

**Proposed 6210 Regulations - Approved for Posting by
State Board at November 7, 2007 meeting.**

Also, copy of the proposed 6210.19 Regulation

1 **October 26, 2007, DRAFT**

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

11

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

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 style are tested. Such votes shall be entered into the voting system

16 in the same manner as they will be entered by voters during an election. If a

17 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 the 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

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

3

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

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 style are tested. Votes cast for the purposes of this section
18 shall be cumulative ballots cast on each piece of equipment during each of the
19 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

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 test materials
9 including but not limited to ballot layouts, reports, simulation cartridges
10 and test decks, shall be stored in secured locked storage for two years
11 after the election, pursuant to Election Law Section 3-222.

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

14
15 D. During the period including July 16 - September 15 (and in years when a
16 presidential primary is conducted, during the January 15 - April 15 period), the
17 test ballot format for each piece of equipment shall consist of each primary
18 ballot style as certified by the county board, if said equipment is to be utilized in
19 a primary election. The voting system shall be cleared of all votes and a printed
20 report shall be produced by the system, to verify the correct ballot face and
21 election configuration, and to confirm that all voting positions are at zero.
22 Ballots cast for the purposes of this test shall be manually cast. The system

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

11
12 E. For the period between ballot certification and seven days before the general
13 election, the test ballot format for each piece of equipment shall consist of each
14 general election ballot style as certified by the county board. The voting system
15 shall be cleared of all votes and a printed report shall be produced by the
16 system, to verify the correct ballot face and election configuration, and to confirm
17 that all voting positions are at zero. Ballots cast for the purposes of this test
18 shall be manually cast. The system shall again be cleared of all votes and a
19 printed report shall be produced by the system to confirm that all voting positions
20 are at zero. Each officer or board charged with the duty of preparing voting
21 machines for use in any election shall give written notice, by first class mail, to
22 the State Board and to all candidates, except candidates for member of the

1 county committee, who are lawfully entitled to have their names appear thereon,
2 of the time when, and the place where, they may inspect the voting machines to
3 be used for such election. The candidates or their designated representatives
4 may appear at the time and place specified in such notice to inspect such
5 machines, provided, however, that the time so specified shall be not less than
6 two days prior to the date of the election

7
8 F. In addition to any vendor provided training, the State Board shall provide training
9 on routine maintenance and testing of voting systems to county board personnel
10 responsible for voting systems. The State Board shall provide sample tests to
11 be utilized by each county board. The State Board may revise said testing
12 format, based upon its audit and review.

13
14 G. All results of each periodic test and/or pre-qualification test, including the final
15 errorless test, shall be certified as accurate by the county board commissioners
16 or their designees, and such certification shall be entered upon the maintenance
17 log for each such piece of equipment, together with any other information
18 prescribed in said log by the State Board

19
20 H. The county board shall certify to the State Board, the completion of each
21 periodic maintenance test. All documentation and/or test decks, and any test
22 data including copies of ballot programming used for required maintenance tests

1 shall be maintained in secure locked storage. Such certification shall be on a
2 form prescribed and furnished by the State Board, and shall be accompanied by
3 copies of each maintenance log.
4

5 I. Each county shall keep a detailed log of maintenance performance and testing
6 procedures. Such logs shall be in a format provided by the State Board and the
7 same shall have been reviewed by the vendor.
8

9 J. Such logs shall be provided quarterly to or as requested by the State Board, for
10 their review and inspection, and shall be made available to the public.
11

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

16 1) The State Board may reinstate the certification if the equipment passes
17 these further tests, and a review of the maintenance logs supports such
18 reinstatement.

19 2) County boards shall make the system or equipment available to the State
20 Board for any such additional testing and shall provide such assistance
21 as may be deemed necessary.
22

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

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

17
18 M. During successive years, the State Board, whenever it deems necessary, or at
19 the request of a county board, may assist in any or all aspects of the operation
20 of the system.

21
22 **Section 6210.3 Submission of Procedures for Unofficial Tally of Results of**

1 **Election**

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

4
5 **Section 6210.4 Demonstration Models**

6 A. During the first five (5) years after purchase, any county which purchases voting
7 equipment systems shall provide a model or diagram of such voting system's
8 equipment for each polling place in its jurisdiction.

