

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB FILE NO. R111-211

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by the agency submitted on 11/23/2021**

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 and 3, inclusive of this regulation.

Sec. 2. 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. 3. 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.