

**PROPOSED REGULATION OF
THE SECRETARY OF STATE**

LCB File No. R109-21

December 20, 2021

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; revising provisions related to a postelection audit of voter verifiable paper audit trail printers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing regulations require, after each election, a county clerk to conduct a postelection certification audit of a certain number of voter verifiable paper audit trail printers, known as “VVPATs,” that are randomly selected to ensure that the paper record produced by a VVPAT accurately records all votes cast by voters on a mechanical recording device. (NAC 293.255) A VVPAT is 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 has accurately recorded the votes of the voter. (NAC 293.010)

This regulation provides that if a discrepancy of four or more votes is discovered during the postelection certification audit, the county clerk must immediately notify the Secretary of State and investigate the cause of the discrepancy. If the discrepancy cannot be resolved, the county clerk must randomly select an additional number of mechanical recording devices with attached VVPATs used in the election to audit. This regulation also requires the county clerk to include in the audit results transmitted to the Secretary of State an explanation of any discrepancy discovered by the county clerk and, if determined, an explanation of what caused the discrepancy to occur.

Section 1. NAC 293.255 is hereby amended to read as follows:

293.255 1. After each election, a county clerk shall conduct a postelection certification audit of VVPATs randomly selected pursuant to subsection 3 or 4, as applicable, to ensure that

the paper record produced by a VVPAT accurately records all votes cast by voters on a mechanical recording device.

2. A county clerk must conduct a postelection certification audit of a VVPAT by comparing each vote cast for each candidate and on each measure which was electronically recorded on the mechanical recording device to each vote cast for each candidate and on each measure which was recorded on the attached VVPAT. 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 the State pursuant to applicable state and federal law.

3. The county clerk of a county whose population is 100,000 or more must randomly select a number of mechanical recording devices equal to 2 percent of the number of mechanical recording devices with attached VVPATs used in the election, or not less than 20 mechanical recording devices, whichever is greater, for the postelection certification audit. *If a discrepancy of four or more votes is discovered during the postelection certification audit, the county clerk must immediately notify the Secretary of State and investigate the cause of the discrepancy. If the discrepancy cannot be resolved, the county clerk must randomly select an additional number of mechanical recording devices equal to 2 percent of the number of mechanical recording devices with attached VVPATs used in the election, or not less than 20 mechanical recording devices, whichever is greater, for the postelection certification audit.*

4. The county clerk of a county whose population is less than 100,000 must randomly select a number of mechanical recording devices equal to 3 percent of the number of mechanical recording devices with attached VVPATs used in the election, or not less than four mechanical recording devices, whichever is greater, for the postelection certification audit. *If a discrepancy*

of four or more votes is discovered during the postelection certification audit, the county clerk must immediately notify the Secretary of State and investigate the cause of the discrepancy. If the discrepancy cannot be resolved, the county clerk must randomly select an additional number of mechanical recording devices equal to 3 percent of the number of mechanical recording devices with attached VVPATs used in the election, or not less than four mechanical recording devices, whichever is greater, for the postelection certification audit.

5. The county clerk shall transmit the results of the audit to the Secretary of State within 7 working days after the date of the election. *The results of the audit must include, without limitation, an explanation of any discrepancy discovered by the county clerk during the audit and, if determined, an explanation of what caused the discrepancy to occur.*

6. Any member of the public who observes the postelection certification audit shall not interfere with the conduct of the audit.