall equal the sum of the number of paper ballots used for testing/sample purposes and paper ballots remaining unissued and unused.

B. The ballot accounting report shall be attested to by the county board commissioners and shall be retained in accordance with Election Law Section 3-222.

Section 6210.11 Voting Systems Security

County board election officials shall take all steps necessary to ensure that the voting systems and election processes entrusted to them are protected against errors, accidents and malicious or fraudulent manipulation, consistent with voting system security procedures developed by the State Board.

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1 A. The county board shall establish procedures and policies which protect the
2 voting system facility itself, the voting systems stored therein, and servers and
3 computer systems used therein. The county board shall also ensure that any
4 security features or processes recommended by the vendor, such as virus
5 protections, shall be implemented. The county board shall further provide within
6 the facility, locked, secure storage for all ballots, system test materials, copies of
7 software, copies of ballot programming, programming devices, memory devices,
8 disability access devices, voting system keys, key cards, and all ancillary
9 devices or voting system components and materials.

10
11 B. County boards shall adopt security procedures which restrict and document all
12 access to voting systems, computer systems, software, firmware, system
13 components, programming, test materials and any other ballot creation, counting
14 or other system components. All programming, maintenance testing, pre-
15 qualification and post-election testing and canvassing/re canvassing, shall be
16 conducted by bi-partisan teams and be performed in secure, restricted-access
17 space, and logs shall be maintained indicating task/staff assignments, time in
18 and out, security password change dates, and other such pertinent data.

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19
20 C. Internal security procedures shall require the frequent changing of passwords at
21 established intervals, including prior to setup for use in any election,

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22 1) If at any time the county board discovers that any password has been

1 lost, shared or otherwise compromised, all passwords shall be changed.

- 2 2) If persons with administrative passwords are assisting in the performance
3 of election tasks not related to the administration of the voting system,
4 they shall perform such work using their staff password, and not their
5 administrative password.

6
7 D. The county board shall maintain a log, in a manner prescribed by the State
8 Board, which clearly tracks a chain of custody for each voting system.

- 9 1) A log shall be maintained for each voting system, identifying the
10 placement of and serial number on each tamper-evident seal used to
11 secure the voting system and its devices while in the custody of the
12 county board, used to secure the device for delivery to poll sites, and for
13 the securing and return of same, after the close of polls.

14 a) At any stage of the administration, programming or conduct of an
15 election, if a tamper-evident seal is found to have been
16 compromised, or if serial numbers as logged do not match those on
17 the device, the matter shall be immediately documented and
18 investigated.

19 b) The county board shall adopt procedures which direct their actions
20 in such investigations, and which identify methods for the
21 resolution or amelioration of such breaches of security.

- 22 2) A copy of county board security procedures and policies shall be filed with

1 the State Board upon adoption.

2
3 E. The Voting System Supporting Software, the Election Management Software
4 (EMS) and the specific election configuration and ballot configuration for each
5 election shall be maintained under control of the county board and placed in
6 secure locked storage at all times when not in use. Master copies of all election
7 configuration and ballot configuration shall be retained in secured locked
8 storage as designated by the county commissioners and separate from the
9 location of working copies, from the time of completion of pre-qualification
10 demonstration testing and for as long after the election as required by law, these
11 regulations, as ordered by a court, or as directed by the State Board.

12
13 F. The county board shall enforce the provisions of the Election Law which relate to
14 canvassing and recanvassing of votes cast in an election, as well as these
15 Regulations and directives of the State Board.

16
17 G. The voting system and any computers or other peripheral devices shall be
18 dedicated solely to election configuration, ballot configuration (layout) and vote
19 counting functions, including tests conducted pursuant to Section 6210.2. The
20 system shall not be capable of being networked: no modem, telecommunications
21 nor wireless communications devices may be components of a voting system,
22 and no other unapproved software or hardware may run at any time.