9
10 B. If a model or diagram is used, such model or diagram must be approved by the
11 State Board and must meet the following specifications.

- 12 1) may not contain the name of any party or independent body which has
13 been continuously used in New York State.
- 14 2) display a ballot layout which shall consist of at least two party rows and
15 eight voting positions including at least one multiple-candidate office (vote
16 for two)
- 17 3) If a model is used, each model must
- 18 a) be no less than 11 inches by 14 inches
 - 19 b) be operated by electricity and/or a battery power source
 - 20 c) enable the voter to vote for a candidate
 - 21 d) enable the voter to negate or change a vote
 - 22 e) enable the voter to cast the ballot.

- 1 f) specify how and where to cast a write-in ballot.
- 2 4) If a diagram is used,
- 3 a) shall specify how to mark or cast a ballot
- 4 b) shall specify how and where to mark or cast a write-in ballot
- 5 c) shall be no smaller than 11 inches by 17 inches

6

7 **Section 6210.5 Voting System Operations**

- 8 A. All voting systems used in New York State shall be used in a manner consistent
- 9 with New York State Election Law, these Regulations and the United States
- 10 Election Assistance Commission's 2005 Voluntary Voting System Guidelines
- 11 and any conditions specified in the State Board's certification of the voting
- 12 system for use in New York elections.
- 13
- 14 B. Only the county board shall have care, custody and control over all resources for
- 15 the purposes of conducting elections, including but not limited to vote counting,
- 16 preparation and custody of ballots, system maintenance and all testing. If it
- 17 becomes necessary to transfer control of any equipment to a vendor for repairs,
- 18 or to other political subdivisions for use by them in their elections, such voting
- 19 systems and/or equipment shall not be used in a live election by the county
- 20 board until such time as such equipment is returned to the care, custody and
- 21 control of the county board and acceptance testing of each such system or
- 22 equipment is performed pursuant to Section 6209.10 of the State Board

1 Regulations.

2

3 **Section 6210.6 Personnel**

4 It is the responsibility of the county board to provide sufficient and appropriate
5 staff to perform the functions required for successful use of the voting system. All tasks
6 shall be defined in written procedures, and personnel assigned shall be thoroughly
7 trained to carry out their responsibilities.

8

9 **Section 6210.7 Ballots**

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

16

17 B. Detailed specifications for production of ballots shall be supplied to the county
18 board by the voting system vendor. These shall include but not be limited to
19 particulars of the system's ballot such as weight, grain and color of stock;
20 dimensions of ballot faces, ballots and ballot cards; corner cuts; perforations,
21 both for ballot boundaries and for stub boundaries, when appropriate; ballot
22 positions, sensitive areas and voting targets; pre-marks for imprinting of ballot

1 style information; printing registration and tolerances; ink; use of drying powder;
2 and packaging of printed ballots for shipment and for storage until time of use.

3 The county board shall transmit these specifications to the printer chosen to
4 produce its ballots.

5
6 C. In the first year that the voting system is in use, a copy of the final form and
7 arrangement of each ballot style shall be filed with the State Board.

8
9 D. Ballots shall be identified by ballot style, using marks which are machine
10 readable and human readable text.

11
12 E. Ballots to be used with poll site optical scan voting systems, shall be in a form
13 consistent with Election Law Section 7-106. Each ballot shall have a numbered
14 stub which can be separated from it along a perforated boundary. Such ballot
15 shall be detached from the numbered stub prior to the election inspector giving
16 the ballot to the voter and be retained by the board in a manner consistent with
17 election-related document retention requirements.

18 1) The ballot stubs shall be sequentially numbered, and shall include the
19 date of the election, the political subdivision in which the ballot is valid,
20 and in a primary election, the name of the party conducting the primary,
21 and further, stubs may be color coded, to correspond to same.

22 2) Ballot stubs shall include spaces for inspectors to indicate with a check

1 mark, an X, or their initials, whether the ballot was used for affidavit or
2 emergency purposes.

3 3) Ballots shall be bound in booklets of 100, or in such other increments as a
4 county board may, by written procedure, deem appropriate. Binding shall
5 be by staples, to help ensure ballot accountability.

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

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

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

21 7) Only one ballot booklet at a time should be on the inspector table, and the
22 remaining booklets shall be kept in their secure envelope or pouch, in the

1 inspector supply case.

