



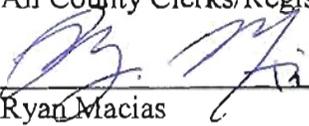
**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT  
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July 20, 2009

County Clerk/Registrar of Voters (CC/ROV) Memorandum #09118

TO: All County Clerks/Registrars of Voters

FROM:

  
\_\_\_\_\_  
Ryan Macias  
Voting Systems Analyst

RE: Recounts: Revised Proposed Regulations

In response to public comments received during the initial 45-day public comment period, the Secretary of State has revised the proposed regulations on recounts. A copy is attached showing additions in italics and deletions in strikeout type. A second, "clean" copy of revised proposed regulations is also attached. The third and final attachment is an Updated Statement of Reasons, summarizing and responding to the written public comments received during the initial public comment period. Members of the public may comment on the revised recount regulations for a period of 15 days. All public comments must be received by Tuesday, August 4, 2009, at 5:00 p.m. Submit written comments to:

Lowell Finley,  
Deputy Secretary of State, Voting Systems Technology and Policy,  
Office of the Secretary of State  
1500 11th Street, 6th Floor  
Sacramento, CA 95814

Please direct questions and concerns to Lowell Finley at [lfinley@sos.ca.gov](mailto:lfinley@sos.ca.gov), with a copy to [votingsystems@sos.ca.gov](mailto:votingsystems@sos.ca.gov). You can also contact Ryan Macias by telephone at (916) 653-7244.

Attachments: 3

TEXT OF PROPOSED REGULATIONS

Add Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 to Division 7 of Title 2 of the California Code of Regulations.

Chapter 8. Recounts

Article 1. General Provisions.

§ 20810. Purpose.

- (a) The purpose of this chapter is to establish standards and procedures for conducting recounts of votes cast for all elections in the State of California requested pursuant to Chapter 9 of Division 15 of the California Elections Code.
- (b) This chapter applies to the Secretary of State and all elections officials within the State of California in conducting recounts of votes cast for all elections in this state.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15600 and 15601, Elections Code.

20811. Definitions.

- (a) "Election data media device" means a card, cartridge, USB flash memory stick or other digital storage device that stores ballot information and/or voting results information in a non-volatile form.
- (b) "Governing body" includes, but is not limited to, a city council or a county board of supervisors.
- (c) "Interested party" includes, but is not limited to, the requestor and those persons identified in Elections Code section 15628.
- (d) "Observer" means any representative of a qualified political party, representative of a bona fide association of citizens, or other person who wishes to observe the recount proceedings subject to space limitations.
- (e) "Qualified political party" means only a political party qualified to participate in the last primary election.

(f) "Relevant material" includes but is not limited to unvoted ballots, vote by mail and provisional ballot envelopes, voting system redundant vote data, ballot definition files, language translation files and the central database or other electronic repository of results for the election in which the contest subject to recount occurred, election data media devices, audit logs, system logs, pre- and post-election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results and consolidated results in a structured, non-proprietary format, surveillance video recordings and chain of custody logs, including logs of security seals and access to election-related storage areas.

(g) "Requestor" means a voter who requests a recount or any other voter who, during the conduct of a recount and for 24 hours thereafter, requests the recount of additional precincts not recounted as a result of the original request.

(h) "Vote tabulating device" means any piece or combination of pieces of equipment, other than a voting machine operated by levers or other mechanical means, that compiles a total of votes cast by

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Deleted: "System redundant vote data" means each and every electronic record of election results for ballots cast in an election on one or more voting system units that is stored in any part of the voting system other than the jurisdiction's central electronic repository of results for that election. ¶  
(h) For purposes of these regulations,

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means of electronic data processing and ballot card sorting, ballot card scanning, or paper ballot scanning.

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(i) "Voter" means any elector who is registered under the Elections Code.

(j) "Vote for One" means an election for an office in which the voter may select only one candidate.

(k) "Vote for Multiple" means an election for an office in which the voter may select two or more candidates.

(l) "Voter verified paper audit trail paper copy" does not include a voter verified paper audit trail paper copy from a direct recording electronic voting machine that was used only with a ballot definition or ballot definitions that did not include the contest being recounted.

(m) "Voting system redundant vote data" means each and every electronic record of election results for ballots cast in a contest subject to recount on one or more voting system units that is stored in any part of the voting system other than the jurisdiction's central electronic repository of results for that election. Some voting systems do not have redundant vote data on all tabulating or recording devices.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 358, 359, 361, 15620, 15621, 15623, and 15625, Elections Code.

#### § 20812. Who May Request Recount.

(a) Any voter may, pursuant to Elections Code sections 15620, 15621 or 15623, request a recount.

(b) Upon receipt of a request for recount, the elections official shall verify that the person requesting the recount is registered to vote in this state.

(c) Any time during the conduct of a recount and for 24 hours thereafter, any voter other than the original requestor may, pursuant to Elections Code sections 15620, 15621 or 15623, request the recount of any precincts not recounted as a result of the original recount request.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15620, 15621 and 15623, Elections Code.

#### § 20813. Material To Be Examined; Relevant Material.

(a) Requests to examine specific categories of relevant material shall be made by the requestor in writing and shall be received by the elections official before the recounting of ballots commences.

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(b) The elections official shall produce any relevant material requested.

(c) The elections official may establish reasonable guidelines for the production and examination of relevant material. The guidelines shall permit photocopying, photography and videotaping of all relevant material except in a manner that would record un-redacted voter signatures.

**Deleted:** For purposes of this section, "relevant material" includes but is not limited to vote by mail and provisional ballot envelopes, voting system redundant vote data, election data media devices, audit logs, system logs, pre- and post-election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results, consolidated results, surveillance video recordings and chain of custody logs, including logs of security seals and access to election-related storage areas.

(d) The elections official shall communicate any request to examine ballots or other relevant material to each interested party or to his or her representative. The interested parties and their representatives appointed pursuant to section 20816(a)(1) may be present during the examination of ballots or other relevant material.

(e) The elections official, or his or her designee, shall be present during the examination of original ballots or original relevant material, but is not required to be present during the examination of copies of relevant material if the written request specified production of copies for examination.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15629 and 15630, Elections Code.

§ 20814. Order of Recount.

- (a) If no order in which precincts are to be counted is specified in the request for recount, the elections official shall determine the counting order of precincts.
- (b) The requestor may request, in writing, a change to the order of precinct counting determined by the elections official or specified in the requestor's initial request for a recount. Any change in the counting order of precincts is subject to the approval of the elections official.
- (c) Any additional estimated costs associated with requests to change the order of precinct counting shall be paid by the requestor prior to re-ordering the precincts.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Section 15622, Elections Code.

§ 20815. Cost of Recount.

- (a) The elections official shall estimate the costs necessary to produce relevant material and the requestor shall pay an advance deposit of the estimated amount at least one day prior to the materials being produced.
- (b) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the elections official's discretion, electronic payment by credit or debit card may be accepted.
- (c) At least one day prior to the commencement of the recount, the elections official shall determine the estimated cost for the first day of the recount and shall advise the requestor in writing of the advance deposit required. The requestor shall, before the recount is commenced, deposit this amount with the elections official. The same procedure shall be followed for each subsequent day of the recount. Daily estimates may vary based upon experience or additional requests made during the course of the recount.
- (d) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the elections official's discretion, electronic payment by credit or debit card may be accepted.
- (e) All actual costs of the recount that would not have been incurred but for the requestor's particular recount request shall be directly recoverable from the requestor and may include, but are not limited to, additional supervision hours, security guard hours, the elections official's staff hours, space rental, transportation of ballots and materials and administrative costs.
- (f) The elections official shall issue a receipt for payment of the deposits and shall maintain a daily log of estimated costs, deposits, actual expenses and amount of refund due, if any.
- (g) If the advance deposit is not paid by a particular requestor, the elections official will terminate the recount of precincts specified by that requestor.
- (h) When the recount is completed or discontinued, any amount collected from a voter requesting the recount, which exceeds the actual costs, shall be refunded to that requestor.
- (i) If upon completion or discontinuation of the recount actual costs exceed the prepaid estimated costs, the elections official shall charge and the requestor shall pay the additional amount.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

§ 20816. Location of Recount.