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H. Audit records shall be prepared for all phases of election configuration and ballot configuration using devices under the care, custody and control of the county board. Such audit records shall address the election configuration and ballot configuration phase, pre-qualification tests, and voting and ballot-counting operations. The Voting System Supporting Software shall log and report audit data such that:

- 1) Systems shall provide the capability to create and maintain a real-time audit record to record and provide the operator or election inspector with continuous updates on voting system status.
- 2) All systems shall include a real-time clock as part of the system's hardware. The system shall maintain an absolute record of the time and date or a record relative to some event whose time and data are known and recorded.
- 3) All audit record entries shall include the time-and-date stamp.
- 4) The generation of audit record entries shall not be able to be terminated or altered by program control, hardware control or by the intervention of any person. The physical security and integrity of the record shall be maintained at all times.
- 5) The system shall be capable of printing a copy of the audit record.
- 6) Any and all reports produced by the printer shall be retained by the county board in accordance with Election Law and these Regulations.

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I. All vote counting programs, including the voting system supporting software and the specific election configuration and ballot configuration coding for each election, shall be available for inspection by the State Board.

J. The county board shall adopt a contingency plan, which addresses how an election shall be configured, tested, conducted, and tabulated, in the event of an unanticipated or unavoidable event. Such plan shall, at a minimum, identify an alternate site within the county, from which election management, administrative or canvassing tasks can be conducted, in the event their own facility is unavailable to them or otherwise compromised.

K. Following voting and ballot accounting, the ballots for each election district shall be reassembled, packaged, sealed and labeled.

1) The county board shall develop a written plan for the retention and storage of the foregoing, and any other data processing materials related to the vote counting, and of all documentation of the election.

2) All such ballots, materials and documents shall be placed in locked storage in a secure location and shall remain there until the expiration of the period for challenging elections and for as long as required by law, State Board Regulations, or unless a court orders their release.

L. Voting systems and election management systems shall be implemented such

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1 that the county board's voting system will only accept election configuration and
2 ballot configuration from that board's election management system and an
3 election management system will only accept results from that board's voting
4 systems, unless two or more county boards enter into a mutually-acceptable
5 written agreement to share election configuration and ballot configuration
6 programming services. A copy of such written agreement shall be filed with the
7 State Board.

8
9 **Section 6210.12 Procedures**

10 The county board shall adopt written procedures to further implement those
11 provisions of the Election Law, the State Board Regulations and the United States
12 Election Assistance Commission's 2005 Voluntary Voting System Guidelines and any
13 conditions specified in the State Board's certification of the voting system for use in
14 New York elections. Such procedures shall include, but not be limited to, ballot
15 security, ballot distribution and counting, the challenge process and systems
16 evaluation. Such procedures shall also include security provisions covering the
17 physical protection of facilities, data and communications access control, internal
18 procedural security, contingency plans, and standards for programming, acceptance
19 testing, audit trails and documentation. The State Board shall develop guidelines for
20 the development of security procedures. All procedures shall be submitted to and
21 approved by the State Board prior to the first use of these systems in an election.

1 **Section 6210.13 Standards for Determining Valid Votes**

2 The State Board hereby adopts the following regulations to provide for uniform,
3 non discriminatory standards for establishing what constitutes a vote and what shall be
4 counted as a vote for all categories of voting systems and voting procedures used in
5 New York.

6 The following standards shall apply in determining whether a ballot has been
7 properly voted and whether a vote should be counted for any office or ballot question.

8 A. The following general standards shall apply in the counting of all ballots and
9 votes, regardless of the voting system used:

10 1) A ballot that is marked or signed by the voter in such a way that it can be
11 identified from other ballots must be voided and none of its votes counted.

12 Examples of such markings include, but are not limited to: voter
13 signature, initials, voter name and address, voter identification number,
14 messages or text, or unusual markings not related to indication of the vote
15 choice for a contest. If there are distinctly identifiable markings on one
16 page of a multiple-page ballot, the entire ballot must be voided.

17 2) A vote for any candidate or ballot measure shall not be rejected solely
18 because the voter failed to follow instructions for marking the ballot. If, for
19 any reason, it is impossible to determine the choice of the voter for any
20 candidate or ballot question, the vote for that candidate or ballot question
21 shall be considered void.

22 3) A mark is considered valid when it is clear that it represents the voter's

1 choice and is the technique consistently used by the voter to indicate his
2 or her selections. Such marks may include, but are not limited to,
3 properly filled in voting position targets, cross mark "X", a checkmark "✓",
4 circles, completed open arrow "←", or any other clear indication of the
5 voter's choice.