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

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

10

11 F. The county board shall cause their respective printer(s) to certify to the county
12 board, upon delivery of ballots ordered:

- 13 1) the actual number of ballots printed
14 2) the number of ballots delivered, and
15 3) that all other ballots printed have been destroyed.

16

17 The county board shall inventory all ballots and ensure the security of any and
18 all ballots while they are in the possession of the county board.

19

20 G. For Central Count Paper-Based voting systems, ballots printed for absentee
21 voting, and those printed for emergency, special and affidavit purposes shall be
22 tabulated by batch, and be subject to all appropriate provisions of these

1 Regulations. The county board shall provide a means by which affidavit,
2 emergency, and special ballots shall be distinguished from absentee ballots.
3

4 **Section 6210.8 Test Deck Procedures**

5 Each county board shall prepare a test deck to be used to verify that the voting
6 system's election configuration and ballot configuration is correct and that the voting
7 system will accurately cast and count votes within each individual ballot style.
8

9 A. The ballots shall be voted with a pre-determined number of valid votes for each
10 candidate, each write-in position, and each voting option on every proposal that
11 appears on the ballot as certified by the county board in order to verify that the
12 vote tabulating system is programmed to correctly count the ballots. The deck
13 includes one or more ballots that are intended to fail, have been improperly
14 voted, or which are voted in excess of the number allowed by law, and one or
15 more ballots on which no votes are cast, in order to test the ability of the system
16 to recognize and/or notify of an under or over vote. If there is more than one
17 ballot style for an election, a separate test deck is created for each ballot style.
18 In election districts that will utilize a single voting system for two or more ballot
19 styles, required testing shall consist of a different test deck for each ballot style
20 to be utilized on such voting system, to ensure that the addition of multiple ballot
21 styles has not affected the accurate casting and counting of votes within
22 individual ballot styles.

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B. Test decks which include sub-decks are created once election configuration and ballot configuration tasks have been completed, and ballot styles have been verified, utilizing detailed procedures for preparation of a test deck prescribed to the county board by the State Board. Using a tool or tools, (ie Excel) make a test script for each specific ballot within the test deck, such that when all test ballots within the test deck are completely cast it will accurately test all positions, undervotes, overvotes, write-in positions, propositions and ballots that are deliberately designed to fail.

1) To create a test deck on an optical scan voting system, test ballots must be marked, following the pattern determined to sufficiently test the ballot programming, logic, and accuracy.

a) For optical scan voting systems, the test deck includes one or more ballots on which two or more votes are cast for a candidate whose name appears on the ballot more than once for the same office in order to test the ability of the system to count only the first of such votes for the candidate.

2) To create a test deck for a DRE systems, the creation of a test script is required, so that the pattern of votes can be followed, to facilitate the manual casting of same.

a) For DRE Systems, the test deck includes one or more ballots in which an attempt is made to cast two or more votes for a candidate

1 whose name appears on the ballot more than once for the same
2 office in order to test the ability of the system to accurately cast the
3 voters choice(s) for such office.

4 3) Assign each ballot in the script a unique ballot number.

5 4) Calculate the number of ballots required to conduct each test. This
6 calculation is the minimum number of ballots that must be cast on each
7 voting machine or system where such ballot style is programmed,
8 pursuant to Section 6210.2 C of these regulations.

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

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

- 1 1) The test shall be documented by the bi-partisan team, on a log to be
2 prescribed by the State Board, and the team shall affix their signatures to
3 the log. The log shall include but not be limited to
- 4 a) The date the test was executed.
 - 5 b) The names of the persons who performed the test and recorded
6 the results.
 - 7 c) The serial number of the machine on which the test was executed.
 - 8 d) The protective counter number of the machine on which the test
9 was executed as it appeared both at the beginning and conclusion
10 of testing.
 - 11 e) The name or description of the test performed.
 - 12 f) The version number of the software under test.
 - 13 g) The test result, either 'pass' if the results match the expected
14 results exactly, or 'fail' if there is even one discrepancy.
- 15
- 16 E. The bi-partisan team shall compare the accuracy of the results reported by the
17 voting system to the expected results and determine if the machine passed or
18 failed. Any discrepancies indicate a failure and must be investigated.
- 19 1) If a test deck is run on a DRE, and the pre-determined vote count does
20 not compare to the results reported by the voting system, the bi-partisan
21 team shall document the problem, and then compare the paper audit trail
22 transactions to the unique test ballot scripts, to be sure votes were cast

1 correctly. Any corrections to the test deck itself, or to the casting of the
2 test deck shall be made, and the test deck shall be re-run until two error-
3 free test results are produced, pursuant to Section 6210.2 (C)(1) of these
4 regulations.