- (a) The recount shall take place in a location to be determined by the elections official. The elections official shall choose a location that is large enough to accommodate the presence of the following:
- (1) Not more than two representatives of each interested party and each qualified political party to check and review the preparation, testing and operation of the tabulating devices, and to attend any or all phases of the recount; and
  - (2) Not more than two representatives of any bona fide association of citizens or a media organization to check and review the preparation, testing and operation of the tabulating devices, and have the representatives in attendance at any or all phases of the recount.
  - (3) In the event the elections official determines that more than two recount boards are necessary, each interested party may designate one additional representative for every additional recount board appointed, solely for the purpose of viewing the recount of ballots and challenging ballots.
- (b) The elections official may limit the total number of representatives employed pursuant to subdivision (a)(2) in attendance to no more than 10 by a manner in which each interested bona fide association of citizens or media organization has an equal opportunity to participate. Any representatives employed and in attendance pursuant to subdivision (a)(1) or (a)(3) shall not be subject to the limit specified in this subdivision.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 5100, 15004, 15625, 15628 and 15629, Elections Code.

§ 20817. Security.

- (a) The elections official shall, within six (6) months of the effective date of these regulations, submit to the Secretary of State written security measures for recounts to ensure the integrity of the recount proceedings. The security measures shall include, but not be limited to, chain of custody controls and signature-verified documentation for all voter verified paper audit trail paper copies, voted, spoiled and unused ballots, and all “relevant material” as described in section 20811(f). If submission by the vendor of a security plan to the Secretary of State is a condition of approval of voting system use, written notice to the Secretary of State of designation of that security plan to govern recounts satisfies the requirement of this subdivision.
- (b) Upon request, all persons authorized to observe the recount pursuant to section 20816 must be permitted to observe and inspect, without physical contact, the integrity of all externally visible security seals used to secure all ballot materials, voter verified paper audit trail paper copies, printed ballot images, relevant material as described in section 20811(f), and recount documentation in a reasonable time and manner that does not interfere with the conduct of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15624 and 15625, Elections Code.

§ 20818. Staffing.

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(a) Prior to the commencement of the recount, the elections official shall determine the number of special recount boards necessary to complete the recount in a timely manner. The elections official shall appoint four voters of the county to each special recount board. A voter who is also an employee of the elections' official's jurisdiction shall not be compensated as a special recount board member pursuant to Elections Code section 18625 for any day for which the jurisdiction otherwise compensates the employee unless the employee uses one of his or her vacation days.

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(b) There shall be one supervisor for every four special recount boards. The supervisor's function is to enforce the rules and transport ballots and reports. The supervisor shall not resolve challenges.

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(c) At the end of each day, the elections official or his or her designee shall post and announce publicly the following:

(1) The results of the recount tally of each precinct recounted that day;

(2) The certified election results tally for each precinct recounted that day;

(3) A running tally of the total recount results for all precincts recounted to date; and

(4) A running tally of the total certified election results for all precincts recounted to date. (d) The

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elections official shall determine whether additional personnel is necessary for tasks such as producing relevant material, sorting or retrieving materials, or checking signatures.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Section 15625, Elections Code.

#### § 20819. Scheduling.

The elections official shall set the daily schedule for the recount, including hours of operation, approximate break and lunch times, in accordance with the requirements of Elections Code section 15626. The schedule shall be posted in a conspicuous place at the office of the elections official and at the location where the recount takes place, if different.

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Deleted: A special recount board shall not stop for a break or lunch while recounting a precinct.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625 and 15626, Elections Code.

#### § 20820. Spokespersons and Observers.

(a) Any person may observe the recount proceedings, subject to space limitations of the recount location selected by the elections official pursuant to section 20816.

(b) Upon request by the elections official, each interested party shall appoint one of his or her representatives to serve as a spokesperson authorized to make decisions with respect to the recount on behalf of the interested party, or the interested party may serve as his or her own spokesperson. When accompanied by an elections official or his or her designee, the spokesperson shall have access to all areas where ballots are recounted by hand or tabulated by machine.

(c) Questions other than ballot challenges shall be routed through the spokesperson, who shall then direct the question to the elections official or his or her designee. Official discussions with any interested party concerning resolution of questions shall include each interested party or his or her spokesperson.

(d) The elections official may require any requestor, interested party, representative, or observer of the

recount proceedings to log in and receive an identification badge before entering the recount location. If required, identification badges shall be worn at all times and returned to the elections official at the end of the day.

(e) Requestors, interested parties, representatives, and observers shall not interfere in any way with the conduct of the recount, touch any voting system components, ballots, tally sheets or other special recount board materials, sit at the official recount worktables, place any material on the official recount worktables, talk to members of the special recount boards or supervisors, while they are processing ballots or other recount materials or assist in recount procedures.

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(f) The elections official may deny entry to the recount location to any person who fails to comply with the requirements of this section.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code. Reference: Sections 15625, 15629 and 15630, Elections Code.

§ 20821. Media, Photography and Recording Devices.

(a) The elections official shall, within six (6) months of the effective date of these regulations, develop a written policy providing reasonable access to the recount location by the media, and the use of cameras or audio or video recording devices in the recount location in a manner that will not interfere with the recount, compromise the anonymity of any ballot or record the signature of any voter. Interested parties and observers shall be permitted the same access for use of cameras or audio or video recording devices as members of the media.

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(b) No interviews shall be permitted in the recount location while the recount is being conducted.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code. Reference: Sections 15625 and 15629, Elections Code.

§ 20822. Results of Recount.

(a) Upon completion of the recount, the elections official shall post the results of the recount in a highly visible public location in the elections official's office.

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(b) In a recount of an election for a statewide office or measure, Assembly, State Senate, Presidential convention delegate or state of electors, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State. The Secretary of State shall compile the results of the recount and notify the affected counties within five (5) business days of receipt of all of the results of the recount as to whether the recount has changed the outcome of the election, as provided in Elections Code section 15632.

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(c) If the outcome of an election has changed as a result of a recount, as provided in Elections Code section 15632, the elections official shall: (1) In a recount of an election for a statewide office or measure, Assembly, State Senate, presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, recertify the official returns for the recounted election with the new official count for each precinct involved in the recount and send a copy of the recertification to the Secretary of State.

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(2) In a recount of an election for any office or measure not included in subdivision (c)(1), recertify the official returns for the election with the new official count for each precinct involved in the recount and send a copy of the recertification to the public official or governing body that declares the results of the

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election subject to the recount, in order that they may adopt the recertification and re-declare the results of the election.

(3) Refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome of the election. If a recount conducted in multiple counties changed the overall outcome of the election, all monies deposited in all affected counties by such a requestor shall be refunded. No refund shall be made if the recount did not change the overall outcome of the election.

**Deleted:** (3) In a contest for statewide office, Assembly, State Senate, Presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15624, 15625, 15632 and 15633, Elections Code.

§ 20823. Challenges.

(a) A challenged ballot shall be set aside with a notation indicating the precinct number, the method by which it was originally counted for the official canvass, e.g., direct recording electronic voting system, scanner or hand count, the challenge number assigned to the ballot, the reason for the challenge, and the identity of the person making the challenge.

