

**PROPOSED REGULATION OF THE  
SECRETARY OF STATE**

**LCB FILE NO. R059-211**

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**PROPOSED REGULATIONS OF THE SECRETARY OF STATE**

**ELECTIONS DIVISION**

**LCB File No. \_\_\_\_\_**

**Section 1. Chapter 293B of NAC is hereby amended by amending the provisions set forth in Sections 2 to 5, and by adding thereto the provisions set forth in Sections 6 to 7, inclusive of this regulation.**

**Sec. 2. NAC 293B.010 is hereby amended to read as follows:**

**NAC 293B.010 Definitions.** (NRS 293.124, 293.247) As used in this chapter, unless the context otherwise requires:

1. “Firmware” means programming instructions that are stored in a read-only memory format within a mechanical recording device rather than being implemented through software.
2. “Mechanical recording device” has the meaning ascribed to it in NRS 293B.032.
3. “Mechanical voting system” has the meaning ascribed to it in NRS 293B.033.
4. “Results cartridge” means a cartridge which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.
5. “Voter verifiable paper audit trail printer” or “VVPAT” means the device attached to a mechanical recording device and the paper it prints to record all votes cast by a voter for any and all candidates and for or against any and all measures, enabling that voter to visually verify that the mechanical voting system accurately recorded the votes of the voter.

*6. “Ballot Marking Device” (BMD) describes a style of mechanical voting system pursuant to NRS 293B.033(2).*

*7. “Ballot Polling” when used in reference to a Risk Limiting Audit (RLA) pursuant to NRS 293.394 means a post-election audit in which individual paper ballots are randomly*

*selected, and the voter markings are examined and interpreted manually. If a large enough sample shows a large enough majority for the reported winner, the audit stops. This type of RLA cannot identify whether a specific ballot was mis-tabulated, but it can provide convincing evidence about whether the reported outcome is correct.*

*8. “Ballot Comparison” when used in reference to a Risk Limiting Audit (RLA) pursuant to NRS 293.394 means a post-election audit in which individual paper ballots are randomly selected, the voter markings are examined and interpreted manually, and the human interpretation of voter intent is compared to the voting system’s interpretation of the same ballot, as reflected in the corresponding cast vote records.*

**Sec. 3. NAC 293B.090 is hereby amended to read as follows:**

**NAC 293B.090 Testing of equipment and programs; reporting and correction of certain errors; use of mechanical recording devices which directly record votes electronically.**

(NRS 293.124, 293.247, 293.3677, 293B.105)

1. Before and after each election, as provided in NRS 293B.140 to 293B.170, inclusive, *no sooner than two weeks before and no later than 5 p.m. on the day before early voting commences*, the county clerk in a county using a mechanical voting system shall ensure that each *Ballot Marking Device (BMD) which marks a ballot, each* mechanical recording device which directly records votes electronically, each VVPAT and the automatic tabulating equipment and programs to be used in the election will accurately *mark or* record the votes cast for all offices and on all measures by completing the tests required pursuant to this section and chapter 293B of NRS.

2. A county clerk shall, in the course of performing the other tests of the system, conduct a test to ascertain that the VVPAT correctly records on the paper record the selection made on the

mechanical voting device for all offices and all measures on the ballot. If a county clerk is required to conduct an election in more than one language, the test ballots must be processed in each required language.

3. A county clerk shall conduct the test required pursuant to subsection 2 by:

(a) Processing on a mechanical recording device, during the periods prescribed in NRS 293B.150 and 293B.165, a group of logic and accuracy test ballots voted so as to record:

(1) A vote for each candidate and a vote for and against each measure on the ballot;

(2) A vote for “None of these candidates” for all statewide contests;

(3) “No selection made” for each contest and ballot measure; and

(4) In all contests in which a voter may vote for more than one candidate, each option available to the voter, from “No selection made” to the total number of candidates a voter may select.

(b) Comparing the paper record with the contests and candidate names required to be on the ballot to ensure the paper record is accurately recording and reflecting the selections made on the mechanical recording device.

