September 5, 2007 DRAFT

Part 6210

Routine Maintenance and Testing of Voting Systems, Operational Procedures, and Standards for Determining Valid Votes

Section 6210.1 Definitions

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

1. Pre-qualification test is a test prescribed by the State Board, conducted immediately prior to the voting systems' use in an election in which a predetermined set of votes are cast which will ensure that all voting positions for each ballot style are tested. Such votes shall be entered into the voting system in the same manner as they will be entered by voters during an election. If a voting system offers several methods for votes to be entered, such as touch-screen, push-button, or other electronic mechanism, a key pad and/or pneumatic switch for voters with disabilities, or alternate language displays, then the pre-determined set of votes shall be entered separately using each method and language display. The results of the casting of said votes and all voting system logs shall be extracted from the system as though during normal use in an election, and the results and logs shall be compared to the predetermined

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

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

Section 6210.2 Routine Maintenance and Testing of Voting Systems

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

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

1) January 15 - April 15
2) April 16 - July 15
3) July 16 - September 15
4) September 16 - November 15

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

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

C. Testing shall include the comparison of software installed on the delivered system to certified software, via the use a Secure Hash Signature Standard (SHS) validation program, as described in Federal Information Processing Standards Publication 180-2 issued by the National Institute Standards Technology (This publication is available electronically by accessing http://csrc.nist.gov/publications/. Alternatively, copies of NIST computer security publications are available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.) Testing shall consist of the re-calibration of equipment, as appropriate, pursuant to recommendations made in vendor's maintenance documentation, and the casting of a 'test deck' by voting the minimum number of ballots, determined pursuant to the requirements of Section 6210.8 of these regulations, to ensure that all voting positions for each ballot style are tested. Votes cast for the purposes of this section shall be cumulative ballots cast on each piece of equipment during each of the prescribed periods outlined.

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

or errors shall be ascertained and corrected. The voting system shall be re-tested until there are two consecutive error-free tests before the system is approved for use in the count of actual ballots. The commissioners of the county board or their designees shall certify that they have reviewed and verified the results of said testing. The summary results of all tests, including all inaccurate test results, their causes and the actions taken to correct them, as well as the results of all errorless counts, shall be entered upon the maintenance log. All test materials including but not limited to ballot layouts, reports, simulation cartridges and test decks, shall be stored in secured locked storage for two years after the election, pursuant to Election Law Section 3-222.

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

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

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

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

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

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

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

H. The county board shall certify to the State Board, the completion of each periodic maintenance test. All documentation and/or test decks, and any test

data including copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage. 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 these further tests, and a review of the maintenance logs supports such reinstatement.

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

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

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

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 or diagram of such voting system's equipment for each polling place in its jurisdiction.

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

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 for two).

3) If a model is used, each model must

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.

4) If a diagram is used,

a) shall specify how to mark or cast a ballot

b) shall specify how and where to mark or cast a write-in ballot

c) shall be no smaller than 11 inches by 17 inches

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

Section 6210.7 Ballots

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

B. Detailed specifications for production of ballots shall be supplied to the county board by the voting system vendor. These shall include but not be limited to particulars of the system's ballot such as weight, grain and color of stock; dimensions of ballot faces, ballots and ballot cards; corner cuts; perforations, both for ballot boundaries and for stub boundaries, when appropriate; ballot

positions, sensitive areas and voting targets; pre-marks for imprinting of ballot style information; printing registration and tolerances; ink; use of drying powder; and packaging of printed ballots for shipment and for storage until time of use. The county board shall transmit these specifications to the printer chosen to produce its ballots.

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

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

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 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 a check mark, an X, or 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.

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

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

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

7) Only one ballot booklet at a time should be on the inspector table, and the

remaining booklets shall be kept in their secure envelope or pouch, in the inspector supply case.

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

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

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

1) the actual number of ballots printed

2) the number of ballots delivered, and

3) that all other ballots printed have been destroyed.

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

G. For Central Count Paper-Based voting systems, ballots printed for absentee voting, and those printed for emergency, special and affidavit purposes shall be

tabulated by batch, and be subject to all appropriate provisions of these Regulations. The county board shall provide a means by which affidavit, emergency, and special ballots shall be distinguished from absentee ballots.

Section 6210.8 Test Deck Procedures

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

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

individual ballot styles.

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

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

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

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

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

test, the other member shall monitor that votes are cast correctly.

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

a) The date the test was executed.

b) The names of the persons who performed the test and recorded the results.

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

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

e) The name or description of the test performed.

f) The version number of the software under test.

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

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

1) If a test deck is run on a DRE, and the pre-determined vote count does not compare to the results reported by the voting system, the bi-partisan team shall document the problem, and then compare the paper audit trail

transactions to the unique test ballot scrips, to be sure votes were cast correctly. Any corrections to the test deck itself, or to the casting of the test deck shall be made, and the test deck shall be re-run until two error-free test results are produced, pursuant to Section 6210.2 (C)(1) of these regulations.

