

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB FILE NO. R200-221

**The following document is the initial draft regulation proposed
by the agency submitted on 12/02/2022**

**2nd REVISED TEMPORARY REGULATION OF
THE SECRETARY OF STATE**

August 24, 2022

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

AUTHORITY: §§ 1, 2, and 4-7, NRS 293.124 and 293.3677; §§ 3 and 10, NRS 293.124, 293.247, 293.3677 and 293.404; §§ 8, 9 and 11-13, NRS 293.124 and 293C.369.

A REGULATION relating to elections; establishing requirements for conducting a hand count of ballots; and providing other matters properly relating thereto.

Digest:

Existing law requires the Secretary of State to adopt regulations establishing uniform, statewide standards for counting a vote cast using certain methods of voting and authorizes the Secretary of State to adopt regulations for counting votes cast using certain types of mechanical voting systems. (NRS 293.3677, 293C.369) This regulation sets forth various requirements for a hand count of the ballots.

Section 7 of this regulation defines the term “hand count.”

Sections 2 and 9 of this regulation authorize a county or city clerk, in consultation with the governing body of the county or city, to conduct a hand count of the ballots voted in an election.

Sections 3 and 10 of this regulation require a county or city clerk who is going to conduct a hand count to submit to the Secretary of State 30 days before the date of the election a plan for the hand count, which must include certain procedures for conducting the hand count, plans for the location and necessary equipment and personnel for the hand count, plans ensuring the security of the hand count and contingency plans to meet certain deadlines.

Sections 4 and 11 of this regulation require a county or city clerk conducting a hand count to establish a sufficient number of hand count tally teams, which must consist of at least four election board officers, who must not all be of the same political party.

Sections 5 and 12 of this regulation set forth the procedures required to tally the votes during the hand count.

Sections 6 and 13 of this regulation: (1) set forth certain requirements for the writing devices used by the hand count tally team; and (2) prohibit the hand count tally team members from bringing their own writing devices into the physical location where the ballots will be hand counted.

Section 1. Chapter 293 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *Each county clerk may, in consultation with the board of county commissioners, conduct a hand count of the ballots voted in an election for:*

- (a) All contests on the ballot;*
- (b) A specified number of contests on the ballot, as determined by the county clerk; or*
- (c) A specified sample of the precincts in the county, as determined by the county clerk.*

2. *If a county clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:*

(a) Be conducted in accordance with the requirements of sections 2 to 6, inclusive, of this regulation;

(b) Be completed on or before the seventh day following the election; and

(c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.

3. *A county clerk may use an electronic tabulator to validate the results of the hand count.*

4. *The Secretary of State will make the forms for tallying the results of the hand count available not less than 30 days before the date of the election.*

Sec. 3. *If a county clerk is going to conduct a hand count, the county clerk shall submit to the Secretary of State not later than 30 days before the date of the election a plan for conducting the hand count. The plan must include, without limitation:*

1. *A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter and title 24 of NRS for counting ballots.*

2. *The total number of election board officers and hand count tally teams that will be required to complete the hand count.*

3. *The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.*

4. *The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.*

5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*

(a) *Whether all such items are currently in the possession of the county and, if not, the date by which any necessary items will be obtained by the county; and*

(b) *The estimated cost to the county to obtain the necessary items.*

6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*

7. *The plans for ensuring the security of:*

(a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*

(b) *The election board officers who conduct the hand count.*

8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*

9. *A contingency plan for:*

(a) *Completing the counting of the ballots in the event the hand count will not be completed by the date required for the canvass of returns pursuant to NRS 293.387;*

(b) *Conducting any recount in accordance with NRS 293.404; and*

(c) *Completing any recount by the deadline set forth in NRS 293.405.*

Sec. 4. 1. The county clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:

(a) One election board officer known as the reading clerk to read the ballots;

(b) One election board officer known as the verification clerk to watch that the ballots are read correctly; and

(c) Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.

2. In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the county clerk may appoint to a hand count tally team:

(a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 2 to 6, inclusive, of this regulation and reporting any issues or concerns to the county clerk; and

(b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.

3. An election board officer assigned to work on a hand count tally team:

(a) May not work more than 8 hours in a 24-hour period; and

(b) Must wear medical style exam gloves at all times while working his or her shift.

4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count

tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.

Sec. 5. 1. Before conducting a hand count of the ballots voted in an election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293.363.

2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.

3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.

4. In addition to the requirements of NRS 293.367 to 293.370, inclusive, each hand count tally team shall process the ballots in the following manner:

(a) For a primary election, the ballots must be sorted by political party and nonpartisan ballots to be tallied separately, with a Republican tally form, Democrat tally form and nonpartisan tally form.