6 a) A mark crossed out by the voter, an erasure, or words such as 'no'
7 next to a candidate's name or a voting position target area for a
8 ballot question shall not be considered to be a valid vote but will,
9 instead, be deemed an indication that the voter did not choose to
10 cast a vote for that candidate or measure and the vote for that
11 candidate or proposition shall be considered void.

12 4) In determining the validity of a partially filled-in voting position target area,
13 the consistency of a voter's marks on the entire ballot shall be taken into
14 consideration. A 'hesitation mark' such as a dot in the voting position
15 target area shall not be considered a valid mark unless it is demonstrated
16 that the voter consistently marked his or her ballot in such a manner.

17 5) Overvote. If a contest is marked with a greater number of choices of
18 different candidates or ballot questions than the number for which he or
19 she is lawfully entitled to vote, the vote shall not be counted for that
20 contest, but shall be counted in all other contests in which there are no
21 overvotes and the voter's choice can be clearly determined.

22 6) Undervote. If a contest is marked with a lesser number of choices of

1 candidates or ballot questions than the number for which he or she is
2 lawfully entitled to vote, the votes cast for all otherwise properly marked
3 candidates or ballot questions shall be counted.

4 7) If a ballot is marked in each of two or more target areas or sensitive areas
5 for a candidate whose name appears on the ballot more than once for the
6 same office, and the total number of votes cast for such race for different
7 candidates does not exceed the number for which he or she is lawfully
8 entitled to vote, only the first vote for such candidate with multiple
9 markings shall be counted for such candidate.

10 8) Ballots that are damaged, torn by the Board of Elections or its agents, or
11 otherwise non-machine processable as submitted by the voter, shall be
12 manually counted by a bipartisan team of election inspectors and such
13 vote totals shall be added to the canvass of such other valid ballots for
14 the respective office(s) and ballot questions.

15 9) Unintended machine marks placed on a ballot by the voting system that
16 are not made at the direction of the voter shall not invalidate the ballot.

17 10) If two or more persons are to be nominated or elected to the same office
18 or position, a voter may vote for one or more persons whose names do
19 appear on the ballot and one or more persons whose names do not
20 appear on the ballot, provided that the total number of votes cast by the
21 voter for that office or position does not exceed the number of persons to
22 be elected or nominated to such office or position.

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1 | 11) Abandoned Ballot.

2 | a) If a voter leaves the voting machine or system without casting their
3 | ballot, a bipartisan team of election inspectors shall cause the
4 | ballot to be cast as the voter left it, without examining the ballot.

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5 | b) If a voter leaves their paper ballot in a privacy booth and leaves the
6 | polling place without first casting that ballot on the voting device,
7 | such ballot shall be marked 'spoiled' and retained by the election
8 | inspectors, accounted for in the Statement of Canvass, and
9 | returned in secure storage with such other spoiled ballots to the
10 | county board.

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11 | 12) Write-in votes are votes cast for a person or persons whose name(s) do
12 | not appear on the official ballot.

13 | a) Write-in votes for persons whose names appear on the official
14 | ballot for that office or party position shall not be counted.

15 | b) A write-in vote may be cast by the use of a name stamp

16 | c) A write-in vote must be cast in the appropriate place on the
17 | machine, or it shall be void and not counted.

18 | d) A voter need not write in the first and last name of a candidate in
19 | every situation; the standard is whether the election inspectors can
20 | reasonably determine the intent of the voter when they cast their
21 | ballot.

