

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

LCB FILE NO. R011-23I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/22/2023**

2023 Regulatory Review

Regulations related to the PPP must be in place no later than the last business day of September (Sept 29, 2023)

1. Other adjustments to existing regulations in NAC 293

a. NAC 293.010

i. Amend NAC 293.010(4) as follows:

4. “Results cartridge” means the cartridge *or memory device* of a mechanical recording device which contains the electronically recorded ballots cast during the election and from which the ballots are tabulated.

ii. Amend NAC 293.010(9) as follows:

9. “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 *during the period for early voting or* on the day of the election.

b. NAC 293.015

i. Amend NAC 293.015 as follows:

NAC 293.015 “Polling place” interpreted for purposes of prohibition on soliciting votes and electioneering. (NRS 293.124, 293.361, 293.740) As used in NRS 293.361 and 293.740, the Secretary of State will interpret the term “polling place” to mean any place that is designated by the county clerk for voting by personal appearance *including without limitation a mail ballot drop box location established pursuant to NRS 293.269921.*

c. NAC 293.090

i. Amend to reference 52 USC, not 42 USC

d. NAC 293.160

i. Amend as follows:

NAC 293.160 Conduct of voting. (NRS 293.124, 293.247, 293.273)

1. *The chair of the election board shall designate the officer of the election board who is to make the proclamation required pursuant to NRS 293.273. That officer shall make the proclamation at the entrance or inside of the polling place.*

2. *During the time the polls are open, the members of an election board may take time for meals or personal needs, except that only one member may be absent at any time from a polling place where four or fewer members are employed, and only two members may be absent at any time from a polling place where five or more members are employed.*

3. The election board shall, to the extent possible, prevent any person who has given assistance in voting to another from disclosing the nature of the assisted person's vote.

4. Any election board which receives mailing ballots from the county clerk shall follow the procedure prescribed for ~~absent ballots in NRS 293.333 and 293.335~~ mail ballots in NRS 293.26991-293.26997.

5. When it is time to close the polls, a member of the election board shall proclaim that the polls are closed for voting.

6. After the completion of an election, all ballots and paper records of VVPATs must be returned by the sheriff or representative of the county clerk and placed by him or her in a secure storage area designated and provided by the county clerk.

7. If ~~an absent~~ a mail ballot central counting board is appointed, the members of the board shall meet at a place designated by the county clerk ~~as soon as the polls close at the time designated by the county clerk to begin the processing of mail ballots. The board of county commissioners shall prepare abstracts of votes on a form which was submitted by the county clerk to and approved by the Secretary of State.~~

e. NAC 293.173 – Amended as follows:

NAC 293.173 Counting of votes cast by certain challenged voters. (NRS 293.124, 293.247)

1. If an ~~absent~~ mail ballot central counting board has been established pursuant to ~~NRS 293.235~~ NRS 293.269929, ballots cast by voters whose eligibility to vote has been successfully challenged solely on the basis of a change of residence within the county must be counted and recorded separately from those cast by other voters in any precinct *pursuant to NRS 293.304*.

2. If an ~~absent~~ mail ballot central counting board has not been established, the county clerk shall provide the manner of counting such ballots.

f. Amend NAC 293.203(d) as follows:

(d) A plan for the security of ballots for early voting *and election day*;

g. Amend NAC 293.207(2)(c) as follows:

2. If a registered voter with a disability indicates on the application for a ballot that he or she will return the ballot by mail, the local elections official must provide to the registered voter a ballot and instructions for marking and returning the ballot, including, without limitation:

(a) How to indicate the candidate or candidates for whom the voter is voting;

(b) How to correct the ballot if the voter commits an error marking the ballot or wants to change the candidate or candidates for whom the voter is voting;

(c) An explanation that the completed ballot must be inserted into the accompanying privacy sleeve or envelope;

(d) An explanation that the registered voter must insert the ~~privacy envelope or sleeve into the declaration envelope~~ ballot and secrecy sleeve into the return envelope and sign the accompanying declaration of covered voter;

h. Amend NAC 293.211(1) as follows (repeal all of subsection 1):

~~1.—Cause a unique identification number to be included on the ballot.~~

i. Amend NAC 293.215 as follows:

NAC 293.215 *Electronic notification to Secretary of State of opening and closing of polls during period for early voting.* (NRS 293.124, 293.247, 293.3568)

1. On each voting day during the period for early voting described in NRS 293.3568, the county clerk shall notify the Secretary of State by ~~facsimile~~ **phone call** or electronic mail:

(a) If the opening or closing of any ~~permanent~~ polling place located within the jurisdiction of the county clerk was delayed. The notification required pursuant to this paragraph must be sent to the Secretary of State as soon as practicable after the delay occurs and must include, without limitation, an explanation of the reason for the delay.

