

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R095-21

December 20, 2021

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

AUTHORITY: §§ 1, 4 and 7, NRS 293.124 and 293.247; § 2, NRS 293.124 and 293.247 and section 10 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1220 (NRS 293.269925); § 3, NRS 293.124 and 293.247 and section 17 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1223 (NRS 293.269937); § 5, NRS 293.124 and 293.247 and section 58 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1247 (NRS 293C.26325); § 6, NRS 293.124 and 293.247 and section 65 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1250 (NRS 293C.26337).

A REGULATION relating to elections; establishing certain security requirements for an electronic device used to verify signatures on mail ballots; setting forth certain requirements for the daily audit of an electronic device used to verify signatures on mail ballots; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) requires a county and city clerk to establish procedures for the processing and counting of mail ballots; and (2) authorizes a county and city clerk to review the signature of a voter on a mail ballot manually or by electronic means. (Sections 10, 11, 58 and 59 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1220 and 1247 (NRS 293.269925, 293.269927, 293C.26325 and 293C.26327)) **Sections 2 and 5** of this regulation provide that an electronic device used in an election to verify signatures on mail ballots may only be connected to a computer network for maintenance and support and such a computer network must be closed, secure and behind a firewall. **Sections 2 and 5** further require that the county and city clerk keep maintenance logs documenting certain information regarding maintenance performed on the electronic device.

Existing law provides that if a county or city clerk uses an electronic device to verify signatures on mail ballots, the clerk must: (1) conduct a test of the accuracy of every electronic device before the election; (2) perform daily audits of the electronic device during the processing of ballots for the election; and (3) prepare an audit report. (Sections 17 and 65 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at pages 1223 and 1250 (NRS 293.269937 and 293C.26337)) **Sections 3 and 6** of this regulation set forth requirements for the daily audit of an electronic device used to verify signatures on mail ballots. **Sections 3 and 6** provide that if during the daily audit a manual review of signatures verified by the electronic device results in a

signature being rejected by the auditors that was verified by the electronic device, the electronic device fails the audit and the county or city clerk must stop using the device immediately and notify the Secretary of State.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *An electronic device that is used to verify signatures on mail ballots may only be connected to a computer network for maintenance and support. When connected to the computer network, the electronic device must be operated on a closed, secure network behind a firewall. The county clerk shall keep maintenance logs documenting:*

- 1. The name of any person who provides maintenance or support to the electronic device;*
- 2. The time and date the electronic device was accessed; and*
- 3. The reason for accessing the electronic device.*

Sec. 3. *The daily audit of an electronic device used to verify signatures on mail ballots that is required pursuant to section 17 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1223 (NRS 293.269937), must comply with the following requirements:*

1. The county clerk shall select a random sample of 1 percent of the mail ballots received before 3:00 p.m. from the previous 24-hour period for which the electronic device has verified the signatures.

2. A team of bipartisan election board officers appointed by the county clerk shall manually review the signatures selected in accordance with the procedures set forth in section 11 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1220 (NRS 293.269927).

3. The election board officers shall sign and date the daily audit report. The audit report must be deposited in the vaults of the county clerk pursuant to NRS 293.391, as amended by section 34 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1232.

4. If the team of election board officers rejects a signature that the electronic device verified, then the electronic device fails the audit and the county clerk shall:

(a) Immediately stop using the electronic device;

(b) Notify the Secretary of State in writing within 48 hours after the electronic device has failed the audit; and

(c) Work with the Secretary of State to identify the issue and implement a solution.

Sec. 4. Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 5 and 6 of this regulation.

Sec. 5. *An electronic device that is used to verify signatures on mail ballots may only be connected to a computer network for maintenance and support. When connected to the computer network, the electronic device must be operated on a closed, secure network behind a firewall. The city clerk shall keep maintenance logs documenting:*

1. The name of any person who provides maintenance or support to the electronic device;

2. The time and date the electronic device was accessed; and

3. The reason for accessing the electronic device.

Sec. 6. *The daily audit of an electronic device used to verify signatures on mail ballots that is required pursuant to section 65 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1250 (NRS 293C.26337), must comply with the following requirements:*

1. The city clerk shall select a random sample of 1 percent of the mail ballots received before 3:00 p.m. from the previous 24-hour period for which the electronic device has verified the signatures.

2. A team of bipartisan election board officers appointed by the city clerk shall manually review the signatures selected in accordance with the procedures set forth in section 59 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1247 (NRS 293C.26327).

3. The election board officers shall sign and date the daily audit report. The audit report must be deposited in the vaults of the city clerk pursuant to NRS 293C.390, as amended by section 80 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1257.

4. If the team of election board officers rejects a signature that the electronic device verified, then the electronic device fails the audit and the city clerk shall:

(a) Immediately stop using the electronic device;

(b) Notify the Secretary of State in writing within 48 hours after the electronic device has failed the audit; and

(c) Work with the Secretary of State to identify the issue and implement a solution.

Sec. 7. This regulation becomes effective upon the later of:

1. January 1, 2022; or

2. The date upon which the regulation is filed with the Secretary of State.