(1) A ballot that was counted in the official canvass, including a counted vote by mail or provisional ballot, may be challenged only on grounds of disqualifying distinguishing marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.

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(2) A voted ballot that was not counted in the official canvass, including a rejected unopened vote by mail or provisional ballot, may be challenged and added to the count if the elections official determines that the ballot was properly cast.

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(b) Resolution of challenged ballots shall take place in a segregated area within the recount location, separate from that being used to perform the recount, as determined by the elections official, to avoid confusion and mixing of ballots.

(c) Challenges shall be resolved each day after all special recount boards complete their work, or more often if necessary, as determined by the elections official, but in any event before the conclusion of all recount proceedings. The determination of the elections official on a challenge shall be final. The elections official shall maintain a record of each challenge and the determination on each challenge.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625 and 15631, Elections Code.

Article 2. Recount of Votes Cast On Ballot Cards or Paper Ballots and Originally Tabulated Automatically.

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§ 20830. Recounts Using the Type of Vote Tabulating Devices Used In the Election.

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(a) Prior to conducting a recount of ballot cards or paper ballots using the type of vote tabulating devices used in the election, a logic and accuracy test limited to the contest subject to recount shall be conducted on each of the vote tabulating devices to be used in the recount, using a test deck created to test logic and accuracy for the contest to be recounted. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The results of the test, as well as the test deck used, shall be made available for inspection by any requestor, spokesperson, member of the media or

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observer present at the recount location between the time the test is completed and the posted time for recounting of ballots to begin.

(b) A recount, using the type of vote tabulating devices used in the election shall, to the maximum extent possible, be conducted using the same methods used to tabulate the ballots originally, and shall include the following:

(1) On equipment capable of producing a paper tape or print-out, a zero-results tape or report shall be printed from each vote tabulating device, if feasible without new election coding and if supported by the device in the configuration used in the election, and verified by the requestor and spokespersons prior to any processing of ballots with that device.

(2) If necessary to preserve the original vote count record, a backup of the election results shall be made and the same type of memory media that was used in the election shall be prepared to capture the recount vote results.

(3) Each voted ballot shall be processed with the same type of vote tabulating devices used in the election.

(4) Ballots that cannot be read by the vote tabulating devices shall be corrected or duplicated in accordance with Elections Code sections 15208, 15210 and 15211.

(c) Once all eligible ballots cast in a precinct have been processed by a tabulating device, the device shall, if supported by the voting system, be rendered incapable of accepting further ballots for that precinct and the vote results shall be printed from that device and made available for public inspection. If supported by the voting system, the following steps shall also be taken:

(1) Recount vote results of ballots cast in each precinct subject to recount shall be uploaded to the voting system's central tabulation and reporting application; and

(2) The elections official shall report separately the recount vote results for each precinct subject to recount. Such reporting will include the number of ballots undervoted and overvoted in the recounted contest.

(d) At the conclusion of tabulation of all precincts designated for the recount, a logic and accuracy test limited to the contest subject to recount shall be conducted on each tabulating device used in the recount, using the same test deck created prior to the recount to test logic and accuracy for the contest. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816.

The elections official shall make the results of the logic and accuracy test, as well as the test deck used for the test, available for inspection by the requestor, spokespersons, members of the media and observers at the recount location before the conclusion of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code. Reference: Sections 15633, 19220, 19360, 19370, 19380, 19381, 19382, 19383 and 19384, Elections Code.

§ 20831. Manual Recounts Generally.

(a) One of the four special recount board members shall read the ballot and call out the vote cast for the contest subject to recount on that ballot; one shall observe that the correct call was made, and two members shall each separately and independently record the votes as called out.

(b) Prior to beginning the actual manual recount, the elections official shall instruct all members of the special recount boards, requestor, interested parties, representatives and observers on the procedures to be followed for the recount and shall provide them with copies of these recount regulations, any local

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- Deleted: ) All vote by mail ballots cast in a precinct subject to recount, including early-voted ballots cast for that pr[...] [1]
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documentation concerning recount procedure, and documentation on how to interpret and read the votes cast on the ballot, consistent with federal and state law and the State Uniform Vote Count Standards. The instructions and documentation shall include a statement that in the event of a challenge, the determination of the elections official shall be final.

(c) Vote by mail and early-voted ballots cast from a precinct subject to recount shall be tabulated separately from ballots cast in a polling place on Election Day.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15101-15110, 15276, 15290 and 15625, Elections Code.

§ 20832. Manual Recounts, “Vote for One” Contests.

Manual recount tabulation on a voting system in a “Vote for One” contest is subject to the following requirements:

(a) Prior to counting the ballots, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct shall be separated into stacks that do and do not contain the contest. Those that contain the contest shall be sorted as follows:

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(1) Ballots that were not voted for the contest (under-voted);

(2) Ballots that were over-voted for the contest; and

(3) Ballots that were voted for the contest, sorted by candidate or position.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of either 10 or 25, at the discretion of the elections official.

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out the same number of counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) A requestor or an authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the ballots.

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Tallying will resume once the requestor or spokesperson has completed the inspection, which the requestor or spokesperson shall complete in a reasonable amount of time.

(f) Tallying shall continue in this manner, until all stacks of voted ballots have been tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes shall each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they shall each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the elections official. If the special recount board members announce

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different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded will be examined. If the difference can be explained by the special recount board or

supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written report shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct shall start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

§ 20833. Manual Recounts, “Vote for Multiple” Contests.

Manual recount tabulation on a voting system in a “Vote for Multiple” contest is subject to the following requirements:

(a) Prior to counting the ballots for the contest subject to recount, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct shall be separated into stacks that do and do not contain the contest. Those that contain the contest shall be sorted as follows:

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- (1) Ballots that were not voted for the contest (under-voted);
- (2) Ballots that were over-voted for the contest;

- (3) Ballots indicating a vote for the first candidate listed on the ballot for the contest; and
- (4) Ballots that do not indicate a vote for the first candidate listed on the ballot for the contest.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of 10 (or 25).

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out 10 (or 25) counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) A requestor or an authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the the inspection is completed, which the requestor or spokesperson shall complete in a reasonable amount of time.

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(f) Once all the votes for the first candidate have been recorded, the valid voted ballots shall be resorted into two stacks:

- (1) Ballots that were voted for the second candidate in the contest; and
- (2) Ballots that do not indicate a vote for the second candidate in the contest.

The ballots voted for the second candidate shall be calculated in accordance with (b) through (e) above. Tallying shall continue in this manner, until the votes for each candidate in the contest have been recounted and tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes will each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they will each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or

position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the elections official. If the special recount board members announce different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded and announced will be examined. If the difference can be explained by the special recount board or supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct will start over.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

### Article 3. Recount Of Votes Cast On Direct Recording Electronic Voting Systems.

#### § 20840. Recounts on Direct Recording Electronic Voting Systems Using Electronic Vote Results.

(a) Prior to conducting the actual recount of ballots, a logic and accuracy test limited to the contest subject to recount shall be conducted on each direct recording electronic voting system being used in the recount, using a test pattern created to test the logic and accuracy for the contest. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The elections official shall make the results of the logic and accuracy test, as well as the test pattern used for the test, available for inspection by the requestor, spokespersons and observers at the recount location before the conclusion of the recount.

**Deleted:** , using the same method used prior to the election subject to the recount pursuant to Elections Code section 15000.

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**Deleted:** The results of that test, as well as the test deck used, shall be made available for their inspection by the requestor, spokespersons and observers before the commencement of the recount.

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(b) If supported by the voting system, electronic recount tabulation on a direct recording electronic voting system shall be based on a re-import and re-tabulation of the vote results from the electronic media originally used to capture and transfer the vote results from the direct recording electronic voting system devices into the election management system for that voting system. If re-import from electronic media is not supported by the voting system, the DRE vote results shall be manually added to the final results. The elections official shall generate a report for each recounted precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19220, 19381, 19382 and 19383, Elections Code.

