

1 **Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of**
2 **the State of New York is hereby amended by repealing Part 6210.18, and by**
3 **adding thereto a new Part, to be Part 6210.18, to read as follows:**
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5 **Section 6210.18 Three-Percent (3%) Audit**

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

14
15 (b) The voting machines or systems to be audited to meet the county-wide minimum
16 requirement set forth in Subdivision (a) herein shall be selected by lot through a
17 transparent, random, manual process where all selections of machines or
18 systems used in the county are equally probable. [The voting machines or
19 systems to be audited to meet the requirements for a specific contest set forth in
20 Subdivision (a) herein shall be selected by lot through a transparent, random,
21 manual process where all selections of machines or systems used in the contest

1 within each county are equally probable.]The county boards shall adopt one of
2 the random, manual selection methods prescribed by the State Board of
3 Elections or such county board may submit for approval by the State Board a
4 proposed alternative random, manual selection method. County Board adoption
5 of the prescribed random, manual selection method shall take place not later
6 than 45 days after the purchase of a voting system and notice by the County
7 Board of the adoption of such random, manual selection method shall be filed
8 with the State Board.

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

20 (2) Such notice shall also announce the date, time, and location that the
21 audit shall commence, information on the number of audit teams which

1 will conduct such audit, and such other information that the County Board
2 deems necessary.

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

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

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14 (c) For each voting machine or system subject to be audited, the manual audit shall
15 consist of a manual tabulation of the voter verifiable paper audit trail records and
16 a comparison of such count, with respect to all candidates and any questions or
17 proposals appearing on the ballot, with the electronic vote tabulation reported for
18 such election district.

19 (1) A reconciliation report, on a form prescribed by the State Board of
20 Elections, that reports and compares the manual and electronic vote
21 tabulations for each audited candidate for each contest and any question

1 or proposal from each machine or system subject to the audit by election
2 district, including tallies of overvotes, undervotes, blank ballots, spoiled
3 ballots and rejections recorded on the VVPAT, along with any
4 discrepancies, shall be prepared by the board of elections or a bipartisan
5 team appointed by such board and signed by such members of the audit
6 team.

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

12 (3) If any unresolved discrepancy is detected between the manual count
13 described in Subdivision (c) above and the machine or system electronic
14 count, even an unresolved discrepancy of a single vote, the manual count
15 shall be conducted a second time on such machine or system to confirm
16 the discrepancy.

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18 (d) The reconciliation report required in Subdivision (c) above shall be transmitted to
19 the County Board commissioners or their designees upon completion of the
20 initial phase of the audit for determination on the expansion of the audit
21 conducted pursuant to Subdivisions (e) through (g) herein.

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(e) The county board shall aggregate the audit results reported pursuant to Subdivision (c) (2) herein that are applicable to any contests, questions or proposals. The aggregated results for each contest, question or proposal shall be used to determine whether further auditing is required as follows:

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

(i) Any one or more discrepancies between the confirming manual counts described in Subdivision (c) (3) herein and the original machine or system electronic counts, which taken together, would alter the vote share of any candidate, question or proposal by one tenth of one percent (0.1%) or more of the hand counted votes for respective contests, questions or proposals in the entire sample; or

(ii) If discrepancies of any amount are detected between the confirming manual count described in Subdivision (c) (3) herein and the original machine or system electronic count from at least 10% of the machines or systems initially audited then the board or bipartisan team appointed by such board shall manually count the votes recorded on all the voter verifiable paper audit trail records from no less than an additional 5% of each type of the same type

1 of voting machine or system which contains any such discrepancy
2 or discrepancies.

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

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

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

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

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

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

3 (4) When determining whether discrepancies warrant expanding the audit, all
4 percentage-based thresholds in this section shall be rounded down by
5 truncating the decimal portion (with a minimum of 1).
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8 (g) A further expansion of the audit will be required if either or both of the following
9 criteria apply to the audit results:

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

16 (2) For each contest, question or proposal, the county board shall take the
17 results of the 12% expanded audit under Subdivision (f) above, and, if
18 such results of unresolved discrepancies satisfy the criteria in Subdivision
19 (e)(1)(ii) above, a further expansion of the audit will be required.

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

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

3 (4) When determining whether discrepancies warrant expanding the audit, all
4 percentage-based thresholds in this section shall be rounded down by
5 truncating the decimal portion (with a minimum of 1).
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7 (h) The standards set forth in Subdivisions (a)-(g) above are not intended to
8 describe the only circumstances for a partial or full manual count of the voter
9 verifiable paper audit record, but instead are designed to set a uniform statewide
10 standard under which such hand counts must be performed. The county boards
11 of elections, as well as the courts, retain the authority to order manual counts of
12 those records in whole or in part under such other and additional circumstances
13 as they deem warranted. In doing so, they should take into consideration: 1)
14 whether the discrepancies were exclusively or predominantly found on one type
15 of voting machine or system; 2) the size of the discrepancies; 3) the number of
16 discrepancies; 4) the percentage of machines or systems with discrepancies; 5)
17 the number and distribution of unusable voter-verified paper audit trail records as
18 described in Section J below; 6) the number of cancellations recorded on the
19 voter-verified paper audit trail records reported pursuant to Subdivision (c)(1)
20 herein; and 7) whether, when projected to a full audit, the discrepancies detected

1 (no matter how small) might alter the outcome of the contest, question or
2 proposal result.

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

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10 (j) If a complete audit is conducted, the results of such audit shall be used by the
11 canvassing board in making the statement of canvass and determinations of
12 persons elected and propositions approved or rejected. The results of a partial
13 audit shall not be used in lieu of voting machine or system tabulations, unless a
14 voting machine or system is found to have failed to record votes in a manner
15 indicating an operational failure. When such operational failure is found, the
16 board of county canvassers shall use the voter verifiable audit records to
17 determine the votes cast on such machine or system, provided such records
18 were not also impaired by the operational failure of the voting machine or
19 system. If the voter verified paper audit trail records in any machine or system
20 selected for an audit are found to be unusable for an audit for any reason
21 whatsoever, another machine or system used in the same contest shall be

1 selected at random by the county board to replace the original machine or
2 system in the audit sample. All such selections shall be made randomly in the
3 presence of those observing the audit. The County Board shall inquire in an
4 effort to determine the reason the voter verified paper audit trail records were
5 compromised and unusable and such inquiry shall begin as soon as practicable.
6 The results of the inquiry shall be made public upon completion.

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8 (k) Any anomaly in the manual audit shall be reported to and be on a form
9 prescribed by the State Board and shall accompany the certified election results.