5 2) If a test deck is run on an optical scan voting system, and the pre-
6 determined vote count does not match the computer generated tabulation,
7 then the bi-partisan team shall document the problem and compare the
8 unique ballot script pattern with the test deck pattern to ensure that the
9 test deck was made correctly and that all ballots were run. Any
10 corrections to the test deck itself, or to the casting of the test deck, shall
11 be made and the test deck shall be re-run until two error-free test results
12 are produced, pursuant to Section 6210.2 (C)(1) of these regulations.

13 3) If the test deck and voting system fail to produce two error-free results,
14 the system shall not be used until such time as the problem is resolved
15

16 F. For DRE systems, the paper audit trail records with the accumulation report shall
17 be signed by the testing team, then bound and placed in secure storage. For
18 optical scan voting systems, the results report shall be signed by the bi-partisan
19 team, and placed in secure storage. After all voting systems upon which a
20 particular ballot style is valid have been tested, the test deck shall be stored with
21 all corresponding reports, audit trails and log sheets
22

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

21

22 **Section 6210.9 Vote Tabulation**

- 1 A. Preparation of ballots for tabulation by Central Count Paper-Based Systems.
- 2 1) Ballots shall be reviewed pursuant to the provisions of Section 6210.13 of
- 3 these regulations, to determine if the ballot is machine-readable or if the
- 4 ballot requires that it be manually counted, then recorded in the official
- 5 canvass of the votes for the election.
- 6 2) Ballots shall be assembled in separate batches by election district.
- 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 of the ballots shall be
- 22 locked in secure storage.

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 (N) 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
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 (N), shall be run so as to demonstrate the accuracy and
17 dependability of the count.

18
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:

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

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

12
13 B. The ballot accounting report shall be attested to by the county board
14 commissioners and shall be retained in accordance with Election Law Section 3-
15 222.

16
17 **Section 6210.11 Voting Systems Security**

18 County board election officials shall take all steps necessary to ensure that the
19 voting systems and election processes entrusted to them are protected against errors,
20 accidents and malicious or fraudulent manipulation.

21
22 A. The county board shall establish procedures and policies which protect the

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

9
10 B. County boards shall adopt security procedures which restrict and document all
11 county board staff access to voting systems, computer systems, software,
12 firmware, system components, programming, test materials and any other ballot
13 creation, counting or other system components. All programming, maintenance
14 testing, pre-qualification and post-election testing and canvassing/recanvassing,
15 shall be conducted in secure, restricted-access space, and logs shall be
16 maintained indicating task/staff assignments, time in and out, and other such
17 pertinent data.

18
19 C Internal security procedures shall require the frequent changing of passwords at
20 established intervals, including immediately prior to election day.

21
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 system, they shall
4 perform such work using their staff password, and not their administrative
5 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 ballot configuration (layout) and vote counting functions,
19 including pre-qualification and post-election testing. The system shall not be
20 capable of being networked: no modem, telecommunications nor wireless
21 communications devices may be components of a voting system, and no other
22 unapproved software 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 terminated or altered by program 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.

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

4
5 J. The county board shall adopt a contingency plan, which addresses how an
6 election shall be configured, tested, conducted, and tabulated, in the event of an
7 unanticipated or unavoidable event. Such plan shall, at a minimum, identify an
8 alternate site within the county, from which election management, administrative
9 or canvassing tasks can be conducted, in the event their own facility is
10 unavailable to them or otherwise compromised

11
12 K. Following voting and ballot accounting, the ballots for each election district shall
13 be reassembled, packaged, sealed and labeled.

