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PART 6211

OPERATION OF ABSENTEE COUNTING SYSTEM UTILIZING ELECTRONICALLY
TABULATED PUNCHCARD BALLOTS

(Statutory authority: Election Law, §§ 3-102, 7-200, 7-201)

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Section 6211.1 Definitions.

The terms used in this Part shall have the significance herein defined unless another meaning is clearly apparent in language or context.

(a) Absentee Ballot Counting System means any electronic or computerized ballot counting hardware and software, as well as any hardware and software which supports such system, which is reviewed for certification, or certified, by the State Board after September 1, 1986.

(b) Acceptance Test means a test conducted by the county board of elections under the supervision of the State Board. It is a means of demonstrating that the absentee ballot counting system, as delivered and installed, satisfies all of its functional requirements and other requirements specified in the contract, in the user's environment.

(c) Ballot means a document on which is printed the names of candidates for party position or public office or contains ballot proposals and on which the voter records his or her selection. A ballot may be comprised of two or more standard computer tabulating cards joined together which may be separated for the purpose of counting votes.

(d) Ballot Card means the standard computer tabulating card produced when the stub has been removed from the ballot and when the full ballot, if necessary, has been separated into its sections. In these rules, the term "ballot card" and "ballot" are sometimes used interchangeably.

(e) Ballot Program means the software used by the system to execute the layout of the ballots.

(f) Ballot Proposal means an amendment, proposition or question presented to a voter as a contest in an election in which a vote is cast by making a positive or negative choice with respect to the proposal.

(g) Ballot Style or Ballot Type means a unique aggregation of contests which make up the ballot for a particular group of voters identified by common characteristics of residence location, party affiliation, or both.

(h) Test Deck means a preaudited group of ballots voted with a predetermined number of valid votes for each candidate, each write-in position and each voting option on a question or proposition that appears on the ballot. It also includes one or more ballots that have been improperly voted or which are voted in excess of the number allowed by law in order to test the ability of the system to reject those votes and one or more blank ballots, and 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.

(i) Contest means the aggregate of candidates who run against each other or among themselves for a particular office or number of offices. There must be a write-in voting option for each position to be filled in the contest. In these instances, the write-in option or options are also part of a contest. The positive and negative voting options of a ballot proposal submitted to voters (Yes or No) also constitute a contest.

(j) Counting Center means a central location designated by the county election board for the processing of ballots and vote tabulation.

(k) Election Vote Counting File means a compilation of all the documents produced, either manually or by computer, in connection with vote counting for a single election. It includes records of system testing, vote counts, and post-count audit and verification.

(l) Header Card means a punchcard or mark sense card on which is punched or marked with printed information to identify a particular batch of ballots, usually those for a single election district. It is placed at the beginning of the batch for vote tabulation to ensure that the votes cast on those ballots are correctly attributed.

(m) Maintenance Log means a written record which contains all information relating to system testing, performance of scheduled and non-scheduled maintenance requirements recommended by the vendor or manufacturer of such equipment, and all service visits performed by vendor or manufacturer.

(n) Punchcard or mark sense ballot means a standard computer tabulating card in which holes can be punched or marked at designated locations.

(o) State Board means the New York State Board of Elections.

(p) Trailer Card or End Card means a punchcard or mark sense ballot on which is punched or marked information to identify the end of the ballots to be counted. It is placed at the end of the ballots before tabulation.

(q) Vendor means any manufacturer, company or individual who seeks to sell, or sells, an absentee ballot counting system in New York State.

(r) Vote Counting Program means the computer programs used for counting of votes cast on punchcard or mark sense absentee ballots. It includes both any and all vendor software, and the coding programs specific to each election.

(s) Voting Position means a defined location on the absentee ballot in which a punch or mark can be made to indicate a valid vote.

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6211.2 Applicability.

These rules are applicable to the purchase and operation, by a county board of elections in New York State, of an absentee vote counting system utilizing electronically tabulated punchcard or mark sense ballots.

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6211.3 System management.

(a) Only the county board shall have management control over all resources employed during vote counting, including preparation and custody of ballots and testing of the system, until the control is voluntarily relinquished when no longer needed.

(b) If it becomes necessary to transfer control of the system or any component of the system to the vendor, or to another authority, for repairs, operational elections activities may not be carried out on the system while it is under the control of an entity other than the county board.