(b) Of the number of persons who cast ballots on that day at each ~~permanent~~ polling place located within the jurisdiction of the county clerk. The notification required pursuant to this paragraph must be sent to the Secretary of State as soon as practicable after the close of all permanent polling places located within the jurisdiction of the county clerk.

2. If a county clerk reports a delay of an opening or closing of a polling place pursuant to paragraph (a) of subsection 1, the county clerk shall inform the Secretary of State when the delay has been cured and the polling place has opened or closed, as the case may be. The notification required pursuant to this subsection must be sent to the Secretary of State as soon as practicable after the opening or closing, as the case may be, of the polling place.

3. On the last day of the period for early voting described in NRS 293.3568, the county clerk shall notify the Secretary of State by facsimile or electronic mail at the time when all polling places within the jurisdiction of the county clerk closed that day. The notification required pursuant to this subsection must be sent to the Secretary of State as soon as practicable after the close of all permanent polling places located within the jurisdiction of the county clerk.

j. Amend NAC 293.217(4) as follows:

4. Each county clerk shall submit a plan to the Secretary of State setting forth the procedures that the county clerk will use for:

(a) Opening and closing all polling places within the jurisdiction of the county clerk; and

(b) Notifying the Secretary of State of election results **tabulated during the period for early voting and received** on the day of election.

k. NAC 293.220 - Amend NAC 293.220(1)(d) as follow:

(d) If the polling place:

(1) Is a vote center, a means to ~~print~~ **electronically provide** each sample ballot which pertains to the election upon request; or

(2) Is not a vote center, at least three copies of each sample ballot which pertains to the election;

l. Amend NAC 293.225 by adding NAC 293.240 to (1)(b)

- m. Amend NAC 293.240 by removing (2) entirely. It is not possible to accomplish (2. A member of the election board shall not permit any person to enter a voting booth to vote until he or she ascertains that the person understands how to operate the vote recording device.)
- n. Amend NAC 293.249 and .250 (same amendment to both under subsection 1 in both):
 - i. Add “the number of uncast ballots that were surrendered by voters”
 - ii. Add “the number of voted ballots dropped off to be delivered to the central counting board for processing”
- o. Amend NAC 293.275 as follows:

*NAC 293.275 Notification of certain persons of ability to cast provisional ballot. (NRS 293.124, 293.247) The county clerk, or a designee thereof, shall inform any person whose name does not appear on a voter registration list as an eligible voter for a polling place, or who an election official asserts is not eligible to vote at the polling place, of the ability of the person to cast a provisional ballot **and that they can register to vote up to the close of polls on election day pursuant to NRS 293.5842.***

- p. Amend NAC 293.305 as follows:

NAC 293.305 Delivery of ~~absent~~ mail ballot by mail. (NRS 293.124, 293.247, 293.323) When a county clerk sends a voter an ~~absent~~ mail ballot pursuant to NRS 293.~~323~~ .269911, the county clerk shall use an envelope that may not be forwarded to an address of the voter that is different from the address to which the ~~absent~~ mail ballot is mailed.

- q. Amend NAC 293.311 as follows:

NAC 293.311 Procedures for handling ~~absent~~ mail voters’ ballots in county with ~~absent~~ mail ballot central counting board; county clerk required to post public notice; general public authorized to observe handling of ~~absent~~ mail ballots. (NRS 293.124, 293.247)

1. In a county in which the county clerk has appointed an ~~absent~~ mail ballot central counting board and posted a statement pursuant to subsection 2, the county clerk may, not earlier than ~~4 15~~ working days before election day ~~and not later than 5 p.m. on the second working day before election day~~, deliver the ~~absent~~ mail voters’ ballots to the ~~absent~~ mail ballot central counting board. When the ballots are received, the ~~absent~~ mail ballot central counting board shall:

(a) Sort the ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district, unless the system for counting the ballots produces an accounting of the ballots by precinct or voting district;

(b) Count the number of ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district;

(c) Account for all ballots on the statement of ballots; and

(d) Place all the ballots and the statement of ballots into the container provided by the county clerk to transport those items to a central counting place and seal the container. The container and seal used must comply with the provisions of [NRS 293.462](#).