22 | 13) If a ballot is received that is a federal write-in absentee ballot (pursuant to

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1 | ,42 USC Section 1973ff-2), the county board shall canvass the ballot as
2 | follows:

- 3 | a) If the overseas voter designated a candidate by writing in the name
4 | of the candidate or writing in the name of a political party, the vote
5 | is counted for the candidate of that party.
- 6 | b) If the overseas voter wrote in only the last name of a candidate
7 | whose name appears on the ballot, the vote is counted for that
8 | candidate.
- 9 | c) If the voter wrote in the name of only a candidate for President or
10 | only a candidate for Vice-President whose name appears on the
11 | ballot, the vote is counted for the electors of that candidate. The
12 | name is entered into the canvass as the official ballot name of the
13 | presidential candidate.
- 14 | d) Abbreviations, misspellings or other minor variations in the form of
15 | the name of a candidate or political party shall be disregarded if
16 | the intention of the voter can be ascertained. The name is entered
17 | into the canvass so that its spelling matches the spelling of the
18 | candidate's official ballot name. If it is impossible to determine the
19 | voter's choice of a candidate or candidates for an office upon the
20 | official ballot, such vote shall not be counted, but shall be returned
21 | as a blank vote.
- 22 |

1 **6210.14 Standards for Determining Valid Votes on Direct Recording**

2 **Electronic (DRE) Equipment.**

3 A. A vote cast on a DRE voting device shall be the choice made by a voter, not to
4 exceed the maximum allowable votes per race or question than the number for
5 which the voter is eligible to vote, by pressing the appropriate sensitive area, or
6 using an approved accessibility device to cast a vote on the DRE voting device
7 in a manner to cause an "X" highlight or similar designation to display in the
8 voting target position of the name of the candidate or ballot question for which
9 the voter desires to vote, followed by the voter activating the cast vote indicator.

10

11 B. To select a candidate or vote on a ballot question, the voter shall:

- 12 1) Press the appropriate sensitive area on the touchscreen, press the
13 button, target area, or use an approved accessibility device to choose a
14 candidate or vote on a ballot question for which the voter desires to vote;
- 15 2) Type on the touchscreen, or use the scrolling device to select on the
16 screen, the letters for the name of a write-in candidate in accordance with
17 the instructions for voting on the DRE voting system and press the
18 appropriate place on the touchscreen or press the button to record the
19 write-in vote in the designated write-in space;
- 20 3) Press the appropriate place on the official ballot to designate a write-in
21 candidate and write the name of a candidate on the paper provided in the
22 write-in candidate window; or

- 4) Use an approved accessibility device on an accessible voting unit to signify the voter's selection of a particular candidate or to vote on a ballot question for which the voter desires to vote.

C. To Verify Selections.

- 1) Allow the voter in a private and independent manner to review and verify the votes selected by the voter on the ballot before the ballot is cast and counted, including the opportunity to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

D. To cast a ballot, the voter shall:

- 1) Press the place on the touchscreen or press the button to activate the cast ballot indicator, or
- 2) Use an approved accessibility device for the accessible voting unit to signify the voter's desire to cast the ballot.

6210.15 Standards for Determining Valid Votes on Optical Scan Voting

Systems and/or Paper Ballots

- A. Standards Indicating a Valid Vote. A vote cast on a paper ballot shall be the choice made by a voter, not to exceed the maximum allowable votes per race or question than the number for which the voter is eligible to vote, by: (the

1 examples below in this section apply to all types of voting position target areas
2 on ballots, regardless of what form they may take e.g. rectangle, oval, circle,
3 square, open arrow):

- 4 1) Voter indicates vote choice by consistently filling inside the entire voting
5 position target;
- 6 2) Voter indicates choice by consistently filling in less than the entire voting
7 position target for all vote choices on the ballot and the ballot is
8 processed in a manner consistent with the use procedures provided and
9 approved for the voting system;
- 10 3) Voter indicates vote choice by consistently placing a distinctive mark,
11 such as properly filled in voting position targets, a cross mark "X", a
12 checkmark "✓", a circle, or complete an open arrow "←" inside the
13 associated voting position target area for a candidate choice or ballot
14 question;
- 15 4) Voter marks vote choices by circling the entire voting position target area
16 for a candidate or ballot question;
- 17 5) Voter writes in or stamps the name of a candidate in the designated write-
18 in space for that race, even if the write-in square, oval or arrow is not
19 marked;
- 20 6) A write-in vote in addition to a vote for another candidate for the office,
21 with a greater number of choices of different candidates than the number
22 for which he or she is lawfully entitled to vote, the vote shall not be

1 counted for that contest, but shall be counted in all other contests in
2 which there are not overvotes and the voter's choices can be clearly
3 determined;