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

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

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

G. For Central Count Paper-Based systems, after entering all election ballot codes and creating header cards, if required by the software, the following verification procedures shall be performed:

1) place one ballot from the appropriate ballot style behind each header card.

2) process the complete set of header cards containing the single ballots against the absentee counting system and ballot counting program.

3) if the software rejects a header or ballot card, the cause of the error shall be ascertained and corrected.

4) re-process all cards which generated errors to verify correction.

5) At the discretion of and mutual agreement of a county board's commissioners, a resolution may be adopted for a specific election, which may provide that ballots be canvassed manually, rather than by using the Central Count Paper-Based voting system. Such resolution shall be filed with the county board's official minutes, and notice of the resolution and decision shall be provided in writing, to the State Board and to all party chairs and candidates, whose names appear on the ballots to be counted manually. The county board shall give written notice, by first class mail, to the State Board and to all party chairs and candidates who are lawfully entitled to have their names appear on the ballots, of such resolution.

Section 6210.9 Vote Tabulation

A. Preparation of ballots for tabulation by Central Count Paper-Based Systems.

1) Ballots shall be reviewed pursuant to the provisions of Section 6210.13 of these regulations, to determine if the ballot is machine-readable or if the ballot requires that it be manually counted, then recorded in the official canvass of the votes for the election.

2) Ballots shall be assembled in separate batches by election district.

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

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

3) Ballots shall then be fed into the Central Count Paper-Based voting system. Following the counting of all ballots, a tabulation report shall be printed. Two back-up copies of the tabulation of the ballots shall be

locked in secure storage.

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

B. Testing During Ballot Tabulation by Central Count Paper-Based Systems. The system shall be so designed and constructed that, at the discretion of the county board, it shall be possible to halt the ballot tabulation at a point when a portion of the election districts have been counted, and run the test deck to demonstrate, as in the tests listed in Section 6210.2 (N) of these regulations, the accuracy and dependability of the count without interrupting or affecting any official tabulation of results that may be on the equipment at that time.

C. Testing Following the Machine Tabulation of Ballots by Central Count Systems. Immediately following the machine tabulation of the ballots from all the election districts and the production of the county-wide totals of votes, the pre-count tests listed in Section 6210.2 (N), shall be run so as to demonstrate the accuracy and dependability of the count.

Section 6210.10 Ballot Accounting

A. Following the counting of all votes in an election, a full accounting of paper ballots shall be made, and shall be reported on a form to be provided by the

State Board, which shall include:

1) For each entire election and for each ballot style 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.

2) For each entire election and for each ballot style 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.

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

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

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

1) If at any time the county board discovers that any password has been lost, shared or otherwise compromised, all passwords shall be changed.

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

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

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

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

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

2) A copy of county board security procedures and policies shall be filed with the State Board upon adoption.

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

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

G. The voting system and any computers or other peripheral devices shall be dedicated solely to ballot configuration (layout) and vote counting functions, including pre-qualification and post-election testing. The system shall not be capable of being networked: no modem, telecommunications nor wireless communications devices may be components of a voting system, and no other

unapproved software may run at any time.

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.

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, of any other data processing materials related to the vote counting, and of all documentation of the election.

2) All 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.

Section 6210.12 Procedures

The county board shall adopt written procedures to further implement those provisions of the Election Law, the State Board 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. Such procedures shall include, but not be limited to, ballot security, ballot distribution and counting, the challenge process and systems evaluation. Such procedures shall also include security provisions covering the physical protection of facilities, data and communications access control, internal procedural security, contingency plans, and standards for programming, acceptance testing, audit trails and documentation. The State Board shall develop guidelines for the development of security procedures. All procedures shall be submitted to and approved by the State Board prior to the first use of these systems in an election.

Section 6210.13 Standards for Determining Valid Votes

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

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

A. The following general standards shall apply in the counting of all ballots and

votes, regardless of the voting system used:

1) A ballot that is marked or signed by the voter in such a way that it can be identified from other ballots must be voided and none of its votes counted. Examples of such markings include, but are not limited to: voter signature, initials, voter name and address, voter identification number, messages or text, or unusual markings not related to indication of the vote choice for a contest. If there are distinctly identifiable markings on one page of a multiple-page ballot, the entire ballot must be voided.

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

3) A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate his or her selections. Such marks may include, but are not limited to, properly filled in voting position targets, cross mark "X", a checkmark "✓", circles, completed open arrow "🡐", or any other clear indication of the voter's choice.

   a) A mark crossed out by the voter, an erasure, or words such as 'no' next to a candidate's name or a voting position target area for a ballot question shall not be considered to be a valid vote but will,

instead, be deemed an indication that the voter did not choose to cast a vote for that candidate or measure and the vote for that candidate or proposition shall be considered void.