(b) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.

(c) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.

(d) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are

counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.

(e) The tally clerks shall:

(1) Tally the votes on the appropriate tally form, depending on whether the ballot has been cast in a primary or general election. If the election is a primary election, the tallied votes should be noted on the tally form for the applicable political party or the nonpartisan tally form.

(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.

(3) For every fifth vote for the same candidate or ballot question, place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:

(I) The fifth vote throughout the course of the tally; and

(II) The total number of hash marks for each candidate or ballot question.

(f) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (e), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.

(g) If the count of the tally clerks:

(1) Matches, the tallying must continue.

(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.

5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a county clerk, but the county clerk is the party responsible for the hand count.

Sec. 6. 1. *The county clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

2. The writing devices provided by the county clerk pursuant to subsection 1:

(a) Must be uniform in color and style;

(b) Must not write in blue or black ink; and

(c) Must not be pencils.

Sec. 7. NAC 293.010 is hereby amended to read as follows:

293.010 As used in this chapter, unless the context otherwise requires:

1. “Ballot stock” means:

(a) The paper upon which a ballot is printed on which a voter directly indicates his or her vote; and

(b) The materials included with a mail ballot, including, without limitation, the mail ballot, return envelope, envelope or sleeve into which the mail ballot is inserted to ensure its secrecy and voter instructions.

2. “Department” means the Department of Motor Vehicles.

3. *“Hand count” means the process of determining the election results where the primary method of counting the votes cast for each candidate or ballot question does not involve the use of a mechanical voting system.*

4. “Mail ballot” has the meaning ascribed to it in NRS 293.0653.

~~14.1~~ 5. “Results cartridge” means the cartridge of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

~~15.1~~ 6. “Signature stamp” has the meaning ascribed to it in NRS 427A.755.

~~16.1~~ 7. “Statewide voter registration list” has the meaning ascribed to it in NRS 293.111.

~~17.1~~ 8. “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 has accurately recorded the votes of the voter.

~~18.1~~ 9. “Voting booth” means any place or compartment used to screen a voter from the observation of others.

~~19.1~~ 10. “Vote center” means a polling place established by the county or city clerk, as applicable, pursuant to the provisions of NRS 293.3072 to 293.3075, inclusive, or 293C.3032 to 293C.3035, inclusive, as applicable, where any person entitled to vote by personal appearance in the county or city, as applicable, may do so on the day of the election.

Sec. 8. Chapter 293C of NAC is hereby amended by adding thereto the provisions set forth as sections 9 to 13, inclusive, of this regulation.

Sec. 9. 1. *Each city clerk may, in consultation with the governing body of the city, conduct a hand count of the ballots voted in a city election for:*

(a) All contests on the ballot;

(b) A specified number of contests on the ballot, as determined by the city clerk; or

(c) A specified sample of the precincts in the city, as determined by the city clerk.

2. If a city clerk decides to conduct a hand count pursuant to subsection 1, the hand count must:

(a) Be conducted in accordance with the requirements of sections 9 to 13, inclusive, of this regulation;

(b) Be completed on or before the seventh day following the city election; and

(c) Use the forms prescribed by the Secretary of State for tallying the results of the hand count.

3. A city clerk may use an electronic tabulator to validate the results of the hand count.

4. The Secretary of State will make the forms for tallying the results of the hand count available not less than 30 days before the date of the city election.

Sec. 10. *If a city clerk is going to conduct a hand count, the city clerk shall submit to the Secretary of State not later than 30 days before the date of the city election a plan for conducting the hand count. The plan must include, without limitation:*

1. A detailed description of how the hand count will be conducted in order to meet the applicable deadlines set forth in this chapter, chapter 293 of NAC and title 24 of NRS for counting ballots.

2. The total number of election board officers and hand count tally teams that will be required to complete the hand count.

3. The work schedule for the hand count, which must not be more than 16 hours in a 24-hour period. There must not be more than two separate 8-hour shifts.