2. Not later than 2 working days before the date of delivery of the ballots pursuant to subsection 1, the county clerk must post a statement in his or her office that notifies the public of any actions that will be taken pursuant to subsection 1.

3. Any **absent mail** ballots received by the county clerk after he or she delivers the ballots pursuant to subsection 1 must be:

(a) Stored and secured pursuant to the provisions of [NRS 293.325](#) after those ballots have been returned pursuant to subsection 1; and

(b) Processed pursuant to the provisions of [NRS 293.3625](#) to [293.397](#), inclusive.

4. The county clerk shall allow members of the general public to observe the handling of the **absent mail** ballots conducted pursuant to subsection 1 if those members do not interfere with the handling of the **absent mail** ballots *or compromise the security or secrecy of the ballots.*

r. Amend NAC 293.313 to replace “absentee” with “mail”. No other changes

s. Amend NAC 293.315 to replace “absentee” with “mail”. No other changes

t. Amend NAC 293.317 as follows:

NAC 293.317 Absent Mail ballot: Receipt; recording; verification of signature. ([NRS 293.124](#), [293.247](#), [293.250](#), ~~[293.317](#)~~, [293.269921](#))

~~1. To be counted, an absent ballot must be received by the office of the county clerk by 7 p.m. on the day of the election. In order for a mail ballot to be counted for any election, the mail ballot must be:~~

(a) Before the time set for closing of the polls, delivered by hand to the county clerk, or any ballot drop box established in the county pursuant to this section; or

(b) Mailed to the county clerk, and:

(1) Postmarked on or before the day of the election; and

(2) Received by the clerk not later than 5 p.m. on the fourth day following the election.

2. If a mail ballot is received by mail not later than 5 p.m. on the third day following the election and the date of the postmark cannot be determined, the mail ballot shall be deemed to have been postmarked on or before the day of the election.

~~2.~~ 3. The county clerk shall place each rejected absent ballot in a separate envelope and note on the outside of the envelope the appropriate number of the precinct and the reason for the rejection of the absent ballot.

~~3.~~ 4. When an absent ballot is returned to the county clerk, the county clerk shall:

u. Amend NAC 293.319 as follows:

NAC 293.319 Absent Mail ballot: Reporting requirements after election. ([NRS 293.124](#), [293.247](#), [293.250](#)) Not later than 60 days after the date of an election, a county clerk shall report to the Secretary of State, in the form prescribed by the Secretary of State:

1. The number of **absent Mail** ballots for that election that the county clerk sent using approved electronic transmission.

2. The number of **absent Mail** ballots for that election that were returned by voters using approved electronic transmission.

3. The number of **absent Mail** ballots described in subsection 2 which were counted by the county clerk.

4. The number of uncast mail ballots dropped off at each drop box or polling location to be surrendered.

5. The number of cast mail ballots dropped off at each drop box or polling location for tabulation at the central counting place.

6. The number of voters who registered to vote in-person (SDRI) through the in-person early voting period and on election day.

7. *The number of voters who updated their voter registration (SDRU) through the in-person early voting period and on election day.*

8. *The number of voters who registered to vote online (SDRO) through the in-person early voting period and on election day.*

v. **Amend NAC 293.322(1) as follows:**

NAC 293.322 Duties of mail ballot central counting board; county clerk required to post public notice; general public authorized to observe handling of mail ballots. (NRS 293.124, 293.247)

1. The county clerk shall, not earlier than 15 days before the day of the election, deliver the mail ballots to the mail ballot central counting board for counting. When the mail ballots are received, the mail ballot central counting board shall, in addition to the requirements of NRS 293.269931, 293.269933 and 293.269935:

(a) Sort the mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district, unless the system for counting the mail ballots produces an accounting of the mail ballots by precinct or voting district;

(b) Count the number of mail ballots by precinct or, for those precincts that have been consolidated into a single voting district, by voting district;

(c) Account for all *returned* mail ballots on the record of mail ballots; and

(d) Place all the *received* mail ballots and the record of *returned* mail ballots into the container provided by the county clerk.

w. **Amend NAC 293.323 as follows:**

NAC 293.323 Unique color for return envelopes: Request by clerks; printing. (NRS 293.124, 293.247, 293.250, 293.269911, 293.269913, 293C.263, 293C.26312)

1. Each county and city clerk must submit to the Secretary of State a request to use a unique color ~~for~~ *upon* all return envelopes that are enclosed with mail ballots in the county or city, as applicable. If more than one clerk requests to use the same color ~~for~~ *on their* return envelopes, the Secretary of State will determine which clerk is allowed to use that color for return envelopes. The Secretary of State will inform the county or city clerk whether the request is approved.