(c) During the first year of operation, the State Board shall assist and direct the county board in the operation of the system. Such assistance and direction shall include but not be limited to:

- (1) definition of personnel requirements and tasks;
- (2) staff training;
- (3) preparation of test deck;
- (4) defining procedures for preelection, public demonstration and precount tests; and
- (5) defining procedures for official tabulation of ballots on the day to be designated by the county board of elections.

(d) The State Board shall also supply to the county board of elections:

- (1) clear and detailed written instructions for preparation of a test deck which meets the requirements of Section 6211.1 (h) of this section;
- (2) specifications for the device or instrument to be used by the voter for punching or marking the ballot; and
- (3) if necessary for the particular ballot used, specifications for the styrofoam or other ballot backing which is mailed with the ballot.

(e) In succeeding years, the State Board, when deemed necessary, shall assist in operation of the system.

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6211.4 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 system for absentee ballot counting. All tasks shall be defined in written procedures, and personnel assigned shall be thoroughly trained to carry out their responsibilities.

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6211.5 Acceptance testing.

(a) County boards of elections, under the supervision of the State Board, shall conduct an acceptance test on an absentee ballot counting system purchased by the county. Acceptance testing shall begin within seven days of receipt of the equipment by the purchaser.

(b) Such testing shall be conducted under the supervision of the State Board in accordance with the testing requirements and formats provided by the State Board. This test may consist in part of tabulating the certification test deck utilized by the State Board in the certification of the system.

(c) The results of acceptance testing shall be both documented and attested to by the county board and the State Board, and the documentation placed in the maintenance log for the system.

(d) If the acceptance test reveals anything improper or faulty in the absentee ballot counting system, the vendor shall be notified immediately and required to correct the deficiencies identified within 30 days of such notification.

(e) The State Board, following acceptance testing of a system may, at its discretion, withdraw certification of said system for future sales in the State of New York in accordance with the provisions of Section 6210.11 of the Rules and Regulations of the State Board of Elections. Such certification may be reinstated after a complete review of further testing.

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6211.6 Maintenance logs.

(a) Each county which has purchased absentee ballot counting equipment after September 1, 1986, shall keep a detailed log of maintenance performance and testing procedures.

(b) Such logs shall be in a format provided by the State Board which shall be reviewed by the vendor and which shall be available for periodic review and inspection by the State Board.

(c) The State Board, upon the written request of a vendor or any other interested or aggrieved party, may, after a hearing, suspend the use of any absentee ballot counting system in any county in which proper maintenance procedures or proper servicing by the manufacturer have not been fully implemented.

(d) The State Board may reinstate the certification based upon review of these procedures and a review of the maintenance logs.

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6211.7 Voter instruction.

(a) The county board shall ensure that voters are well-instructed in the use of the system in order that no voter will lose his or her vote because adequate instruction has not been provided.

(b) Instructions to voters shall comply with all relevant provisions of Section 7-122 of the Election Law, and, in addition, shall include any further information the county board deems necessary to ensure voter understanding.

(c) Along with each punchcard ballot issued, the county board shall supply to the voter an instrument suitable for punching the necessary holes to record his vote. If appropriate, a backing for the ballot made of styrofoam or a similar substance shall be provided to ensure that punches made by the voter have clean edges and that hanging shreds of paper are avoided.

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6211.8 Ballots.

(a) In content and layout, ballots shall comply with all relevant provisions of Article 7 of the Election Law.

(b) For printing ballots, the county board shall contract with a printer that has the requisite expertise, staff, and equipment for printing electronically tabulated ballots of the complexity and in the volume required for the conduct of elections in that county, and can ensure delivery of finished ballots in time to comply with the relevant provisions of law and the election calendar.

(c) Detailed specifications for production of ballots shall be supplied to the county board by the vendor at the time of purchase. These shall include particulars of weight, grain and color of stock; dimensions of ballots and ballot cards; corner cut; perforations, both for ballot card boundaries and for stub boundaries; prescoring of voting positions; gang punching or imprinting of identification marks; 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.

(d) Final form and arrangement of ballots in the first year that the system is in use shall be approved by the State Board before production printing begins.

(e) Ballots shall be identified by ballot style by marks which are both machine readable and human readable.

(f) Each ballot shall have a stub, which can be separated from it along a perforated boundary. Such stub shall be removed from the ballot prior to transmission of the ballot to the voter and retained by the board until certification of the election.

(g) At the time ballots are received from the printer, they shall be placed in secure storage, under the control of local election board personnel. When removed from such storage, ballots may not be left unattended at any time, and the county board shall ensure the security of all ballots -- unvoted, voted, spoiled, and those used in testing -- from the time of receipt until tabulation is completed, results are certified, and time for challenging the election has passed.