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

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

21

22 **Section 6210.12 Procedures**

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

13

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

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

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

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

- 1 1) A ballot that is marked or signed by the voter in such a way that it can be
2 identified from other ballots must be voided and none of its votes counted.
3 Examples of such markings include, but are not limited to: voter
4 signature, initials, voter name and address, voter identification number,
5 messages or text, or unusual markings not related to indication of the vote
6 choice for a contest. If there are distinctly identifiable markings on one
7 page of a multiple-page ballot, the entire ballot must be voided
- 8 2) A vote for any candidate or ballot measure shall not be rejected solely
9 because the voter failed to follow instructions for marking the ballot. If, for
10 any reason, it is impossible to determine the choice of the voter for any
11 candidate or ballot question, the vote for that candidate or ballot question
12 shall be considered void
- 13 3) A mark is considered valid when it is clear that it represents the voter's
14 choice and is the technique consistently used by the voter to indicate his
15 or her selections. Such marks may include, but are not limited to,
16 properly filled in voting position targets, cross mark "X", a checkmark "✓",
17 circles, completed open arrow "←", or any other clear indication of the
18 voter's choice.
- 19 a) A mark crossed out by the voter, an erasure, or words such as 'no'
20 next to a candidate's name or a voting position target area for a
21 ballot question shall not be considered to be a valid vote but will,
22 instead, be deemed an indication that the voter did not choose to

1 cast a vote for that candidate or measure and the vote for that
2 candidate or proposition shall be considered void

- 3 4) In determining the validity of a partially filled-in voting position target area,
4 the consistency of a voter's marks on the entire ballot shall be taken into
5 consideration. A 'hesitation mark' such as a dot in the voting position
6 target area shall not be considered a valid mark unless it is demonstrated
7 that the voter consistently marked his or her ballot in such a manner.
- 8 5) Overvote. If a contest is marked with a greater number of choices of
9 different candidates or ballot questions than the number for which he or
10 she is lawfully entitled to vote, the vote shall not be counted for that
11 contest, but shall be counted in all other contests in which there are no
12 overvotes and the voter's choice can be clearly determined.
- 13 6) Undervote. If a contest is marked with a lesser number of choices of
14 candidates or ballot questions than the number for which he or she is
15 lawfully entitled to vote, the votes cast for all otherwise properly marked
16 candidates or ballot questions shall be counted.
- 17 7) If a ballot is marked in each of two or more target areas or sensitive areas
18 for a candidate whose name appears on the ballot more than once for the
19 same office, and the total number of votes cast for such race for different
20 candidates does not exceed the number for which he or she is lawfully
21 entitled to vote, only the first vote for such candidate with multiple
22 markings shall be counted for such candidate.

- 1 8) Ballots that are damaged, torn by the Board of Elections or its agents, or
2 otherwise non-machine processable as submitted by the voter, shall be
3 manually counted by a bipartisan team of election inspectors and such
4 vote totals shall be added to the canvass of such other valid ballots for
5 the respective office(s) and ballot questions.
- 6 9) If two or more persons are to be nominated or elected to the same office
7 or position, a voter may vote for one or more persons whose names do
8 appear on the ballot and one or more persons whose names do not
9 appear on the ballot, provided that the total number of votes cast by the
10 voter for that office or position does not exceed the number of persons to
11 be elected or nominated to such office or position.
- 12 10) Abandoned Ballot. If a voter leaves the voting machine without casting
13 their ballot, a bipartisan team of election inspectors shall cause the ballot
14 to be cast as the voter left it, without examining the ballot.
- 15 11) If a voter leaves their paper ballot in a privacy booth and leaves the
16 polling place without first casting that ballot on the voting device, such
17 ballot shall be marked 'spoiled' and retained by the election inspectors,
18 accounted for in the Statement of Canvass, and returned in secure
19 storage with such other spoiled ballots to the county board.
- 20 12) Write-in votes are votes cast for a person or persons whose name(s) do
21 not appear on the official ballot.
- 22 a) Write-in votes for persons whose names appear on the official

1 ballot for that office or party position shall not be counted.

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

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

5 d) A voter need not write in the first and last name of a candidate in
6 every situation; the standard is whether the election inspectors can
7 reasonably determine the intent of the voter when they cast their
8 ballot.

9 13) If a ballot that is a federal/military write-in ballot from an overseas voter
10 not on the county board's standard ballot (see 42 USC Section 1973ff et
11 seq), the county board shall canvass the ballot as follows:

12 a) If the overseas voter designated a candidate by writing in the name
13 of the candidate or writing in the name of a political party, the vote
14 is counted for the candidate of that party.