4 7) Any ballot which has any other mark or marks in the target area or
5 sensitive area including circling the target area and/or candidate's name
6 or making a mark through the target area, provided that the votes do not
7 exceed the maximum allowable votes per race or question than the
8 number for which the voter is eligible to vote, shall be counted as a vote
9 for such candidate(s) or ballot question(s);

10 8) Any ballot which has a mark or marks in the target area or sensitive area
11 for one candidate, which extended partially into one or more other target
12 areas or sensitive areas, shall be counted as a vote for the candidate so
13 marked only if it is readily apparent that at least 3/4th of the mark is in that
14 candidate's area or target area, and no other candidate is similarly
15 marked;

16 9) Any ballot which has a mark that is clearly next to (either before or after) a
17 candidate's name, or across the name, shall be recognized as a mark and
18 shall be counted as a vote for the candidate or question so marked; or

19 10) Writings or remarks which appear to be ranking the candidates (e.g.
20 letters, numbers +/-) shall not be considered valid marks unless the
21 number of such marks does not exceed the maximum allowable votes per
22 race than the number for which the voter is eligible to vote.

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2 B. Standards Indicating an Invalid Vote. A voter's choice shall be considered an
3 invalid vote, if the:

4 1) Voter uses random markings and there is no distinctive and consistent
5 voting pattern to clearly indicate voter choice(s).

6 2) A mark that is between or across more than one candidate's name, target
7 areas or sensitive areas shall not be recognized as a mark and no vote
8 shall be counted.

9

10 C. Whenever paper ballots are to be counted manually, the county board of
11 elections shall use the accompanying "Ballot Examples for Counting Paper
12 Ballots" as guidance for such counts.

1 **6210.16 Ballot Examples for Counting Paper Ballots**

1 **6210.17 Standards for Determining Valid Votes on Lever Type Voting Machines**

2 A vote cast on a lever-type voting machine, as specified by the legally valid
3 ballot instructions, shall be the choice made by a voter, not to exceed the maximum
4 allowable votes per race or question than the number for which the voter is eligible to
5 vote, by either operating the lever adjacent to the name of the candidate or ballot
6 question or by writing or stamping the name of a write-in candidate whose name does
7 not otherwise appear on the ballot for that office, in or upon the proper receptacle or
8 device provided, followed by the voter activating the cast vote mechanism.

9

10 **Section 6210.18 Three-Percent (3%) Audit**

11 A. As required by Election Law Section 9-211, the board of elections or a bipartisan
12 team appointed by such board shall manually count all votes of the voter
13 verifiable paper audit trail (VVPAT), from no less than 3% of each type of voting
14 machine or system used within the county, provided, however, that there shall be
15 a manual count of at least one of each type of voting machine or system used
16 therein for each public office and any questions or proposals appearing on the
17 ballot. The conduct of such random audit shall be in a manner consistent with
18 procedures prescribed by the State Board of Elections.

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20 B. The voting machines or systems to be audited to meet the county-wide minimum
21 requirement set forth in Section A herein shall be selected by lot through a
22 transparent, random, manual process where all selections of machines or

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1 systems used in the county are equally probable. The voting machines or
2 systems to be audited to meet the requirements for a specific contest set forth in
3 Section A herein shall be selected by lot through a transparent, random, manual
4 process where all selections of machines or systems used in the contest within
5 each county are equally probable. The county boards shall adopt one of the
6 random, manual selection methods prescribed by the State Board of Elections or
7 such county board may submit for approval by the State Board a proposed
8 alternative random, manual selection method. County Board adoption of the
9 prescribed random, manual selection method shall take place not later than 45
10 days after the purchase of a voting system and notice by the County Board of
11 the adoption of such random, manual selection method shall be filed with the
12 State Board.

- 13 1) As required by Election Law Section 9-211, not less than five days prior to
14 the time fixed for the random selection process, the board of elections
15 shall send notice by first class mail to each candidate, political party and
16 independent body entitled to have had watchers present at the polls in
17 any election district in such board's jurisdiction and to the State Board.
18 Such notice shall state the time and place fixed for such random selection
19 process. Such random selection process shall not occur until after
20 election day. Each candidate, political party or independent body entitled
21 to appoint watchers to attend at a polling place shall be entitled to appoint

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1 such number of watchers to observe the random selection process and
2 the subsequent audit.