(h) When ballots printed for absentee voting are also used as emergency and affidavit ballots, those emergency and affidavit ballots shall be tabulated with the absentee ballot batches and be subject to all appropriate provisions of these rules. The county board shall provide a means by which affidavit or emergency ballots shall be distinguished from the absentee ballots.

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6211.9 Testing of absentee counting system for each election.

(a) Complete testing of the absentee ballot counting system shall be conducted before the use of the system in any election.

(b) Before beginning the testing required in this section, the system's equipment shall be inspected to ascertain that it is in good working order. Any maintenance indicated during the inspection shall be performed. Records of such maintenance shall be made in the maintenance logs of the county board, required by Section 6211.6 of this part.

(c) After entering all election ballot codes and creating header cards, 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 code program;

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

(4) reprocess all cards which generate errors to verify correction.

(d) Detailed procedures for preparation of a certification test deck shall be supplied to the county board by the State Board. Such a deck is a preaudited group of ballots prepared for each election. The ballots are voted with a predetermined number of valid votes for each candidate, each write-in position, and each voting option on every proposal that appears on the ballot. The deck includes one or more ballots that have been improperly voted or which are voted in excess of the number allowed by law in order to test the ability of the system to reject votes, and one or more blank ballots. It also 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. If there is more than one ballot style for an election, a separate test deck is created for each ballot style.

(e) Preelection test not more than 20 days or less than 10 days before the day designated by the county board for the counting of absentee ballots the board shall test the system to ascertain that it will count properly the votes cast for all offices and proposals. The test shall be conducted by processing the test deck for each ballot style. If the system does not accurately count the test deck, the cause for the error or errors shall be ascertained and corrected and an errorless count shall be made before the system is approved for use in the count of actual ballots. The commissioners of the county board shall certify that they have reviewed and verified the results of said testing.

(f) Public demonstration. (1) In addition to the preelection test referred to in section (e) of this section, the county board shall conduct a public demonstration of the system utilizing all, or a portion of, the certification test deck. Appropriate written notice of the public demonstration shall be mailed at least 10 days before the public demonstration to the chairman of the county committee of each political party and to each candidate whose name appears on the ballot. At least one representative of each political party and one representative of each candidate who is not a candidate of a political party shall be entitled to be present at the test.

(2) The commissioners of the county board shall certify that they have reviewed and verified the results of the public demonstration testing.

(3) After this certification of the vote counting program by the commissioners, any changes to the operating system programs shall be completely documented and reported on the system output printer.

(g) Storage of the test deck and vote tabulation materials. Following

the preelection test and until the public demonstration test, and

following the public demonstration test and until immediately preceding the official tabulation of absentee ballots, the test deck and other vote tabulating materials shall be taken into custody by the county board and placed in secure storage. Other vote tabulating materials include copies of test data and copies of vote counting programs.

(h) Absentee and seven-day absentee precount test. Immediately preceding the official tabulation of absentee ballots, the following testing shall be done:

(1) The absentee ballot counting system shall be cleared of all votes and a printed report produced to confirm that all voting positions are at zero.

(2) The test deck for all ballot styles shall be run through the system to demonstrate that the system can accurately count votes and the results including accumulated totals shall be compared to the preelection test data. The commissioners of the county board shall certify that they have reviewed and verified the comparison of the test data before the official tabulation of ballots is conducted.

(3) The absentee ballot counting system shall again be cleared of all votes and a printed report produced by the system to confirm that all voting positions are at zero.

(i) Testing during vote tabulation. The absentee ballot counting system shall be so designed and constructed that, at the discretion of the county board, it shall be possible to halt the vote tabulation at a point when a portion of the ballots have been counted and run the test deck to demonstrate, as in the precount test described in subdivision (h) of this section, the accuracy of the count without jeopardizing any official tabulation of results that may be stored in the system at that time.

(j) Testing after vote tabulation. Immediately following tabulation of the ballots from all the election districts and the production of the countywide total of votes, the following steps are to be performed:

(1) immediately make two backup disk copies of the tabulation of the ballots;

(2) prepare the absentee ballot counting system to process the test decks to demonstrate and confirm the logic and accuracy of the ballot counting program; and

(3) generate the accumulated report and compare the results to the pre-election test data.

(k) Attestation to tests results.