15 b) If the overseas voter wrote in only the last name of a candidate
16 whose name appears on the ballot, the vote is counted for that
17 candidate.

18 c) If the voter wrote in the name of only a candidate for President or
19 only a candidate for Vice-President whose name appears on the
20 ballot, the vote is counted for the electors of that candidate. The
21 name is entered into the canvass as the official ballot name of the
22 presidential candidate.

1 d) Abbreviations, misspellings or other minor variations in the form of
2 the name of a candidate or political party shall be disregarded if
3 the intention of the voter can be ascertained. The name is entered
4 into the canvass so that its spelling matches the spelling of the
5 candidate's official ballot name. If it is impossible to determine the
6 voter's choice of a candidate or candidates for an office upon the
7 official ballot, such vote shall not be counted, but shall be returned
8 as a blank vote.
9

10 **6210.14 Standards for Determining Valid Votes on Direct Recording**

11 **Electronic (DRE) Equipment.**

12 A. A vote cast on a DRE voting device shall be the choice made by a voter, not to
13 exceed the maximum allowable votes per race or question than the number for
14 which the voter is eligible to vote, by pressing the appropriate sensitive area, or
15 using an approved accessibility device to cast a vote on the DRE voting device
16 in a manner to cause an "X", highlight or similar designation to display in the
17 voting target position of the name of the candidate or ballot question for which
18 the voter desires to vote, followed by the voter activating the cast vote indicator.
19

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

- 21 1) Press the appropriate sensitive area on the touchscreen, press the
22 button, target area, or use an approved accessibility device to choose a

- 1 candidate or vote on a ballot question for which the voter desires to vote;
- 2 2) Type on the touchscreen, or use the scrolling device to select on the
- 3 screen, the letters for the name of a write-in candidate in accordance with
- 4 the instructions for voting on the DRE voting system and press the
- 5 appropriate place on the touchscreen or press the button to record the
- 6 write-in vote in the designated write-in space;
- 7 3) Press the appropriate place on the official ballot to designate a write-in
- 8 candidate and write the name of a candidate on the paper provided in the
- 9 write-in candidate window; or
- 10 4) Use an approved accessibility device on an accessible voting unit to
- 11 signify the voter's selection of a particular candidate or to vote on a ballot
- 12 question for which the voter desires to vote

13

14 C To cast a ballot, the voter shall:

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

19

20 **6210.15 Standards for Determining Valid Votes on Optical Scan Voting**

21 **Systems and/or Paper Ballots**

22 A. Standards Indicating a Valid Vote. A vote cast on a paper ballot shall be the

1 choice made by a voter, not to exceed the maximum allowable votes per race or
2 question than the number for which the voter is eligible to vote, by: (the
3 examples below in this section apply to all types of voting position target areas
4 on ballots, regardless of what form they may take e.g. rectangle, oval, circle,
5 square, open arrow):

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

1 with a greater number of choices of different candidates than the number
2 for which he or she is lawfully entitled to vote, the vote shall not be
3 counted for that contest, but shall be counted in all other contests in
4 which there are not overvotes and the voter's choices can be clearly
5 determined;

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

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

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

21 10) Writings or remarks which appear to be ranking the candidates (e.g.
22 letters, numbers +/-) shall not be considered valid marks unless the

1 number of such marks does not exceed the maximum allowable voters per
2 race than the number for which the voter is eligible to vote.

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

- 6 1) Voter uses random markings and there is no distinctive and consistent
7 voting pattern to clearly indicate voter choice(s).
- 8 2) A mark that is between or across more than one candidate's name, target
9 areas or sensitive areas shall not be recognized as a mark and no vote
10 shall be counted.

11
12 C Whenever paper ballots are to be counted manually, the county board of
13 elections shall use the accompanying "Ballot Examples for Counting Paper
14 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 records 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 on the ballot. The conduct of such random audit
17 shall be in a manner consistent with procedures prescribed by the State Board of
18 Elections.

