

**PROPOSED REGULATION OF  
THE SECRETARY OF STATE**

**LCB File No. R110-21**

December 20, 2021

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

AUTHORITY: §§ 1 and 2, NRS 293.124, 293.247 and 293.394 and section 37.7 of Assembly Bill No. 422, chapter 554, Statutes of Nevada 2021, at page 3848.

A REGULATION relating to elections; setting forth requirements for risk-limiting audits of the 2022 Primary and General Elections; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires the Secretary of State to adopt regulations for conducting a risk-limiting audit of an election. (NRS 293.394) Existing law also: (1) requires the Secretary of State to develop a pilot program for conducting a risk-limiting audit of the 2022 General Election; and (2) authorizes the Secretary of State to require each county clerk to participate in the pilot program and conduct a risk-limiting audit. (Section 37.7 of Assembly Bill No. 422, chapter 554, Statutes of Nevada 2021, at page 3848)

This regulation: (1) requires that certain county clerks conduct a risk-limiting audit of the 2022 Primary Election; (2) requires that all county clerks conduct a risk-limiting audit of the 2022 General Election; and (3) sets forth certain requirements that apply to any risk-limiting audit conducted of the 2022 Primary Election or 2022 General Election.

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

*1. The provisions of this section apply to any risk-limiting audit conducted of the 2022 Primary Election or 2022 General Election.*

*2. Each county clerk:*

*(a) That has not conducted a risk-limiting audit of a previous election must conduct a risk-limiting audit of the 2022 Primary Election.*

*(b) That has conducted a risk-limiting audit of a previous election may conduct a risk-limiting audit of the 2022 Primary Election.*

*(c) Must conduct a risk-limiting audit of the 2022 General Election.*

*3. A risk-limiting audit conducted pursuant to this section must audit the results of:*

*(a) One race for statewide office. The Secretary of State will randomly select one race for statewide office to be audited at the election using a method determined by the Secretary of State in which all races for statewide office on the ballot at the election have an equal chance of being selected. The Secretary of State will notify each county clerk which race for statewide office has been selected for the risk-limiting audit at least 15 days before the date of the election.*

*(b) One race for countywide office. Each county clerk conducting a risk-limiting audit of an election shall randomly select one race for countywide office to be audited at the election using a method determined by the county clerk in which all races for countywide office on the ballot at the election have an equal chance of being selected. The county clerk must notify the Secretary of State which race for countywide office has been selected for the risk-limiting audit at least 15 days before the date of the election.*

*4. Each county clerk that conducts a risk-limiting audit pursuant to this section shall create a ballot manifest using the form provided by the Secretary of State that:*

*(a) Tracks the location of all accepted and tabulated ballots, including, without limitation, mail ballots, provisional ballots and ballots voted using a mechanical recording device; and*

*(b) Allows for the retrieval of any such ballot for purposes of conducting the risk-limiting audit.*

5. *As soon as possible after the completion of counting ballots for the election but not later than the date the county clerk certifies the abstract of the election results pursuant to NRS 293.387, as amended by section 33 of Assembly Bill No. 321, chapter 248, Statutes of Nevada 2021, at page 1232, the county clerk must electronically transmit the ballot manifest and record of votes cast in the election to the Secretary of State using a secure file transfer protocol site.*

6. *For the purposes of conducting a risk-limiting audit pursuant to this section, the county clerk may remove the seals affixed pursuant to subsection 1 of NRS 293.391 to retrieve the ballots used in the audit. After the completion of a risk-limiting audit, the county clerk must return the ballots to the original location and seal the ballots. The county clerk shall maintain a record of the seals affixed to the ballots used in the risk-limiting audit.*

7. *For the purposes of conducting a risk-limiting audit pursuant to this section, the Secretary of State:*

*(a) Will require the use of risk-limiting audit software with the risk limit set at 5 percent; and*

*(b) May designate one or more of the following types of audit methods:*

*(1) Ballot comparison;*

*(2) Ballot polling; or*

*(3) A hybrid of ballot comparison and ballot polling.*

8. *As used in this section:*

*(a) "Ballot comparison" means a technique used in a risk-limiting audit in which the results of the ballot polling are compared to the results of the mechanical voting system as set forth in the record of votes cast on the system.*

*(b) “Ballot polling” means a technique used in a risk-limiting audit in which individual paper ballots are randomly selected and the ballot markings are examined and interpreted manually until the sampling of selected paper ballots indicates a sufficient majority for the reported winner of the election.*

*(c) “Countywide office” means an elected county office whose candidates are voted upon in the election by the registered voters of the entire county.*

*(d) “Statewide office” means an elected state office whose candidates are voted upon in the election by the registered voters of the entire State.*

**Sec. 2.** Section 1 of this regulation expires on December 31, 2023.