

**APPROVED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R200-22

Filed September 29, 2023

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

AUTHORITY: §§ 1, 2, 4 and 6, NRS 293.124 and 293.3677; §§ 3 and 10, NRS 293.124, 293.247, 293.3677 and 293.404, as amended by section 2.7 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3306; § 5, NRS 293.124, 293.3677, 298.640 and 298.680; § 7, NRS 293.124, 293.247 and 293.3677; §§ 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.

Legislative Counsel’s Digest:

Existing law requires the Secretary of State to adopt regulations establishing uniform, statewide standards for counting a vote cast by certain methods of voting and authorizes the Secretary of State to adopt regulations for counting a vote cast by certain types of mechanical voting systems. (NRS 293.3677, 293C.369) This regulation sets forth various requirements for the hand counting of 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 conducts a hand count to submit to the Secretary of State, 90 days before the date of the election, a plan for conducting 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 4 and 11** further require, to the extent practicable, that at least one election board officer on each hand count tally team be a registered voter whose political affiliation is nonpartisan.

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

Sections 6 and 13 of this regulation: (1) set forth certain requirements for the writing devices used by a hand count tally team; and (2) prohibit members of the hand count tally team

from bringing any other writing devices to 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 hand count is conducted 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) Be conducted using 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 available to the county clerk the forms for tallying the results of the hand count not less than 90 days before the date of the election.

Sec. 3. *If a county clerk intends to conduct a hand count pursuant to section 2 of this regulation, the county clerk shall submit to the Secretary of State, not later than 90 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 appointed pursuant to section 4 of this regulation 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 such 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 members of the general public in accordance with NRS 293B.353 and NAC 293.356 and the plan submitted pursuant to NRS 293B.354.*
7. *A plan for ensuring the security of:*
 - (a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040; 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 that 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, as amended by section 2.7 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3306, and section 1.3 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3303; and

(c) Completing any recount by the deadline set forth in NRS 293.405, as amended by section 2.8 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3307.

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 all be of the same political party, as follows:*

(a) One election board officer, appointed as the reviewing clerk, to review the conduct of the hand count tally team;

(b) One election board officer, appointed as the verification clerk, to ensure that the ballots are tallied correctly; and

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

↳ To the extent practicable, at least one election board officer on each hand count tally team must be a registered voter whose political party affiliation is nonpartisan.

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 requirements for observation of the hand count by the general public, including, without limitation, ensuring that the general public is able to observe the hand count and ensuring that the general public does not distract or interfere with the hand count tally team.

3. An election board officer appointed to a hand count tally team pursuant to subsection 1:

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

(b) Must wear a short-sleeve shirt or a shirt with sleeves rolled above the elbows so that the arms are bare from the elbow down at all times while working his or her shift; and

(c) Must wear gloves at all times while working his or her shift.

4. Each hand count tally team must be positioned around a single workspace and maintain a distance of 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. Hand count tally teams are allowed to talk, but must not read out loud the votes to be tallied or discuss information concerning the tallied number of votes.

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 an 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 at least twice by the hand count tally team appointed pursuant to section 4 of this regulation 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 presidential preference primary election, the ballots must be sorted by each major political party to be tallied separately, with a tally form for each candidate listed on the ballot for each respective political party.

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

(c) The ballots must be divided into separate stacks containing not more than 25 ballots per stack. Each stack must be tallied separately.

(d) Each tally clerk shall silently read to themselves from each ballot the choice of the voter, as indicated by the writing in the designated space on the ballot that indicates the voter's intent, including, without limitation, a cross or check. After silently reading each ballot, the tally clerk shall:

(1) Tally the vote on the appropriate tally form, depending on whether the ballot has been cast in a presidential preference primary, primary or general election. If the election is a presidential preference primary election, the tallied votes should be noted on the form for the applicable candidate for the applicable political party. 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) Place a short perpendicular hash mark on the tally form 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.

(e) After tallying each ballot, the tally clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots is counted, the tally clerk shall exchange the stack of tabulated ballots with the other tally clerk on the hand count tally team. Once both tally clerks have counted a stack of ballots, the reviewing clerk shall ensure the ballots are tied with a string or bound with a paper clip, binder clip or rubber band in a stack of not more than 25 ballots.

(f) The verification clerk shall oversee the work of the two tally clerks to ensure that the tally count matches the same stack of ballots. If the count of the tally clerks:

(1) Matches, the tally 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. A member of a hand count tally team may not use or bring any other 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 results of an election 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.

~~4.~~ 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 hand count is conducted 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) Be conducted using 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 available to the city clerk the forms for tallying the results of the hand count not less than 90 days before the date of the city election.

Sec. 10. *If a city clerk intends to conduct a hand count pursuant to section 9 of this regulation, the city clerk shall submit to the Secretary of State, not later than 90 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 appointed pursuant to section 11 of this regulation 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 such 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 members of the general public in accordance with NRS 293B.353 and NAC 293.356 and the plan submitted pursuant to NRS 293B.354.*

7. *A plan for ensuring the security of:*

(a) *The ballots consistent with the plan submitted pursuant to NAC 293B.040; 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 that the hand count will not be 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, as amended by section 2.7 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3306, and section 1.3 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3303; and*

(c) *Completing any recount by the deadline set forth in NRS 293.405, as amended by section 2.8 of Assembly Bill No. 192, chapter 511, Statutes of Nevada 2023, at page 3307.*

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 all be of the same political party, as follows:*

(a) *One election board officer, appointed as the reviewing clerk, to review the conduct of the hand count tally team;*

(b) *One election board officer, appointed as the verification clerk, to ensure that the ballots are tallied correctly; and*

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

↳ To the extent practicable, at least one election board officer on each hand count tally team must be a registered voter whose political affiliation is nonpartisan.

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 requirements for observation of the hand count by the general public, including, without limitation, ensuring that the general public is able to observe the hand count and ensuring that the general public does not distract or interfere with the hand count tally team.

3. An election board officer appointed to a hand count tally team pursuant to subsection 1:

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

(b) Must wear a short-sleeve shirt or a shirt with sleeves rolled above the elbows so that the arms are bare from the elbow down at all times while working his or her shift; and

(c) Must wear gloves at all times while working his or her shift.

4. Each hand count tally team must be positioned around a single workspace and maintain a distance of 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. Hand count tally teams are allowed to talk, but must not read out loud the votes to be tallied or discuss information concerning the tallied number of votes.

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 an 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 at least twice by the hand count tally team appointed pursuant to section 11 of this regulation 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 25 ballots per stack. Each stack must be tallied separately.

(b) Each tally clerk shall silently read to themselves from each ballot the choice of the voter, as indicated by the writing in the designated space on the ballot that indicates the voter's intent, including, without limitation, a cross or check. After silently reading each ballot, the tally clerk shall:

(1) Tally the votes on the tally form.

(2) Place a short perpendicular hash mark on the tally form 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.

(c) After tallying each ballot, the tally clerk shall lay the ballot face down on the table to distinguish the counted ballot from the uncounted ballots. After each stack of ballots is counted, the tally clerk shall exchange the stack of tabulated ballots with the other tally clerk on the hand count tally team. Once both tally clerks have counted a stack of ballots, the reviewing clerk shall ensure the ballots are tied with a string or bound with a paper clip, binder clip or rubber band in a stack of not more than 25 ballots.

(d) The verification clerk shall oversee the work of the two tally clerks to ensure that the tally count matches for same stack of ballots. If the count of the tally clerks:

(1) Matches, the tally 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. A member of a hand count tally team may not use or bring any other 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 pencils.*