3 2) Such notice shall also announce the date, time, and location that the
4 audit shall commence, information on the number of audit teams which
5 will conduct such audit, and such other information that the County Board
6 deems necessary.

7 3) The county board shall at a single session randomly select from all
8 machines and systems used within the county in the election so that no
9 further drawings are required if anomalies are encountered during the
10 manual audit. The audit shall commence on the same day as the random,
11 manual selection process.

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12 4) Prior to auditing the audit records, the county board shall distribute to
13 those in attendance at the audit session, copies of the a list showing the
14 number of machines and systems needed to meet the audit requirement
15 for each contest and any questions or proposals, and the unofficial vote
16 results per voting machine or system selected for audit.

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17
18 C. For each voting machine or system subject to be audited, t the manual audit shall
19 consist of a manual tabulation of the voter verifiable paper audit trail records and
20 a comparison of such count, with respect to all candidates and any questions or
21 proposals appearing on the ballot, with the electronic vote tabulation reported for
22 such election district.

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1) A reconciliation report, on a form prescribed by the State Board of Elections, that reports and compares the manual and electronic vote tabulations for each audited candidate for each contest and any question or proposal from each machine or system, subject to the audit by election district, including tallies of overvotes, undervotes, blank ballots, spoiled ballots and rejections recorded on the VVPAT, along with any discrepancies, shall be prepared by the board of elections or a bipartisan team appointed by such board and signed by such members of the audit team.

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2) Any discrepancies between the corresponding audit results and initial electronic vote counts shall be duly noted, along with a description of the actions taken by the county board of elections for resolution of discrepancies. The number and type of any damaged or missing paper records shall be duly noted.

3) If any unresolved discrepancy is detected between the manual count described in Section C above and the machine or system electronic count, even an unresolved discrepancy of a single vote, the manual count shall be conducted a second time on such machine or system to confirm the discrepancy.

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D. The reconciliation report required in Section C above shall be transmitted to the County Board commissioners or their designees upon completion of the initial

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1 phase of the audit for determination on the expansion of the audit conducted
2 pursuant to Sections E through G herein

Deleted: If any discrepancy is detected between the manual count described in Section A above and the machine or system count, even a discrepancy of a single vote, the manual count shall be conducted a second time on such machine or system to confirm the discrepancy.

3
4 E. The county board shall aggregate the audit results reported pursuant to Section
5 C (2) herein that are applicable to any contests, questions or proposals. The
6 aggregated results for each contest, question or proposal shall be used to
7 determine whether further auditing is required as follows:

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8 1) For any contest, question or proposal, an expanded audit will be required
9 if either or both of the following criteria apply to the aggregated audit
10 results:

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11 a) Any one or more discrepancies between the confirming manual
12 counts described in section C-3 herein and the original machine or
13 system electronic counts, which taken together, would alter the
14 vote share of any candidate, question or proposal by one tenth of
15 one percent (0.1%) or more of the hand counted votes for
16 respective contests, questions or proposals in the entire sample; or

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17 b) If discrepancies of any amount are detected between the
18 confirming manual count described in Section C-3 herein and the
19 original machine or system electronic count from at least 10% of
20 the machines or systems initially audited then the board or
21 bipartisan team appointed by such board shall manually count the
22 votes recorded on all the voter verifiable paper audit trail records

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Deleted: If (1) discrepancies of at least 0.5% of votes cast on the device(s) being audited are detected between the second manual count described in Section C above and the machine or system count, or (2) discrepancies of any amount are detected on

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1 from no less than an additional 5% of each type of the same type
2 of voting machine or system which contains any such discrepancy
3 or discrepancies.

- 4 c) When determining whether discrepancies warrant expanding the
5 audit, the percentage-based thresholds in this section shall be
6 rounded down by truncating the decimal portion (with a minimum of
7 1).