4. If any error is detected during the test required pursuant to subsection 2, the error must be immediately reported to the Secretary of State. The cause of the error must be ascertained and corrected and an errorless count must be made before the particular mechanical recording device or VVPAT is approved for use in the election or certified for accuracy in the official counting of the ballots.

5. A vote is properly cast on a mechanical recording device which directly records votes electronically when:

(a) The voter selects his or her choice;

(b) The mechanical voting system verifies the selection of the voter;

- (c) The voter submits his or her selections; and
  - (d) The mechanical voting system verifies that the selections have been submitted.
6. Each mechanical recording device which directly records votes electronically must include:
- (a) Instructions for casting a vote;
  - (b) A method for a voter to select his or her vote in each contest;
  - (c) A method for a voter to change his or her selection;
  - (d) A visual verification of the selections made by the voter for each contest;
  - (e) A visual notice to the voter if the voter has not made a selection in a contest or if the voter has undervoted in a contest in which the voter may select more than one candidate;
  - (f) Protection from an overvote;
  - (g) A method for the voter to review his or her selections and make changes before the ballot is cast;
  - (h) A notice advising the voter to confirm his or her selections before casting his or her ballot and informing the voter that casting the ballot is irrevocable;
  - (i) A verification that the vote has been cast;
  - (j) A paper record of each vote that is cast; and
  - (k) An electronic record of each ballot stored by the mechanical voting system.
7. A mechanical recording device which directly records votes electronically must create a trail for an audit of the mechanical voting system which substantiates that:
- (a) Only ballots cast by authorized voters have been included in the tally list;
  - (b) All ballots have been unmodified since they were cast;
  - (c) All ballots cast have been accounted for; and

(d) The results of the tabulation of the ballots have been correctly accumulated from the ballots of the authorized voters and are capable of repetition with the same results.

8. Persons authorized to observe the tests conducted pursuant to NRS 293B.150 and 293B.165 must not interfere with the conduct of such tests. The results of the tests conducted pursuant to this section are confidential pursuant to NRS 293B.155.

**Sec. 4. NAC 293B.110 is hereby amended to read as follows:**

**NAC 293B.110 Certification of software and operating systems before each federal election; maintenance of audit trail.** (NRS 293.124, 293.247)

1. Before each election ~~cycle for federal office~~ *no sooner than two weeks before and no later than the 5 p.m. on the day before early voting commences*, in accordance with procedures established by the Secretary of State, each county clerk shall certify that:

(a) The software used to tabulate ballots; and

(b) The operating systems, including, without limitation, software and firmware, installed on each *Ballot Marking Device and* mechanical recording device, have been certified by the Voting System Certification and Laboratory Accreditation Program of the Election Assistance Commission established pursuant to 42 U.S.C. § 15321.

2. The county clerk shall certify the operating systems, including, without limitation, software and firmware, pursuant to subsection 1 by confirming that each component of such operating systems used pursuant to subsection 1 matches the identity registered with the National Software Reference Library.

3. The date and time that the operating systems of each mechanical recording device are certified pursuant to subsection 2 must be recorded, and, subject to the provisions of subsection

4, an audit trail must be maintained from that date which sets forth each instance that the mechanical recording device is accessed.

4. The audit trail required pursuant to subsection 3 must include, without limitation:

- (a) The name of the supervisor responsible for accessing the mechanical recording device;
- (b) The reason for accessing the mechanical recording device; and
- (c) The date and time that the accessing of the mechanical recording device was completed.

**Sec. 5. NAC 293B.120 is hereby amended to read as follows:**

**NAC 293B.120 Postelection audit for verification of operating systems.** (NRS 293.124, 293.247)

1. After each election, each county clerk shall conduct a postelection audit of mechanical recording devices randomly selected pursuant to subsection 3 or 4 to verify that the operating systems, including, without limitation, software and firmware, installed on each mechanical recording device used in the election are the operating systems that were certified before the election pursuant to NAC 293B.110.

2. The county clerk shall verify operating systems pursuant to subsection 1 by confirming that each component of such operating systems matches the identity registered with the National Software Reference Library.

3. For the postelection audit conducted pursuant to subsection 1, the county clerk of a county whose population is 100,000 or more shall randomly select a number of mechanical recording devices that is at least 2 percent of the number of mechanical recording devices used in the election, or not less than 20 mechanical recording devices, whichever is greater.