#### § 20841. Automated Recounts on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Paper Copies.

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(a) The voter requesting the recount of votes cast on a direct recording electronic voting system may request that it be conducted based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail paper copies. An automated scan shall not be used unless the Secretary of State has tested and approved the automated scan method as part of the certification of the voting system.

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(b) Prior to conducting the recount of voter verified paper audit trail paper copies from the direct recording electronic voting system, a logic and accuracy test limited to the contest subject to recount shall be conducted, using a test pattern and a test verified paper audit trail paper roll, on each automated

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scan and tabulation device to be used in the recount. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The elections official shall make the results of the logic and accuracy test, as well as the test pattern and test paper roll used for the test, available for inspection by the requestor, spokespersons and observers at the recount location before the conclusion of the recount.

**Deleted:** within the view of the requestor, spokespersons and observers. The elections official shall make the results of that test, as well as the test deck used, available for their inspection at the conclusion of the recount.

(c) Once all vote results have been scanned and captured from each scanning and tabulating device used for the recount, the elections official shall generate a report for each precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19201, 19220, 19250, 19251 and 19253, Elections Code.

§ 20842. Manual Recounts of Ballots Cast on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Paper Copies.

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The manual recount, using voter verified paper audit trail paper copies, shall include the following:

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(a) If the direct recording electronic voting system used in the election subject to recount created continuous roll, voter verified paper audit trail paper copies, the roll, shall be re-spoled if necessary to permit the recount to begin at the start of the roll. The roll may not be cut to separate the voter verified paper audit trail paper copies of individual voters.

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(b) One member of the special recount board shall be designated to review the voter verified paper audit trail paper copy and call out the vote results for the recounted contest from that paper copy. If it was printed and retained, this member shall begin by reviewing and verifying the zero-results tape printed prior to the opening of the polls and before any votes were captured. The zero-results tape, if it was printed and retained, shall also be reviewed and verified by the supervisor of the special recount board and by the requestor and spokespersons.

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(c) The board member designated to review and call out the vote results shall then proceed to review the voter verified paper audit trail paper copies in succession, calling out each ballot in turn and stating how the ballot was voted in the challenged contest until either 10 or 25 (at the discretion of the elections official) have been called out. If there is no legible voter verified paper audit trail paper copy for a ballot due to a malfunction of the voter verified paper audit trail printer, the elections official shall print the ballot image for that ballot from the memory device used by the direct recording electronic voting system to record the ballot. The board member designated to review and call out the votes results shall review the printed ballot image and shall state how the ballot was voted in the challenged contest.

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(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. The board member designated to call out the votes shall announce when either 10 or 25 votes (at the discretion of the elections official) have been called out, and the recorders shall confirm that their vote counts match exactly. If the vote counts match exactly, the board member reviewing and calling out the vote results shall draw a distinct line on the continuous voter verified paper audit trail roll between the individual voter verified paper audit trail paper copy containing the 10th or 25th counted vote and the individual voter verified paper audit trail paper copy for the next voted ballot, and the tally shall continue forward for the next 10 or 25 counted votes. If the vote counts do not match exactly, then the count for the last interval of voter verified paper audit trail

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paper copies shall be stricken from their tally sheets and those voter verified paper audit trail paper copies recounted.

(e) The individual voter verified paper audit trail paper copies or printed ballot images shall be displayed to permit the requestor, spokespersons and observers to view the contest subject to recount, either directly or indirectly, as the voter verified paper audit trail paper copy or printed ballot image is reviewed and called. Voter verified paper audit trail paper copies for ballots that were canceled or canceled and re-voted, shall be noted but not counted toward the vote results.

(f) A requestor or an authorized spokesperson may request to inspect any voter verified paper audit trail paper copy or printed ballot image. Tallying shall be halted while the voter verified paper audit trail paper copy or printed ballot image is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the voter verified paper audit trail paper copies or printed ballot images. Tallying shall resume once the inspection is completed, which the requestor or spokesperson shall complete in a reasonable amount of time.

(g) Tallying shall continue in this manner, breaks and meal times excepted, until the entire continuous voter verified paper audit trail record has been reviewed and tallied.

(h) After all ballots of a direct recording electronic voting system have been reviewed and tallied from its voter verified paper audit trail paper copies and, where necessary, printed ballot images, the special recount board members who have been recording the votes shall independently calculate the total votes for each candidate or vote position on their tally sheets. When both have completed totaling, each shall announce his or her totals for that candidate or vote position. If both announce the identical vote total for each candidate or vote position in the recounted contest, the recount of that direct recording electronic voting system shall be deemed complete and the recount shall proceed with the continuous voter verified paper audit trail roll for the next direct recording electronic voting system with voted ballots for the challenged contest.

(i) If the special recount board members announce different vote totals for the candidate or position, the recount tallies recorded and announced for that candidate or position shall be examined. If the difference can be explained by the special recount board or supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that direct recording electronic voting system shall be discarded and the recount of that candidate or position shall start over.

(j) Once all the voter verified paper audit trail paper copies and, where necessary, printed ballot images containing votes for a precinct have been reviewed and tallied, the recount of that precinct shall be deemed complete and the results reported to the elections official.

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Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19250 and 19382, Elections Code.

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) All vote by mail ballots cast in a precinct subject to recount, including early-voted ballots cast for that precinct, shall be tabulated for the recount on the same type of vote tabulating device that was used for the original tabulation. All ballots cast in a polling place on Election Day in a precinct subject to recount shall be tabulated on the same type of vote tabulating device, but not the same individual device, that was used for voting at the polling place.

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applying the same test method used

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prior to the election subject to the recount pursuant to Elections Code section 15000

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This test shall be conducted publicly within the view of the requestor, spokespersons and observers.

## TEXT OF PROPOSED REGULATIONS

Add Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, and 20842, of Chapter 8 to Division 7 of Title 2 of the California Code of Regulations.

### Chapter 8. Recounts

#### Article 1. General Provisions.

##### § 20810. Purpose.

- (a) The purpose of this chapter is to establish standards and procedures for conducting recounts of votes cast for all elections in the State of California requested pursuant to Chapter 9 of Division 15 of the California Elections Code.
- (b) This chapter applies to the Secretary of State and all elections officials within the State of California in conducting recounts of votes cast for all elections in this state.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15600 and 15601, Elections Code.

##### 20811. Definitions.

- (a) “Election data media device” means a card, cartridge, USB flash memory stick or other digital storage device that stores ballot information and/or voting results information in a non-volatile form.
- (b) “Governing body” includes, but is not limited to, a city council or a county board of supervisors.
- (c) “Interested party” includes, but is not limited to, the requestor and those persons identified in Elections Code section 15628.
- (d) “Observer” means any representative of a qualified political party, representative of a bona fide association of citizens, or other person who wishes to observe the recount proceedings subject to space limitations.
- (e) “Qualified political party” means only a political party qualified to participate in the last primary election.
- (f) “Relevant material” includes but is not limited to unvoted ballots, vote by mail and provisional ballot envelopes, voting system redundant vote data, ballot definition files, language translation files and the central database or other electronic repository of results for the election in which the contest subject to recount occurred, election data media devices, audit logs, system logs, pre- and post-election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results and consolidated results in a structured, non-proprietary format, surveillance video recordings and chain of custody logs, including logs of security seals and access to election-related storage areas.
- (g) “Requestor” means a voter who requests a recount or any other voter who, during the conduct of a recount and for 24 hours thereafter, requests the recount of additional precincts not recounted as a result of the original request.
- (h) “Vote tabulating device” means any piece or combination of pieces of equipment, other than a voting machine operated by levers or other mechanical means, that compiles a total of votes cast by

means of electronic data processing and ballot card sorting, ballot card scanning, or paper ballot scanning.