19

20 B. The voting machines or systems to be audited shall be selected by lot through a
21 transparent, random, manual process where all selections are equally probable.
22 The county boards shall adopt one of the random, manual selection methods

1 prescribed by the State Board of Elections. County Board adoption of the
2 prescribed random, manual selection method shall take place not later than 45
3 days after the purchase of a voting system and notice by the County Board of
4 the adoption of such random, manual selection method shall be filed with the
5 State Board. If more than one state senate district or assembly district is within
6 the county, or if in even numbered years there is more than one congressional
7 district within the county, then the randomly selected machines or systems shall
8 include 3% of each type of voting machine or system within each such assembly
9 district, each such state senate district and each such congressional district, and
10 at least one voting machine or system of each type used in each such assembly,
11 state senate and congressional district.

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

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

5 3) The county board shall at a single session randomly select from all
6 machines and systems used within the county in the election so that no
7 further drawings are required if anomalies are encountered during the
8 manual audit.

9 4) Prior to auditing the audit records, the county board shall distribute to
10 those in attendance at the audit session, copies of the unofficial vote
11 results per voting system selected for audit.

12
13 C. The manual audit shall consist of a manual tabulation of the voter verifiable
14 paper audit records subject to the audit and a comparison of such count, with
15 respect to all candidates and any questions or proposals appearing on the
16 ballot, with the electronic vote tabulation reported for such election district.

17 1) A reconciliation sheet, on a form prescribed by the State Board of
18 Elections, that reports and compares the manual and electronic vote
19 tabulations for each candidate and question or proposal from each
20 election district subject to the audit, along with any discrepancies, shall be
21 prepared by the board of elections or a bipartisan team appointed by such
22 board and signed by such members of the audit team.

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

6
7 D. If any discrepancy is detected between the manual count described in Section A
8 above and the machine or system count, even a discrepancy of a single vote,
9 the manual count shall be conducted a second time on such machine or system
10 to confirm the discrepancy.

11
12 E. If (1) discrepancies of at least 0.5% of votes cast on the device(s) being audited
13 are detected between the second manual count described in Section D above
14 and the machine or system count, or (2) discrepancies of any amount are
15 detected on at least 10% of the machines or systems audited for any particular
16 public office on the ballot, then the board or bipartisan team appointed by such
17 board shall manually count all voter verifiable paper audit records from no less
18 than an additional 5% of each type of the same type of voting machine or system
19 which contains any such discrepancy or discrepancies. When determining
20 whether discrepancies warrant expanding the audit, the number calculated for
21 the discrepancies on at least 10% of the audited machines; and the number
22 calculated for 0.5% of the votes shall both be rounded down by truncating the

1 decimal portion (with a minimum of 1). The additional voting machine counts to
2 be audited shall be selected from machine counts which include ballots cast in
3 the races or issues that were found in this audit to have discrepancies.
4

5 F. If, upon audit of the additional 5% of voting machines or systems as described in
6 Section E above, (1) discrepancies of at least 0.5% of votes cast are detected as
7 to any election contest or ballot proposal with respect to which the manual count
8 is being conducted, or (2) discrepancies as to those contests or proposals in any
9 amount are detected on at least 10% of the machines or systems audited, then
10 for those contests and proposals, the board or bipartisan team appointed by
11 such board shall manually count all voter verifiable paper audit records from no
12 less than an additional 12% of each type of the same type of voting machine or
13 system which contains any such discrepancy or discrepancies. When
14 determining whether discrepancies warrant expanding the audit, the number
15 calculated for the discrepancies on at least 10% of the audited machines; and
16 the number calculated for 0.5% of the votes shall both be rounded down by
17 truncating the decimal portion (with a minimum of 1). The additional voting
18 machine counts to be audited shall be selected from machine counts which
19 include ballots cast in the races or issues that were found in this audit to have
20 discrepancies.
21

1 G. If, upon audit of the additional 12% of voting machines or systems as described
2 in Section F above, (1) discrepancies of at least 0.5% of votes cast are detected
3 as to any election contest or ballot proposal with respect to which the manual
4 count is being conducted, or (2) discrepancies in any amount are detected on at
5 least 10% of the machines or systems audited, then the board shall manually
6 count all voter verifiable paper audit records from the remaining unaudited 80%
7 of each type of the same type of voting machine or system which contains any
8 such discrepancy or discrepancies. When determining whether discrepancies
9 warrant expanding the audit, the number calculated for the discrepancies on at
10 least 10% of the audited machines; and the number calculated for 0.5% of the
11 votes shall both be rounded down by truncating the decimal portion (with a
12 minimum of 1). The additional voting machine counts to be audited shall be
13 selected from machine counts which include ballots cast in the races or issues
14 that were found in this audit to have discrepancies.

