

**ADOPTED REGULATION OF
THE SECRETARY OF STATE
LCB File No. R003-26**

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: § 1, NRS 293.124 and 293.247.

A REGULATION relating to elections; establishing requirements for a postelection certification audit of electronic tabulators used in an election; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Secretary of State to adopt regulations for the conduct of elections. (NRS 293.247) Existing regulations provide for certain audits to be conducted after an election, including a postelection certification audit of voter verifiable paper audit trail printers and risk limiting audits. (NAC 293.255, 293.481) If a county used electronic tabulators in an election, this regulation requires a county clerk to conduct a postelection certification audit of electronic tabulators used in the election. This regulation sets forth the process for the county clerk to conduct such an audit and requires, if any discrepancy is discovered during the audit, the county clerk to immediately notify the Secretary of State and investigate the cause of the discrepancy. Additionally, this regulation requires the county clerk to transmit the results of the postelection certification audit to the Secretary of State within 9 days after the date of the election but before the canvass and to include in the results an explanation of any discrepancy discovered by the clerk during the audit and, if determined, an explanation of what caused the discrepancy to occur. Finally, this regulation prohibits any member of the public who observes such an audit from interfering with the conduct of the audit.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If a county used electronic tabulators in an election, the county clerk of the county shall, after the election, conduct a postelection certification audit of electronic tabulators

randomly selected pursuant to subsection 3 or 4, as applicable, to ensure that the electronic tabulator accurately records all votes cast by voters on a paper ballot.

2. A county clerk must conduct a postelection certification audit of an electronic tabulator by comparing each vote cast for the candidate or ballot measure selected to be audited pursuant to subsection 3 or 4 which was recorded on a paper ballot to each vote cast for such candidate or measure which was tabulated by the electronic tabulator. Such comparison may be conducted manually or by a mechanical device determined by the Secretary of State to be capable of accurately reading the votes cast and printed and otherwise qualified for use in this State pursuant to applicable state and federal law.

3. A county clerk of a county whose population is 100,000 or more who conducts a postelection certification audit of electronic tabulators pursuant to this section shall randomly select a number of electronic tabulators equal to 2 percent of the number of electronic tabulators used in the election, or not less than three electronic tabulators, whichever is greater. From each electronic tabulator selected pursuant to this subsection, the county clerk shall audit the results of one race for state or federal office or for a statewide measure, one race for a county office or for a countywide measure and one additional race randomly selected from races tabulated on the electronic tabulator. The audit must compare votes cast in person during the period for early voting by personal appearance and on election day that were tabulated by the randomly selected tabulators.

4. A county clerk of a county whose population is less than 100,000 who conducts a postelection certification audit of electronic tabulators pursuant to this section shall randomly select a number of electronic tabulators equal to 2 percent of the number of electronic

tabulators used in the election in the county, or not less than one electronic tabulator, whichever is greater. From each electronic tabulator selected pursuant to this subsection, the county clerk shall audit the results of one race for state or federal office or for a statewide measure, one race for a county office or for a countywide measure and one additional race randomly selected from races tabulated on the electronic tabulator. The audit must compare votes cast in person during the period for early voting by personal appearance and on election day that were tabulated by the randomly selected tabulators.

5. If any discrepancy is discovered during a postelection certification audit conducted pursuant to this section, the county clerk must immediately notify the Secretary of State and investigate the cause of the discrepancy.

6. The county clerk shall transmit the results of the postelection certification audit to the Secretary of State within 9 days after the date of the election but before the canvass. The results of the audit must include, without limitation, an explanation of any discrepancy discovered by the clerk during the audit and, if determined, an explanation of what caused the discrepancy to occur.

7. Any member of the public who observes a postelection certification audit conducted pursuant to this section shall not interfere with the conduct of the audit.

8. As used in this section:

(a) "County office" means an elected county office whose candidates are voted upon in the election by the registered voters of one county.

(b) "Federal office" means the elected federal office of President of the United States, Vice President of the United States, United States Senator or Representative in Congress.

(c) “State office” means the elected state office of Governor, Lieutenant Governor, State Senator, State Assemblymember, justice of the Supreme Court, judge of the Court of Appeals, Attorney General, State Controller, Secretary of State, State Treasurer or a member of the Board of Regents of the University of Nevada.