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

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

6) Undervote. If a contest is marked with a lesser number of choices of candidates or ballot questions than the number for which he or she is lawfully entitled to vote, the votes cast for all otherwise properly marked candidates or ballot questions shall be counted.

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

markings shall be counted for such candidate.

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

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

10) Abandoned Ballot. If a voter leaves the voting machine without casting their ballot, a bipartisan team of election inspectors shall cause the ballot to be cast as the voter left it, without examining the ballot.

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

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

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

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

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

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

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

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

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

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

presidential candidate.

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

6210.14 Standards for Determining Valid Votes on Direct Recording Electronic (DRE) Equipment.

A. A vote cast on a DRE voting device 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 pressing the appropriate sensitive area, or using an approved accessibility device to cast a vote on the DRE voting device in a manner to cause an "X", highlight or similar designation to display in the voting target position of the name of the candidate or ballot question for which the voter desires to vote, followed by the voter activating the cast vote indicator.

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

1) Press the appropriate sensitive area on the touchscreen, press the

button, target area, or use an approved accessibility device to choose a candidate or vote on a ballot question for which the voter desires to vote;

2) Type on the touchscreen, or use the scrolling device to select on the screen, the letters for the name of a write-in candidate in accordance with the instructions for voting on the DRE voting system and press the appropriate place on the touchscreen or press the button to record the write-in vote in the designated write-in space;

3) Press the appropriate place on the official ballot to designate a write-in candidate and write the name of a candidate on the paper provided in the 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 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 examples below in this section apply to all types of voting position target areas on ballots, regardless of what form they may take e.g. rectangle, oval, circle, square, open arrow):

1) Voter indicates vote choice by consistently filling inside the entire voting position target;

2) Voter indicates choice by consistently filling in less than the entire voting position target for all vote choices on the ballot and the ballot is processed in a manner consistent with the use procedures provided and approved for the voting system;

3) Voter indicates vote choice by consistently placing a distinctive mark, such as properly filled in voting position targets, a cross mark "X", a checkmark "✓", a circle, or complete an open arrow "🡐" inside the associated voting position target area for a candidate choice or ballot question;

4) Voter marks vote choices by circling the entire voting position target area for a candidate or ballot question;

5) Voter writes in or stamps the name of a candidate in the designated write-in space for that race, even if the write-in square, oval or arrow is not marked;

6) A write-in vote in addition to a vote for another candidate for the office, with a greater number of choices of different candidates than the number for which he or she is lawfully entitled to vote, the vote shall not be counted for that contest, but shall be counted in all other contests in which there are not overvotes and the voter's choices can be clearly determined;

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

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

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

10) Writings or remarks which appear to be ranking the candidates (e.g.

letters, numbers +/-) shall not be considered valid marks unless the number of such marks does not exceed the maximum allowable voters per race than the number for which the voter is eligible to vote.

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

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

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

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

6210.16 Ballot Examples for Counting Paper Ballots

6210.17 Standards for Determining Valid Votes on Lever Type Voting Machines

A vote cast on a lever-type voting machine, as specified by the legally valid ballot instructions, 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 either operating the lever adjacent to the name of the candidate or ballot question or by writing or stamping the name of a write-in candidate whose name does not otherwise appear on the ballot for that office, in or upon the proper receptacle or device provided, followed by the voter activating the cast vote mechanism.

Section 6210.18 Three-Percent (3%) Audit

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

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

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

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

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

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

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

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

1) A reconciliation sheet, on a form prescribed by the State Board of Elections, that reports and compares the manual and electronic vote tabulations for each candidate and question or proposal from each election district subject to the audit, 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.

2) Any discrepancies between the corresponding audit results and initial 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.

D. 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.

E. 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 at least 10% of the machines or systems audited for any particular public office on the ballot, then the board or bipartisan team appointed by such board shall manually count all voter verifiable paper audit records from no less than an additional 5% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies. When determining whether discrepancies warrant expanding the audit, the number calculated for the discrepancies on at least 10% of the audited machines; and the number calculated for 0.5% of the votes shall both 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. If, upon audit of the additional 5% of voting machines or systems as described in Section D above, (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 board or bipartisan team appointed by such board shall manually count all voter verifiable paper audit records from no less than an additional 12% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies. When determining whether discrepancies warrant expanding the audit, the number calculated for the discrepancies on at least 10% of the audited machines; and the number calculated for 0.5% of the votes shall both 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.

G. If, upon audit of the additional 12% of voting machines or systems as described in Section E above, (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 in any amount are detected on at least 10% of the machines or systems audited, then the board shall manually count all voter verifiable paper audit records from the remaining unaudited 80% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies. When determining whether discrepancies warrant expanding the audit, the number calculated for the discrepancies on at least 10% of the audited machines; and the number calculated for 0.5% of the votes shall both 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.

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

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

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.

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.