4. For the postelection audit conducted pursuant to subsection 1, the county clerk of a county whose population is less than 100,000 shall randomly select a number of mechanical recording

devices that is at least 3 percent of the number of mechanical recording devices, or not less than four mechanical recording devices, whichever is greater.

*5. If a discrepancy of more than 3 votes is discovered, the county clerk must immediately notify the Secretary of State and investigate to determine the reason for the discrepancy. Once the reason for the discrepancy has been identified, and no later than 5 business days after the initial discovery, the reason for the discrepancy must be reported in writing to the Secretary of State. If the discrepancy cannot be resolved, the county clerk must expand the random sample to an additional 2 percent or 20 mechanical recording devices for a county whose population is 100,000 or more or to an additional 3 percent or four mechanical recording devices for a county whose population is less than 100,000.*

**Sec. 6. NAC 293B.140 is hereby created to read as follows:**

*NAC 293B.140 Ballot formatting: uniform contest names. (NRS 293.124, 293.247)*

*In setting up the election programming for programming the ballots for each election, the counties and their vendors shall use only the following contest names as set forth exactly as listed below, including spaces and punctuation, and in the same order as listed, as appropriate depending on the year that the office is up for election:*

- 1. U.S. President*
- 2. U.S. Senator*
- 3. U.S. Representative – District [1, 2, 3, or 4]*
- 4. Governor*
- 5. Lt. Governor*
- 6. Secretary of State*
- 7. Treasurer*

8. *Controller*
9. *Attorney General*
10. *Superintendent of Public Instruction*
11. *State Senate, District \_ [1 through 14]*
12. *State Assembly, District \_ [1 through 28]*
13. *Justice, Supreme Court [Seat \_\_\_]*
14. *Judge, Court of Appeals [Seat \_\_\_]*
15. *Judge, District Court \_ [1 through 9]*

**Sec. 7. NAC 293B.150 is hereby created to read as follows:**

*NAC 293B.150 Risk limiting audits. (NRS 293.124, 293.247, 293.394)*

*The Secretary of State shall conduct risk limiting audit pilots of the 2022 primary and general elections using the following stipulations:*

- 1. All counties must participate in the 2022 general election pilot.*
- 2. The target contest will be a statewide contest such as: U.S. Senate, Governor, Secretary of State, or other statewide constitutional offices. The Secretary of State shall randomly select the contest to be audited not less than fifteen days before the primary or general election date using a method by which all statewide contests have an equal chance to be selected.*
- 3. Each county shall also audit an opportunity contest, which is defined as a countywide contest in which all active registered voters in the county are eligible to participate. This opportunity contest must be selected by a random drawing at which all countywide contests have an equal chance to be selected. The selected contest must be communicated to the Secretary of State by not later than fifteen days before the primary or general election date.*

- 4. The participating counties must develop a ballot manifest in accordance with a form provided by the Secretary of State that tracks where all tabulated ballots have been stored and allows for retrieval for auditing purposes. The ballot manifest must include all mail ballots, ballots cast using a mechanical device, and provisional and Same Day Registration conditional ballots that are accepted and tabulated. As soon as possible after the last ballot has been tabulated for an election but no later than the date that the county certifies the election, the county clerk must transmit the ballot manifest and cast vote record files to the Secretary of State using a secure file transfer protocol site.*
- 5. The Secretary of State shall use risk limiting audit software and, for each risk limiting audit pilot, the risk limit shall be set at five percent (5%).*
- 6. For purposes of the pilot program, the Secretary of State may designate one or more of the following types of audit methods for the participating counties:*
  - a. Ballot comparison*
  - b. Ballot polling*
  - c. Hybrid of ballot comparison and ballot polling*
- 7. For purposes of participating in a risk limit audit, a county may remove seals affixed pursuant to NRS 293.391 to retrieve the ballots that are audited. After completion of the audit, the ballots that were selected must be returned to their original locations and new seals must be affixed. The county clerk must maintain written records of the seals used for all ballots in accordance with NRS 293.391.*