(i) “Voter” means any elector who is registered under the Elections Code.

(j) “Vote for One” means an election for an office in which the voter may select only one candidate.

(k) “Vote for Multiple” means an election for an office in which the voter may select two or more candidates.

(l) “Voter verified paper audit trail paper copy” does not include a voter verified paper audit trail paper copy from a direct recording electronic voting machine that was used only with a ballot definition or ballot definitions that did not include the contest being recounted.

(m) “Voting system redundant vote data” means each and every electronic record of election results for ballots cast in a contest subject to recount on one or more voting system units that is stored in any part of the voting system other than the jurisdiction’s central electronic repository of results for that election. Some voting systems do not have redundant vote data on all tabulating or recording devices.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 358, 359, 361, 15620, 15621, 15623, and 15625, Elections Code.

#### § 20812. Who May Request Recount.

(a) Any voter may, pursuant to Elections Code sections 15620, 15621 or 15623, request a recount.

(b) Upon receipt of a request for recount, the elections official shall verify that the person requesting the recount is registered to vote in this state.

(c) Any time during the conduct of a recount and for 24 hours thereafter, any voter other than the original requestor may, pursuant to Elections Code sections 15620, 15621 or 15623, request the recount of any precincts not recounted as a result of the original recount request.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15620, 15621 and 15623, Elections Code.

#### § 20813. Material To Be Examined; Relevant Material.

(a) Requests to examine specific categories of relevant material shall be made by the requestor in writing and shall be received by the elections official before the recounting of ballots commences.

(b) The elections official shall produce any relevant material requested.

(c) The elections official may establish reasonable guidelines for the production and examination of relevant material. The guidelines shall permit photocopying, photography and videotaping of all relevant material except in a manner that would record un-redacted voter signatures.

(d) The elections official shall communicate any request to examine ballots or other relevant material to each interested party or to his or her representative. The interested parties and their representatives appointed pursuant to section 20816(a)(1) may be present during the examination of ballots or other relevant material.

(e) The elections official, or his or her designee, shall be present during the examination of original ballots or original relevant material, but is not required to be present during the examination of copies of relevant material if the written request specified production of copies for examination.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15629 and 15630, Elections Code.

§ 20814. Order of Recount.

- (a) If no order in which precincts are to be counted is specified in the request for recount, the elections official shall determine the counting order of precincts.
- (b) The requestor may request, in writing, a change to the order of precinct counting determined by the elections official or specified in the requestor's initial request for a recount. Any change in the counting order of precincts is subject to the approval of the elections official.
- (c) Any additional estimated costs associated with requests to change the order of precinct counting shall be paid by the requestor prior to re-ordering the precincts.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Section 15622, Elections Code.

§ 20815. Cost of Recount.

- (a) The elections official shall estimate the costs necessary to produce relevant material and the requestor shall pay an advance deposit of the estimated amount at least one day prior to the materials being produced.
- (b) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the elections official's discretion, electronic payment by credit or debit card may be accepted.
- (c) At least one day prior to the commencement of the recount, the elections official shall determine the estimated cost for the first day of the recount and shall advise the requestor in writing of the advance deposit required. The requestor shall, before the recount is commenced, deposit this amount with the elections official. The same procedure shall be followed for each subsequent day of the recount. Daily estimates may vary based upon experience or additional requests made during the course of the recount.
- (d) The requestor shall pay the advance deposit using cash, cashier's check or money order. At the elections official's discretion, electronic payment by credit or debit card may be accepted.
- (e) All actual costs of the recount that would not have been incurred but for the requestor's particular recount request shall be directly recoverable from the requestor and may include, but are not limited to, additional supervision hours, security guard hours, the elections official's staff hours, space rental, transportation of ballots and materials and administrative costs.
- (f) The elections official shall issue a receipt for payment of the deposits and shall maintain a daily log of estimated costs, deposits, actual expenses and amount of refund due, if any.
- (g) If the advance deposit is not paid by a particular requestor, the elections official will terminate the recount of precincts specified by that requestor.
- (h) When the recount is completed or discontinued, any amount collected from a voter requesting the recount, which exceeds the actual costs, shall be refunded to that requestor.
- (i) If upon completion or discontinuation of the recount actual costs exceed the prepaid estimated costs, the elections official shall charge and the requestor shall pay the additional amount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

§ 20816. Location of Recount.

(a) The recount shall take place in a location to be determined by the elections official. The elections official shall choose a location that is large enough to accommodate the presence of the following:

(1) Not more than two representatives of each interested party and each qualified political party to check and review the preparation, testing and operation of the tabulating devices, and to attend any or all phases of the recount; and

(2) Not more than two representatives of any bona fide association of citizens or a media organization to check and review the preparation, testing and operation of the tabulating devices, and have the representatives in attendance at any or all phases of the recount.

(3) In the event the elections official determines that more than two recount boards are necessary, each interested party may designate one additional representative for every additional recount board appointed, solely for the purpose of viewing the recount of ballots and challenging ballots.

(b) The elections official may limit the total number of representatives employed pursuant to subdivision (a)(2) in attendance to no more than 10 by a manner in which each interested bona fide association of citizens or media organization has an equal opportunity to participate. Any representatives employed and in attendance pursuant to subdivision (a)(1) or (a)(3) shall not be subject to the limit specified in this subdivision.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 5100, 15004, 15625, 15628 and 15629, Elections Code.

§ 20817. Security.

(a) The elections official shall, within six (6) months of the effective date of these regulations, submit to the Secretary of State written security measures for recounts to ensure the integrity of the recount proceedings. The security measures shall include, but not be limited to, chain of custody controls and signature-verified documentation for all voter verified paper audit trail paper copies, voted, spoiled and unused ballots, and all “relevant material” as described in section 20811(f). If submission by the vendor of a security plan to the Secretary of State is a condition of approval of voting system use, written notice to the Secretary of State of designation of that security plan to govern recounts satisfies the requirement of this subdivision.

(b) Upon request, all persons authorized to observe the recount pursuant to section 20816 must be permitted to observe and inspect, without physical contact, the integrity of all externally visible security seals used to secure all ballot materials, voter verified paper audit trail paper copies, printed ballot images, relevant material as described in section 20811(f), and recount documentation in a reasonable time and manner that does not interfere with the conduct of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15624 and 15625, Elections Code.

§ 20818. Staffing.

- (a) Prior to the commencement of the recount, the elections official shall determine the number of special recount boards necessary to complete the recount in a timely manner. The elections official shall appoint four voters of the county to each special recount board. A voter who is also an employee of the elections' official's jurisdiction shall not be compensated as a special recount board member pursuant to Elections Code section 18625 for any day for which the jurisdiction otherwise compensates the employee unless the employee uses one of his or her vacation days.
- (b) There shall be one supervisor for every four special recount boards. The supervisor's function is to enforce the rules and transport ballots and reports. The supervisor shall not resolve challenges.
- (c) At the end of each day, the elections official or his or her designee shall post and announce publicly the following:
- (1) The results of the recount tally of each precinct recounted that day;
  - (2) The certified election results tally for each precinct recounted that day;
  - (3) A running tally of the total recount results for all precincts recounted to date; and
  - (4) A running tally of the total certified election results for all precincts recounted to date.
- (d) The elections official shall determine whether additional personnel is necessary for tasks such as producing relevant material, sorting or retrieving materials, or checking signatures.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Section 15625, Elections Code.