(1) The tests described in subdivisions (h), (i) and (j), of this section, shall be witnessed, verified and attested to by the county board of commissioners or their designee, and notations of such shall be entered upon the printouts of all tests.

(2) Documentation of system testing and vote counting operations shall be maintained in an election vote counting file. This documentation includes all printouts produced by the system starting with the preelection test required by subdivision (e) of this section, and through testing after tabulation required by subdivision (j) of this section, as well as any manual records made of actions taken that affect the system's operation during that time.

(1) Following the election but before certification of the results, at the discretion of the county board, or by directive of the State Board, a portion of the ballots, or contests, shall be recounted manually or on a tabulating system different from the one used for the official tabulation. If the recount does not agree with the original tabulation, the county board shall retain a record on this verification recount in the election vote counting file.

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6211.10 Vote tabulation.

(a) Security during tabulation.

(1) Vote counting programs, including vendor software and the specific coding for each election, shall be maintained under control of the county board and placed in secure storage at all times when not in use. Master copies of all vote counting programs shall be retained in secure locations designated by the commissioners and separate from the location of working copies from the time of completion of preelection public demonstration testing (See Section 6211.9(a) of this Part) and for as long after the election as required by law, as ordered by a court, or directed by the State Board.

(2) The county board shall enforce the provisions of the Election Law which relate to canvassing of absentee ballots, as well as any rules or directives of the State Board concerned with counting electronically tabulated punchcard ballots.

(3) The county board shall provide for the security of the ballots from the time they are removed from secure storage, and throughout the inspection, assembly, and counting processes.

(4) While vote counting programs are being tested or run, including when voted ballots are being tabulated, the system shall be dedicated solely to vote counting functions.

(5) Any actions taken by a computer operator shall be documented and reported automatically on a computer output printer. Any and all reports produced by the printer shall be retained by the local board for the purpose of post election audit and election documentation.

(6) All vote counting programs, including the vendor software and the specific coding for each election, shall be available for inspection by the local board or its designee.

(b) Preparation of ballots for tabulation.

(1) Ballots shall be reviewed for tabulating acceptability.

(i) Any ballot which is proposed to be rejected for reason of noncompliance with provisions of the Election Law, defacement, or revealed identity of the voter shall be so marked and set aside for consideration by the commissioners. No ballot may be rejected except by the commissioners.

(ii) Any ballot which is deemed to be unacceptable for machine tabulation, whether the condition of unacceptability existed when it reached the county board or resulted from processing, shall be duplicated by the commissioners or their designees. Duplication shall be performed by a bipartisan team of two persons who shall ensure that the duplicate ballot they produce reflects the intent of the voter who cast the original ballot. Following duplication, the original ballot shall be replaced by the duplicate ballot which in turn shall be counted with the ballots for the correct election district. The duplicated ballot shall be marked "DUPLICATE" and both it and the ballot it replaces shall be given a unique identifying number. A log shall be kept of ballot duplication activity which records the number and ballot style of each duplicated ballot, and is signed by those who did the duplication.

(2) The county election board shall prepare written guidelines for disallowance of ballots by reason of noncompliance with the Election Law, and written procedures for judging ballots unacceptable for machine tabulation and for duplication of such ballots. These guidelines and procedures shall be submitted to the State Board for review.

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

(i) 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 the ballot cards. Such distinction may be made, for example, by using a different color card stock, or different edge marking, or other appropriate means.

(ii) The county board shall take particular care in creating and emplacing header cards, in order that the votes recorded on each ballot shall be attributed to the correct election district. When emplacing header cards, as each is emplaced by one person, another 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.

(c) Ballots shall then be entered into the tabulating system. Following tabulation of all ballots, reports shall be produced which show the total absentee vote for the entire county and for each election district.

(d) The county board shall make provision for canvassing of write-in votes cast on absentee ballots, following completion of the machine tabulation.

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6211.12 Security and retention of materials following tabulation.

Following tabulation and ballot accounting, the ballots for each election district shall be reassembled, packaged, sealed and labeled. The county board shall develop a written plan for retention and storage of the foregoing, of any other data processing materials related to the vote counting, and of all documentation of the election. 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, unless a court orders their release. During the period of storage the county board or the State Board may order release of the ballots and/or other election materials, for purpose of election verification, a recount, or other resolution of a challenge, after which the materials shall be returned to locked storage.

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6211.13 Procedures.

The county board shall adopt written procedures to implement those provisions of the Election Law and the rules and regulations governing the use of automated ballot counting systems. 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 machines in an election.