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PART 6210

ROUTINE MAINTENANCE AND TESTING OF VOTING
SYSTEMS, OPERATIONAL PROCEDURES, AND STANDARDS
FOR DETERMINING VALID VOTES

(Statutory authority: Election Law, § 3-100, 7-200 and 7-206)

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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 configuration 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 a 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 either 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 or the printed tabulation report 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.

3. "Election Mode": An operational setting and/or functional level of a voting system that would allow the user, under the required conditions stated by law, to make selections, and/or cast a ballot, and which also uniquely provides the potential to have a marked ballot officially accepted for counting at the time of a defined election. Note: This mode of operation may also be synonymous with the term "live vote mode" or similar. This mode may also be run at any time, either for the running of realistic simulations for testing, and/or after various maintenance activities. This mode is specifically required to be run in the conduct of an official election.

4. "Test Mode": An operational setting and/or functional level of a voting system that would allow the user to specify/select, access, and/or test various levels/areas of the device, either, for example, during possible upgrades, diagnostic testing, and/or specific maintenance activities that may not require full functional simulation, or capabilities at that time. Note: This mode of operation is a separate option from Election Mode, and is prohibited from being run in the conduct of an official election.

5. "Closed Network": A closed network is a stand-alone server that is used for a specific purpose, such as an Election Management System (EMS), and to which access is restricted to specific workstations and users and not connected to any other internal or external network.

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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 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 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 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 NYS 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 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, 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 NYS 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 routine maintenance 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 routine maintenance test and/or pre-qualification test. 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 NYS 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 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 NYS 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.

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6210.3 Submission of procedures for unofficial tally of results of election.

County boards which adopt procedures pursuant to NYS Election Law Section 9126(3) shall file such procedures with the State Board of Elections.

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6210.4 Demonstration models.

(A) During the first five (5) years after purchase, any county which purchases voting equipment systems shall provide a model, diagram, video or other electronic instruction (example CD ROM) of such voting system's equipment for each polling place in its jurisdiction.

(B) Any such model, diagram, video or other electronic instruction 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) Demonstrate how a voter can:

(a) vote for a candidate, question or proposition.

(b) verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast and counted.

(c) in a private and independent manner change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

(d) cast a write-in ballot.

(e) cast the ballot.

(f) be notified on the effect of the voter casting multiple votes for an office or proposal in excess of the number permitted.

(g) be notified on the effects of an undervote.

(h) utilize the accept ballot/reject ballot feature, if any is available on such voting machine or system.

(C) If a model is used, each model must:

(1) be no less than 11 inches by 14 inches

(2) be operated by electricity and/or a battery power source

(D) If a diagram is used it shall be no smaller than 11 inches by 17 inches.

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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.

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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.

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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 NYS 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 configuration 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 configuration shall be filed with the State Board.

(D) Ballots shall be identified by ballot configuration, 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 county 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 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 its 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.