#### § 20819. Scheduling.

The elections official shall set the daily schedule for the recount, including hours of operation, approximate break and lunch times, in accordance with the requirements of Elections Code section 15626. The schedule shall be posted in a conspicuous place at the office of the elections official and at the location where the recount takes place, if different.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625 and 15626, Elections Code.

#### § 20820. Spokespersons and Observers.

- (a) Any person may observe the recount proceedings, subject to space limitations of the recount location selected by the elections official pursuant to section 20816.
- (b) Upon request by the elections official, each interested party shall appoint one of his or her representatives to serve as a spokesperson authorized to make decisions with respect to the recount on behalf of the interested party, or the interested party may serve as his or her own spokesperson. When accompanied by an elections official or his or her designee, the spokesperson shall have access to all areas where ballots are recounted by hand or tabulated by machine.
- (c) Questions other than ballot challenges shall be routed through the spokesperson, who shall then direct the question to the elections official or his or her designee. Official discussions with any interested party concerning resolution of questions shall include each interested party or his or her spokesperson.
- (d) The elections official may require any requestor, interested party, representative, or observer of the

recount proceedings to log in and receive an identification badge before entering the recount location. If required, identification badges shall be worn at all times and returned to the elections official at the end of the day.

(e) Requestors, interested parties, representatives, and observers shall not interfere in any way with the conduct of the recount, touch any voting system components, ballots, tally sheets or other special recount board materials, sit at the official recount worktables, place any material on the official recount worktables, talk to members of the special recount boards or supervisors while they are processing ballots or other recount materials or assist in recount procedures.

(f) The elections official may deny entry to the recount location to any person who fails to comply with the requirements of this section.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625, 15629 and 15630, Elections Code.

#### § 20821. Media, Photography and Recording Devices.

(a) The elections official shall, within six (6) months of the effective date of these regulations, develop a written policy providing reasonable access to the recount location by the media, and the use of cameras or audio or video recording devices in the recount location in a manner that will not interfere with the recount, compromise the anonymity of any ballot or record the signature of any voter. Interested parties and observers shall be permitted the same access for use of cameras or audio or video recording devices as members of the media.

(b) No interviews shall be permitted in the recount location while the recount is being conducted.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625 and 15629, Elections Code.

#### § 20822. Results of Recount.

(a) Upon completion of the recount, the elections official shall post the results of the recount in a highly visible public location in the elections official's office.

(b) In a recount of an election for a statewide office or measure, Assembly, State Senate, Presidential convention delegate or slate of electors, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to the Secretary of State. The Secretary of State shall compile the results of the recount and notify the affected counties within five (5) business days of receipt of all of the results of the recount as to whether the recount has changed the outcome of the election, as provided in Elections Code section 15632.

(c) If the outcome of an election has changed as a result of a recount, as provided in Elections Code section 15632, the elections official shall:

(1) In a recount of an election for a statewide office or measure, Assembly, State Senate, presidential convention delegate or elector, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, recertify the official returns for the recounted election with the new official count for each precinct involved in the recount and send a copy of the recertification to the Secretary of State.

(2) In a recount of an election for any office or measure not included in subdivision (c)(1), recertify the official returns for the election with the new official count for each precinct involved in the recount and send a copy of the recertification to the public official or governing body that declares the results of the

election subject to the recount, in order that they may adopt the recertification and re-declare the results of the election.

(3) Refund all monies deposited for the recount by any requestor in whose favor the recount changed the outcome of the election. If a recount conducted in multiple counties changed the overall outcome of the election, all monies deposited in all affected counties by such a requestor shall be refunded. No refund shall be made if the recount did not change the overall outcome of the election.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15624, 15625, 15632 and 15633, Elections Code.

#### § 20823. Challenges.

(a) A challenged ballot shall be set aside with a notation indicating the precinct number, the method by which it was originally counted for the official canvass, e.g., direct recording electronic voting system, scanner or hand count, the challenge number assigned to the ballot, the reason for the challenge, and the identity of the person making the challenge.

(1) A ballot that was counted in the official canvass, including a counted vote by mail or provisional ballot, may be challenged only on grounds of disqualifying distinguishing marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.

(2) A voted ballot that was not counted in the official canvass, including a rejected unopened vote by mail or provisional ballot, may be challenged and added to the count if the elections official determines that the ballot was properly cast.

(b) Resolution of challenged ballots shall take place in a segregated area within the recount location, separate from that being used to perform the recount, as determined by the elections official, to avoid confusion and mixing of ballots.

(c) Challenges shall be resolved each day after all special recount boards complete their work, or more often if necessary, as determined by the elections official, but in any event before the conclusion of all recount proceedings. The determination of the elections official on a challenge shall be final. The elections official shall maintain a record of each challenge and the determination on each challenge.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15625 and 15631, Elections Code.

#### Article 2. Recount of Votes Cast On Ballot Cards or Paper Ballots and Originally Tabulated Automatically.

#### § 20830. Recounts Using the Type of Vote Tabulating Devices Used In the Election.

(a) Prior to conducting a recount of ballot cards or paper ballots using the type of vote tabulating devices used in the election, a logic and accuracy test limited to the contest subject to recount shall be conducted on each of the vote tabulating devices to be used in the recount, using a test deck created to test logic and accuracy for the contest to be recounted. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The results of the test, as well as the test deck used, shall be made available for inspection by any requestor, spokesperson, member of the media or

observer present at the recount location between the time the test is completed and the posted time for recounting of ballots to begin.

(b) A recount using the type of vote tabulating devices used in the election shall, to the maximum extent possible, be conducted using the same methods used to tabulate the ballots originally, and shall include the following:

(1) On equipment capable of producing a paper tape or print-out, a zero-results tape or report shall be printed from each vote tabulating device, if feasible without new election coding and if supported by the device in the configuration used in the election, and verified by the requestor and spokespersons prior to any processing of ballots with that device.

(2) If necessary to preserve the original vote count record, a backup of the election results shall be made and the same type of memory media that was used in the election shall be prepared to capture the recount vote results.

(3) Each voted ballot shall be processed with the same type of vote tabulating devices used in the election.

(4) Ballots that cannot be read by the vote tabulating devices shall be corrected or duplicated in accordance with Elections Code sections 15208, 15210 and 15211.

(c) Once all eligible ballots cast in a precinct have been processed by a tabulating device, the device shall, if supported by the voting system, be rendered incapable of accepting further ballots for that precinct and the vote results shall be printed from that device and made available for public inspection. If supported by the voting system, the following steps shall also be taken:

(1) Recount vote results of ballots cast in each precinct subject to recount shall be uploaded to the voting system's central tabulation and reporting application; and

(2) The elections official shall report separately the recount vote results for each precinct subject to recount. Such reporting will include the number of ballots undervoted and overvoted in the recounted contest.

(d) At the conclusion of tabulation of all precincts designated for the recount, a logic and accuracy test limited to the contest subject to recount shall be conducted on each tabulating device used in the recount, using the same test deck created prior to the recount to test logic and accuracy for the contest. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The elections official shall make the results of the logic and accuracy test, as well as the test deck used for the test, available for inspection by the requestor, spokespersons, members of the media and observers at the recount location before the conclusion of the recount.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.

Reference: Sections 15633, 19220, 19360, 19370, 19380, 19381, 19382, 19383 and 19384, Elections Code.

#### § 20831. Manual Recounts Generally.

(a) One of the four special recount board members shall read the ballot and call out the vote cast for the contest subject to recount on that ballot; one shall observe that the correct call was made, and two members shall each separately and independently record the votes as called out.

(b) Prior to beginning the actual manual recount, the elections official shall instruct all members of the special recount boards, requestor, interested parties, representatives and observers on the procedures to be followed for the recount and shall provide them with copies of these recount regulations, any local

documentation concerning recount procedure, and documentation on how to interpret and read the votes cast on the ballot, consistent with federal and state law and the State Uniform Vote Count Standards. The instructions and documentation shall include a statement that in the event of a challenge, the determination of the elections official shall be final.

