

Part 6210.2 of Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

§ 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) All voting equipment owned by a county board of election shall be tested at least once every calendar year. All other voting equipment that has not undergone pre-election testing prior to use in any election in the calendar year shall be tested no later than December 31st of the calendar year. Such tests are in [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; or
- (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 of 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/] the NIST website. 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 this Part, to ensure that all voting positions for each ballot configuration 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 retested 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. Maintenance logs are to be kept as a permanent record of the county board. All other documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222.

[(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),] For pre-qualification testing of a system to be used in a primary election, the test ballot format for each piece of equipment assigned for use in said primary election shall

consist of each primary ballot configuration 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 configuration 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 and a printed tabulation report shall be produced. 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 pursuant to Election Law section 7-128 and section 7-207, 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. [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 configuration 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 configuration 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 and a printed tabulation report shall be produced. 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 pursuant to Election Law section 7-128 and section 7-207, 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] any testing [routine maintenance, test and/or] in addition to pre-qualification testing, 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 any [each routine maintenance], testing [and/or] including pre-qualification testing. All documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222. Such certification shall be on a form prescribed and furnished by the State Board, and shall be accompanied by copies of each maintenance log.

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

(j) Such logs shall be provided upon completion of any testing, including pre-qualification testing [quarterly to] or as requested by the State Board, for their review and inspection, and shall be made available to the public, upon request.

(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 section 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; and

(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.