15
16 H. The standards set forth in Sections A-G above are not intended to describe the
17 only circumstances for a partial or full manual count of the voter verifiable paper
18 audit record, but instead are designed to set a uniform statewide standard under
19 which such hand counts must be performed. The county boards of elections, as
20 well as the courts, retain the authority to order manual counts of those records in
21 whole or in part under such other and additional circumstances as they deem
22 warranted. In doing so, they should take into consideration: 1) whether the

1 discrepancies were exclusively or predominantly found on one type of voting
2 machine or system; 2) the size of the discrepancies; 3) the number of
3 discrepancies, 4) the percent of machines or systems with discrepancies; or 5)
4 whether, when projected to a full audit, the discrepancies detected (no matter
5 how small) might alter the outcome of the contest or ballot proposal result.

6
7 I. If the audit officials are unable to reconcile the manual count with the electronic
8 vote tabulation on a voting machine or system, then the board of elections shall
9 conduct such further investigation of the discrepancies as may be necessary for
10 the purpose of determining whether or not to certify the election results, expand
11 the audit, or prohibit that voting machine or system's use in such jurisdiction

12
13 J. If a complete audit is conducted, the results of such audit shall be used by the
14 canvassing board in making the statement of canvass and determinations of
15 persons elected and propositions approved or rejected. The results of a partial
16 audit shall not be used in lieu of voting machine or system tabulations, unless a
17 voting machine or system is found to have failed to record votes in a manner
18 indicating an operational failure. When such operational failure is found, the
19 board of county canvassers shall use the voter verifiable audit records to
20 determine the votes cast on such machine or system, provided such records
21 were not also impaired by the operational failure of the voting machine or
22 system.

1

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

1 TITLE 9 OF THE OFFICIAL COMPILATION
2 OF CODES, RULES AND REGULATIONS
3 OF THE STATE OF NEW YORK
4 SUBTITLE V
5 State Board of Elections
6

7 Part 6210

8 **§6210.19 Minimum Number of Voting Machines**

9 (a) The purpose of these determinations is to establish the minimum number of
10 required voting machines and privacy booths needed for each polling place
11 based upon the type of voting system and the number of registered voters
12 (excluding voters in inactive status) assigned to use that specific voting device in
13 accordance with Election Law section 7-203.
14

15 (b) Determinations by Type of Voting System

16 (1) Direct Recording Electronic Voting Systems

17 (a) There shall be at least one direct recording electronic voting device for
18 every 550 registered voters (excluding voters in inactive status) at the
19 polling place.
20

21 (2) Precinct Based Optical Scan Voting Systems

22 (a) There shall be at least one scanning device for every 4000 registered
23 voters (excluding voters in inactive status) at the polling place.
24

25 (b) (i) There shall be at least one privacy booth for every 300 registered
26 voters (excluding voters in inactive status), except that in a general
27 election for governor, or at elections at which electors for President of
28 the United States are selected there shall be at least one privacy booth
29 for every 250 registered voters (excluding voters in inactive status).
30

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

8
9 (iii) A sufficient number of the privacy booths must be accessible to
10 voters with disabilities.

11
12 (c) Obligations of the County Boards of Elections

13
14 (1) County boards shall deploy sufficient voting equipment, election workers and
15 other resources so that voter waiting time at a poll site does not exceed thirty
16 minutes. Each county board of elections may increase in a non-discriminatory
17 manner, the number of voting devices used in any specific polling place.

18
19 (2) The inspectors in each election district shall record the number of persons
20 using audio, tactile or pneumatic switch ballot devices. The county board of
21 elections shall furnish additional voting machines equipped with audio, tactile or
22 pneumatic switch ballot devices when it appears that the number of persons
23 historically using such devices warrant additional devices.

24
25 (d) The State Board of Elections may authorize a reduction in the number of voting
26 devices provided in these regulations upon application of a county board of
27 elections which demonstrates that such a reduction will not create excessive
28 waiting time by voters.