(c) Vote by mail and early-voted ballots cast from a precinct subject to recount shall be tabulated separately from ballots cast in a polling place on Election Day.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15101-15110, 15276, 15290 and 15625, Elections Code.

#### § 20832. Manual Recounts, “Vote for One” Contests.

Manual recount tabulation on a voting system in a “Vote for One” contest is subject to the following requirements:

(a) Prior to counting the ballots, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct shall be separated into stacks that do and do not contain the contest. Those that contain the contest shall be sorted as follows:

- (1) Ballots that were not voted for the contest (under-voted);
- (2) Ballots that were over-voted for the contest; and
- (3) Ballots that were voted for the contest, sorted by candidate or position.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of either 10 or 25, at the discretion of the elections official.

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out the same number of counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) A requestor or an authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the requestor or spokesperson has completed the inspection, which the requestor or spokesperson shall complete in a reasonable amount of time.

(f) Tallying shall continue in this manner, until all stacks of voted ballots have been tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes shall each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they shall each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the elections official. If the special recount board members announce different vote totals for any candidate or vote position in the recounted contest, the recount tallies recorded will be examined. If the difference can be explained by the special recount board or supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written report shall be

made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct shall start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

§ 20833. Manual Recounts, “Vote for Multiple” Contests.

Manual recount tabulation on a voting system in a “Vote for Multiple” contest is subject to the following requirements:

(a) Prior to counting the ballots for the contest subject to recount, and in the clear view of the requestor, spokespersons and observers, all ballots for the precinct shall be separated into stacks that do and do not contain the contest. Those that contain the contest shall be sorted as follows:

- (1) Ballots that were not voted for the contest (under-voted);
- (2) Ballots that were over-voted for the contest;
- (3) Ballots indicating a vote for the first candidate listed on the ballot for the contest; and
- (4) Ballots that do not indicate a vote for the first candidate listed on the ballot for the contest.

(b) Starting with the voted ballots, one member of the special recount board shall state the candidate or position for which the vote was cast making sure the requestor, interested parties and their representatives can observe the contest subject to recount.

(c) After the vote is stated and counted, the counted ballot shall be placed on the table, with the counted ballots placed in stacks of 10 (or 25).

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. Each of these two board members shall announce when he or she has counted 10 (or 25) votes. If both members call out 10 (or 25) counted votes at the same time, the tally shall continue forward for the next 10 (or 25) ballots. If both recorders do not reach 10 (or 25) additional votes on the same ballot, then the count for the last interval of 10 (or 25) ballots shall be stricken from their tally sheets and those ballots recounted.

(e) A requestor or an authorized spokesperson may request to inspect any ballot. Tallying shall be halted while the ballot is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the ballots. Tallying will resume once the the inspection is completed, which the requestor or spokesperson shall complete in a reasonable amount of time.

(f) Once all the votes for the first candidate have been recorded, the valid voted ballots shall be resorted into two stacks:

- (1) Ballots that were voted for the second candidate in the contest; and
- (2) Ballots that do not indicate a vote for the second candidate in the contest.

The ballots voted for the second candidate shall be calculated in accordance with (b) through (e) above. Tallying shall continue in this manner, until the votes for each candidate in the contest have been recounted and tallied.

(g) After all voted ballots have been counted and tallied, the two special recount board members who have been recording the votes will each independently calculate the total votes for each candidate or position on their tally sheets. When both have completed totaling, they will each announce their totals one candidate or vote position at a time. If both announce the identical vote total for each candidate or position in the recounted contest, the recount of that precinct shall be deemed complete and the results reported to the elections official. If the special recount board members announce different vote totals

for any candidate or vote position in the recounted contest, the recount tallies recorded and announced will be examined. If the difference can be explained by the special recount board or supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that precinct shall be discarded and the recount of that precinct will start over.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 15276, 15290, 15629, 15630 and 19380, Elections Code.

### Article 3. Recount Of Votes Cast On Direct Recording Electronic Voting Systems.

#### § 20840. Recounts on Direct Recording Electronic Voting Systems Using Electronic Vote Results.

(a) Prior to conducting the actual recount of ballots, a logic and accuracy test limited to the contest subject to recount shall be conducted on each direct recording electronic voting system being used in the recount, using a test pattern created to test the logic and accuracy for the contest. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20816. The elections official shall make the results of the logic and accuracy test, as well as the test pattern used for the test, available for inspection by the requestor, spokespersons and observers at the recount location before the conclusion of the recount.

(b) If supported by the voting system, electronic recount tabulation on a direct recording electronic voting system shall be based on a re-import and re-tabulation of the vote results from the electronic media originally used to capture and transfer the vote results from the direct recording electronic voting system devices into the election management system for that voting system. If re-import from electronic media is not supported by the voting system, the DRE vote results shall be manually added to the final results. The elections official shall generate a report for each recounted precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19220, 19381, 19382 and 19383, Elections Code.

#### § 20841. Automated Recounts on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Paper Copies.

(a) The voter requesting the recount of votes cast on a direct recording electronic voting system may request that it be conducted based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail paper copies. An automated scan shall not be used unless the Secretary of State has tested and approved the automated scan method as part of the certification of the voting system.

(b) Prior to conducting the recount of voter verified paper audit trail paper copies from the direct recording electronic voting system, a logic and accuracy test limited to the contest subject to recount shall be conducted, using a test pattern and a test verified paper audit trail paper roll, on each automated scan and tabulation device to be used in the recount. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond

those that must be accommodated under section 20816. The elections official shall make the results of the logic and accuracy test, as well as the test pattern and test paper roll used for the test, available for inspection by the requestor, spokespersons and observers at the recount location before the conclusion of the recount.

(c) Once all vote results have been scanned and captured from each scanning and tabulating device used for the recount, the elections official shall generate a report for each precinct detailing the aggregated direct recording electronic voting system vote results for the recounted contest.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19201, 19220, 19250, 19251 and 19253, Elections Code.

#### § 20842. Manual Recounts of Ballots Cast on Direct Recording Electronic Voting Systems Using Voter Verified Paper Audit Trail Paper Copies.

The manual recount, using voter verified paper audit trail paper copies, shall include the following:

(a) If the direct recording electronic voting system used in the election subject to recount created continuous roll voter verified paper audit trail paper copies, the roll shall be re-spooled if necessary to permit the recount to begin at the start of the roll. The roll may not be cut to separate the voter verified paper audit trail paper copies of individual voters.

(b) One member of the special recount board shall be designated to review the voter verified paper audit trail paper copy and call out the vote results for the recounted contest from that paper copy. If it was printed and retained, this member shall begin by reviewing and verifying the zero-results tape printed prior to the opening of the polls and before any votes were captured. The zero-results tape, if it was printed and retained, shall also be reviewed and verified by the supervisor of the special recount board and by the requestor and spokespersons.

(c) The board member designated to review and call out the vote results shall then proceed to review the voter verified paper audit trail paper copies in succession, calling out each ballot in turn and stating how the ballot was voted in the challenged contest until either 10 or 25 (at the discretion of the elections official) have been called out. If there is no legible voter verified paper audit trail paper copy for a ballot due to a malfunction of the voter verified paper audit trail printer, the elections official shall print the ballot image for that ballot from the memory device used by the direct recording electronic voting system to record the ballot. The board member designated to review and call out the votes results shall review the printed ballot image and shall state how the ballot was voted in the challenged contest.