4. The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.

5. *An estimated list of any items necessary to conduct the hand count, which must include, without limitation:*
 - (a) *Whether all such items are currently in the possession of the city and, if not, the date by which any necessary items will be obtained by the city; and*
 - (b) *The estimated cost to the city to obtain the necessary items.*
 6. *Any amendment to the plans for the observation of the hand count by the members of the public in accordance with section 1 of LCB File No. R108-21 and NRS 293B.353 and the plan submitted pursuant to NRS 293B.354.*
 7. *The plans for ensuring the security of:*
 - (a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040, as amended by section 8 of LCB File No. R091-21; and*
 - (b) *The election board officers who conduct the hand count.*
 8. *A list of any outside vendors hired or who may be hired to consult or assist in the preparation or operation of the hand count.*
 9. *A contingency plan for:*
 - (a) *Completing the counting of the ballots in the event the hand count is not completed by the date required for the canvass of returns pursuant to NRS 293C.387;*
 - (b) *Conducting any recount in accordance with NRS 293.404; and*
 - (c) *Completing any recount by the deadline set forth in NRS 293.405.*
- Sec. 11. 1.** *The city clerk shall establish a sufficient number of hand count tally teams to conduct the hand count. Each hand count tally team must consist of at least four election board officers, who must not be of the same political party, as follows:*
- (a) *One election board officer known as the reading clerk to read the ballots;*

(b) One election board officer known as the verification clerk to watch that the ballots are read correctly; and

(c) Two election board officers known as the tally clerks to separately record the votes on the appropriate tally form.

2. In addition to the election board officers appointed to a hand count tally team pursuant to subsection 1, the city clerk may appoint to a hand count tally team:

(a) One election board officer to supervise the overall conduct of the hand count, including, without limitation, tracking the progress of the hand count, ensuring compliance with the requirements of sections 9 to 13, inclusive, of this regulation and reporting any issues or concerns to the city clerk; and

(b) One election board officer to supervise and ensure compliance with the public observation of the hand count, including, without limitation, ensuring that the public is able to observe the hand count and ensuring the public does not distract or interfere with the hand count tally team.

3. An election board officer assigned to work on a hand count tally team:

(a) May not work more than 8 hours in a 24-hour period; and

(b) Must wear medical style exam gloves at all times while working his or her shift.

4. Each hand count tally team must be positioned around a single table, with not less than 10 feet from the center of the table to the center of any other table containing a hand count tally team to reduce the risk of overhearing the other hand count tally team counting the ballots.

Sec. 12. 1. Before conducting a hand count of the ballots voted in a city election, the election board officers must prepare to count the ballots in accordance with the requirements of NRS 293C.362.

2. After the ballots are prepared for counting, the election board may use the electronic tabulator to calculate the results of the tally of the votes cast in a contest on the ballot.

3. A hand count of the ballots must be tallied not less than two times by the hand count tally team for each contest on the ballot that will be hand counted. The results of each tally of the ballots for each contest must match exactly. If the results do not match, the hand count must be conducted again until the results match one of the previous tallies.

4. In addition to the requirements of NRS 293C.367 to 293C.372, inclusive, each hand count tally team shall process the ballots in the following manner:

(a) The ballots must be divided into separate stacks containing not more than 50 ballots per stack. Each stack must be read and tallied separately.

(b) The reading clerk shall read from the ballot the choice of the voter as indicated by writing in the designated space on the ballot indicating the voter's intent, including, without limitation, a cross or check.

(c) After reading each ballot, the reading clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots are counted, the ballots must be tied with a string or bound with a paper clip or binder clip in a stack of not more than 50 ballots.

(d) The tally clerks shall:

(1) Tally the votes on the tally form.

(2) On the tally form, place a short perpendicular hash mark opposite the name of the candidate or ballot question voted for the first through fourth vote for the same candidate or ballot question.

(3) For every fifth vote for the same candidate or ballot question place a horizontal hash mark through the previous four perpendicular hash marks. One of the tally clerks shall then clearly announce:

(I) The fifth vote throughout the course of the tally; and

(II) The total number of hash marks for each candidate or ballot question.

(e) If the tally clerks agree on the total number of hash marks for each candidate or ballot question after the total has been announced pursuant to paragraph (d), the tally clerks shall make a mark above the five hash marks to indicate that the count of both tally clerks matched.

(f) If the count of the tally clerks:

(1) Matches, the tallying must continue.

(2) Does not match, the reason for the discrepancy must be identified and corrected before the hand count tally team may continue tallying.

5. The Office of the Secretary of State may supervise or assist in a hand count of the ballots voted if requested by a city clerk, but the city clerk is the party responsible for the hand count.

Sec. 13. 1. *The city clerk shall provide all writing devices to a hand count tally team conducting a hand count. No member of a hand count tally team may use or bring his or her own writing device to the physical location where the ballots will be hand counted.*

2. The writing devices provided by the city clerk pursuant to subsection 1:

(a) Must be uniform in color and style;

(b) Must not write in blue or black ink; and

(c) Must not be a pencil.