~~2. Before January 1, 2024, the return envelope enclosed with each mail ballot sent to a registered voter by a county or city clerk may be printed in the unique color approved by the Secretary of State pursuant to subsection 1 for the county or city.~~

3. On and after January 1, 2024, the return envelope enclosed with each mail ballot sent to a registered voter by a county or city clerk must be printed ~~in~~ *with* the unique color approved by the Secretary of State pursuant to subsection 1 for the county or city.

x. **Amend NAC 293.412(4)(b) & (4)(b)(1):** replace “absent ballot” with “mail ballot”

y. **Amend NAC 293.245:** Add to (3) - the clerk or SOS may assess a charge or fee pursuant to NRS 293.443

z. Amend NAC 293.454 as follows:

NAC 293.454 Establishment and maintenance of computerized database of registered voters.
(NRS 293.124, 293.675)

1. Each county clerk shall ~~use establish~~ and maintain ~~a the~~ computerized database of registered voters in the county that is ~~established compatible with the statewide voter registration list and meets such technical requirements as may be prescribed~~ by the Secretary of State ~~pursuant to NRS 293.675~~. The database must include, without limitation:

aa. Amend NAC 293.480 as follows:

NAC 293.480 Requirements; participation in pilot program for 2022 Primary Election and 2022 General Election. [Effective through December 31, 2023.] (NRS 293.124, 293.247, 293.394, § 37.7 of ch. 554, Stats. 2021)

1. ~~The provisions of this section apply to any risk-limiting audit conducted after January 1, 2024. 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.~~

~~(ea) Must conduct a risk-limiting audit of the 2022 General Election. following any election.~~

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

(a) One race for statewide office, **if applicable**. 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, **if applicable**. 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~~, 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.

bb. Amend NAC 293.740 as follows:

NRS 293.740 Soliciting votes and electioneering inside polling place or within certain distance from polling place prohibited; penalty.

1. Except as otherwise provided in subsection 2, it is unlawful inside a polling place or within 100 feet from the entrance to the building or other structure in which a polling place is located:

(a) For any person to solicit a vote or speak to a voter on the subject of marking the voter's ballot.

(b) For any person, including an election board officer, to do any electioneering on election day.

➤ The county clerk or registrar of voters shall ensure that, at the outer limits of the area within which electioneering is prohibited, notices are continuously posted on which are printed in large letters "Distance Marker: No electioneering between this point and the entrance to the polling place."

2. The provisions of subsection 1 do not apply to the conduct of a person in a private residence or on commercial or residential property that is within 100 feet from the entrance to a building or other structure in which a polling place is located. The provisions of subsection 1 are not intended to prohibit a person from voting solely because he or she is wearing a prohibited political insigne and is reasonably unable to remove the insigne or cover it. In such a case, the election board officer shall take such action as is necessary to allow the voter to vote as expediently as possible and then assist the voter in exiting the polling place as soon as is possible.

3. Any person who violates any provision of this section is guilty of a gross misdemeanor.

4. As used in this section, “electioneering” means campaigning for or against a candidate *on the ballot in that particular election*, ballot question *on the ballot in that particular election* or political party *who has candidates representing their political party on the ballot in that particular election* by:

- (a) Posting signs relating to the support of or opposition to a candidate, ballot question or political party;
- (b) Distributing literature relating to the support of or opposition to a candidate, ballot question or political party;
- (c) Using loudspeakers to broadcast information relating to the support of or opposition to a candidate, ballot question or political party;
- (d) Buying, selling, wearing or displaying any badge, button or other insigne which is designed or tends to aid or promote the success or defeat of any political party or a candidate or ballot question to be voted upon at that election;
or
- (e) Soliciting signatures to any kind of petition.