8
9 F) A further expansion of the audit will be required if either or both of the following
10 criteria apply to the audit results:

11 1) For each contest, question or proposal, the county board shall aggregate
12 the results from the initial audit as required in Section A above and the
13 expanded 5% audit. If, such aggregated results of unresolved
14 discrepancies satisfy the criteria in Section E(1a) above, a further
15 expansion of the audit will be required.

16 2) For each contest, question or proposal, the county board shall take the
17 results of the 5% expanded audit under Section E above, and, if such
18 results of unresolved discrepancies satisfy the criteria in Section E(1b)
19 above, a further expansion of the audit will be required.

20 3) When an expanded audit is required for a contest pursuant to this
21 section, each county board or bipartisan team appointed by such board,
22 shall manually count all voter verifiable paper audit trail records from no

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1 less than an additional 12% of each type of the same type of voting
2 machine or system which contains any such discrepancy or
3 discrepancies.

- 4 4) When determining whether discrepancies warrant expanding the audit, ~~all~~
5 ~~percentage-based thresholds in this section~~, shall be rounded down by
6 truncating the decimal portion (with a minimum of 1).

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8
9 G) A further expansion of the audit will be required if either or both of the following
10 criteria apply to the audit results:

- 11 1) For each contest, question or proposal, the county board shall aggregate
12 the results from the initial audit as required in Section A above and the
13 expanded 17% audit. If, such aggregated results of unresolved
14 discrepancies satisfy the criteria in Section E(1a) above, a further
15 expansion of the audit will be required.

- 16 2) For each contest, question or proposal, the county board shall take the
17 results of the 12% expanded audit under Section F above, and, if such
18 results of unresolved discrepancies satisfy the criteria n Section E(1b)
19 above, a further expansion of the audit will be required.

- 20 3) ~~When an expanded audit is required for a contest pursuant to this~~
21 ~~section, each county~~ board shall manually count all voter verifiable paper

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Deleted: F above, any of the criteria in Section E(1a) or E(1b) herein are applicable to the aggregated audit results for any contest, question or proposal, an expanded audit will be required.

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1 audit trail records from all the remaining unaudited machines and systems
2 where the contest appeared on the ballot.

3 4) When determining whether discrepancies warrant expanding the audit, all
4 percentage-based thresholds in this section shall be rounded down by
5 truncating the decimal portion (with a minimum of 1).

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- Deleted: both
- Deleted: The additional voting machine counts to be audited shall be selected from machine counts which include ballots cast in the races or issues that were found in this audit to have discrepancies.

7 H. The standards set forth in Sections A-G above are not intended to describe the
8 only circumstances for a partial or full manual count of the voter verifiable paper
9 audit record, but instead are designed to set a uniform statewide standard under
10 which such hand counts must be performed. The county boards of elections, as
11 well as the courts, retain the authority to order manual counts of those records in
12 whole or in part under such other and additional circumstances as they deem
13 warranted. In doing so, they should take into consideration: 1) whether the
14 discrepancies were exclusively or predominantly found on one type of voting
15 machine or system; 2) the size of the discrepancies; 3) the number of
16 discrepancies; 4) the percentage of machines or systems with discrepancies; 5)
17 the number and distribution of unusable voter-verified paper audit trail records
18 as described in Section J below; 6) the number of cancellations recorded on the
19 voter-verified paper audit trail records reported pursuant to Section C(1) herein;
20 and 7) whether, when projected to a full audit, the discrepancies detected (no
21 matter how small) might alter the outcome of the contest question or proposal
22 result.

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I. If the audit officials are unable to reconcile the manual count with the electronic vote tabulation on a voting machine or system, then the board of elections shall conduct such further investigation of the discrepancies as may be necessary for the purpose of determining whether or not to certify the election results, expand the audit, or prohibit that voting machine or system's use in such jurisdiction.

J. If a complete audit is conducted, the results of such audit shall be used by the canvassing board in making the statement of canvass and determinations of persons elected and propositions approved or rejected. The results of a partial audit shall not be used in lieu of voting machine or system tabulations, unless a voting machine or system is found to have failed to record votes in a manner indicating an operational failure. When such operational failure is found, the board of county canvassers shall use the voter verifiable audit records to determine the votes cast on such machine or system, provided such records were not also impaired by the operational failure of the voting machine or system. If the voter verified paper audit trail records in any machine or system selected for an audit are found to be unusable for an audit for any reason whatsoever, another machine or system used in the same contest shall be selected at random by the county board to replace the original machine or system in the audit sample. All such selections shall be made randomly in the presence of those observing the audit. The County Board shall inquire in an

effort to determine the reason the voter verified paper audit trail records were compromised and unusable and such inquiry shall begin as soon as practicable.
The results of the inquiry shall be made public upon completion.

K. Any anomaly in the manual audit shall be reported to and be on a form prescribed by the State Board and shall accompany the certified election results.

Section 6210.19 Minimum Number of Voting Machines

A. The purpose of these determinations is to establish the minimum number of required voting machines and privacy booths needed for each polling place based upon the type of voting system and the number of registered voters (excluding voters in inactive status) assigned to use that specific voting device in accordance with Election Law sections 7-200 and 7-203.

B. Determinations by Type of Voting System

1) Direct Recording Electronic Voting Systems

a) There shall be at least one direct recording electronic voting device for every 550 registered voters (excluding voters in inactive status) at the polling place.

2) Precinct Based Optical Scan Voting Systems

A. There shall be at least one scanning device for every 4000 registered voters (excluding voters in inactive status) at the polling place.

B. Privacy Booths:

(i) There shall be at least one privacy booth for every 300

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SUBTITLE VI¶
State Board of Elections¶
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Part 6210

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1 registered voters (excluding voters in inactive status),
2 except that in a general election for governor, or at elections
3 at which electors for President of the United States are
4 selected there shall be at least one privacy booth for every
5 250 registered voters (excluding voters in inactive status).

6 (ii) At polling places that accommodate more than 6000
7 registered voters (excluding voters in inactive status), there
8 shall be one privacy booth for every 350 registered voters
9 (excluding voters in inactive status) in a general election for
10 governor, or at elections at which electors for President of
11 the United States shall be selected; and one privacy booth
12 for every 400 active voters in all other elections.

13 (iii) A sufficient number of the privacy booths must be accessible
14 to voters with disabilities.

15
16 C. Obligations of the County Boards of Elections

17
18 1) County boards shall deploy sufficient voting equipment, election workers
19 and other resources so that voter waiting time at a poll site does not
20 exceed thirty minutes. Each county board of elections may increase in a
21 non-discriminatory manner, the number of voting devices used in any
22 specific polling place.

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24 2) The inspectors in each election district shall record the number of persons
25 using audio, tactile or pneumatic switch ballot devices. The county board
26 of elections shall furnish additional voting machines equipped with audio,
27 tactile or pneumatic switch ballot devices when it appears that the number
28 of persons historically using such devices warrant additional devices.

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1 | D. The State Board of Elections may authorize a reduction in the number of voting
2 | devices provided in these regulations upon application of a county board of
3 | elections which demonstrates that such a reduction will not create excessive
4 | waiting time by voters.
5 |

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mark and where to mark or cast a write-in ballot

- c) if the voter selects votes for more than one candidate for a single office:
 - i) notice to the voter on the effect of the voter selecting more than one candidate for a single office on the ballot
 - ii) notice to the voter on the effect of casting multiple votes for an office or proposal in excess of the number permitted; and
 - iii) notice to the voter on the effects of an undervote
- d) how to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted
- e) how the voter may, in a private and independent manner, change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.
- f) how to utilize the accept ballot/reject ballot feature
- g

be rounded down by truncating the decimal portion (with a minimum of 1). The additional voting machine counts to be audited shall be selected from machine counts which include ballots cast in the races or issues that were found in this audit to have discrepancies.

F

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subject to the expanded audit under Section E above

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upon audit of all the additional

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voting machines or systems as described in Section

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pplicable to the aggregated audit results for any contest, question or
proposal

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1) discrepancies of at least 0.5% of votes cast are detected as to any
election contest or ballot proposal with respect to which the manual
count is being conducted, or (2) discrepancies as to those contests
or proposals in any amount are detected on at least 10% of the

machines or systems audited, then for those contests and proposals, the