(d) Two members of the special recount board shall record the votes stated, marking hashes in succession on their individual tally sheets. The board member designated to call out the votes shall announce when either 10 or 25 votes (at the discretion of the elections official) have been called out, and the recorders shall confirm that their vote counts match exactly. If the vote counts match exactly, the board member reviewing and calling out the vote results shall draw a distinct line on the continuous voter verified paper audit trail roll between the individual voter verified paper audit trail paper copy containing the 10th or 25th counted vote and the individual voter verified paper audit trail paper copy for the next voted ballot, and the tally shall continue forward for the next 10 or 25 counted votes. If the vote counts do not match exactly, then the count for the last interval of voter verified paper audit trail paper copies shall be stricken from their tally sheets and those voter verified paper audit trail paper copies recounted.

(e) The individual voter verified paper audit trail paper copies or printed ballot images shall be

displayed to permit the requestor, spokespersons and observers to view the contest subject to recount, either directly or indirectly, as the voter verified paper audit trail paper copy or printed ballot image is reviewed and called. Voter verified paper audit trail paper copies for ballots that were canceled or canceled and re-voted, shall be noted but not counted toward the vote results.

(f) A requestor or an authorized spokesperson may request to inspect any voter verified paper audit trail paper copy or printed ballot image. Tallying shall be halted while the voter verified paper audit trail paper copy or printed ballot image is presented to the requestor or spokesperson for closer inspection. At no time may any requestor or spokesperson touch or come into physical contact with any of the voter verified paper audit trail paper copies or printed ballot images. Tallying shall resume once the inspection is completed, which the requestor or spokesperson shall complete in a reasonable amount of time.

(g) Tallying shall continue in this manner, breaks and meal times excepted, until the entire continuous voter verified paper audit trail record has been reviewed and tallied.

(h) After all ballots of a direct recording electronic voting system have been reviewed and tallied from its voter verified paper audit trail paper copies and, where necessary, printed ballot images, the special recount board members who have been recording the votes shall independently calculate the total votes for each candidate or vote position on their tally sheets. When both have completed totaling, each shall announce his or her totals for that candidate or vote position. If both announce the identical vote total for each candidate or vote position in the recounted contest, the recount of that direct recording electronic voting system shall be deemed complete and the recount shall proceed with the continuous voter verified paper audit trail roll for the next direct recording electronic voting system with voted ballots for the challenged contest.

(i) If the special recount board members announce different vote totals for the candidate or position, the recount tallies recorded and announced for that candidate or position shall be examined. If the difference can be explained by the special recount board or supervisor, or by the elections official or his or her designee, it shall be corrected on the tally sheet. A written explanation shall be made on an attachment to the tally sheet. In the event of an unexplained discrepancy, the results for that direct recording electronic voting system shall be discarded and the recount of that candidate or position shall start over.

(j) Once all the voter verified paper audit trail paper copies and, where necessary, printed ballot images containing votes for a precinct have been reviewed and tallied, the recount of that precinct shall be deemed complete and the results reported to the elections official.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 15601, Elections Code.  
Reference: Sections 19250 and 19382, Elections Code.

# UPDATED STATEMENT OF REASONS

## UPDATE OF INITIAL STATEMENT OF REASONS

The information contained in the Initial Statement of Reasons (ISR) at the time of Public Notice remains unchanged with the exception of the following modifications.

**SECTION 20811.** (ISR, page 2) The proposed regulation as originally noticed to the public, would have provided definitions for key terms used in the proposed regulations. It has been amended to include a definition of “relevant material” that appeared in section 20813 as noticed, to add a definition of providing that the term “voter verified paper audit trail paper copy” does not include such documents from a voting machine that did not include the contest being recounted, and to make other minor revisions suggested by commenters.

**SECTION 20813.** (ISR, page 2) The proposed regulation as originally noticed to the public, would have provided rules governing the recount requestor’s examination of “relevant material.” It has been amended to delete a definition of “relevant material” that has been moved to proposed section 20811 and, pursuant to comments received during the 45-day public comment period, to specify that requests for examination must be made before recounting commences, that photocopying, photography and videotaping of relevant materials shall be permitted except in a manner that would record un-redacted voter signatures, and to require the presence of the elections official or designee during examination of original ballots or original relevant material.

**SECTION 20814.** (ISR, page 2) The proposed regulation as originally noticed to the public, would have provided rules governing the counting order of precincts. It has been amended, pursuant to comments received during the 45-day public comment period, to specify that the requestor shall pay any additional costs associated with requests to change the order before precincts are re-ordered.

**SECTION 20815.** (ISR, page 3) The proposed regulation as originally noticed to the public, would have provided rules on the timing and form of the requestor’s payment of the estimated cost of producing requested “relevant material” and daily payments of the estimated costs of the recount, and a non-exclusive lists of recount costs chargeable to the requestor. It has been amended, pursuant to comments received during the 45-day public comment period, to give elections officials discretion to accept electronic payment, to clarify that only costs that would not have been incurred but for the requestor’s particular recount request are chargeable, and to add space rental and transportation costs to the list of chargeable costs.

**SECTION 20817.** (ISR, page 3) The proposed regulation as originally noticed to the public, would have required the elections official to establish written security measures for recounts and specified certain provisions that must be included. It has been amended, pursuant to comments received during the 45-day public comment period, to require submission of the security measures to the Secretary of State and to permit the elections official to satisfy this requirement by designating for this purpose the security plan submitted to the Secretary of State by the vendor of the voting system as

a condition of approval for use of the system.

**SECTION 20818.** (ISR, pages 3 – 4) The proposed regulation as originally noticed to the public, would have required the elections official to determine the number of special recount boards necessary for timely completion of the recount, to appoint jurisdiction voters as board members, to provide one supervisor for every two special recount boards, and to compile precinct tallies and a running tally at the end of each recount day. It has been amended, pursuant to comments received during the 45-day public comment period, to prohibit paying special recount board compensation to a jurisdiction employee unless the employee uses a vacation day, and to require the elections official or designee at the end of each recount day to post and announce the original and recount results for each precinct recounted that day and a running tally of the total original and recount results for all precincts recounted to date.

**SECTION 20819.** (ISR, page 4) The proposed regulation as originally noticed to the public, would have required the elections official to set and post a daily schedule for the recount and to prohibit a special recount board from stopping for a break or lunch while recounting a precinct. It has been amended, pursuant to comments received during the 45-day public comment period, to delete the prohibition on a special recount board stopping for a break or lunch while recounting a precinct.

**SECTION 20820.** (ISR, page 4) The proposed regulation as originally noticed to the public, would have provided rules governing the conduct of the spokespeople for each interested party and other observers of the recount. It has been amended, pursuant to comments received during the 45-day public comment period, to make minor clarifying changes in wording that do not change the effect of the section.

**SECTION 20821.** (ISR, page 4) The proposed regulation as originally noticed to the public, would have required the elections official to develop a written policy providing access to the recount location by the media, including use of cameras, audio recording devices and video recording devices in a manner that will not interfere with the recount. It has been amended, pursuant to comments received during the 45-day public comment period, to require that the written policy shall not permit use of such devices in a manner that would compromise the anonymity of any ballot or record the signature of any voter, and to require that the policy apply the same rules for use of such devices to interested parties and non-media observers.

**SECTION 20822.** (ISR, page 5) The proposed regulation as originally noticed to the public, would have required the elections official to make daily announcements concerning interim recount results, to post the final recount results, send a copy to the Secretary of State or, in the case of local offices and measures, to the appropriate governing body, and, if the recount changed the outcome of the election in the requestor's favor, to refund all funds deposited for the recount by that requestor. It has been amended, pursuant to comments received during the 45-day public comment period, to delete the provisions concerning announcement of daily interim results (which now appear in proposed subsection 20818(c)), to specify the actions to be taken by the Secretary to determine whether the recount has changed the outcome of a multi-county election and notify the affected counties, and clarify that whether a county involved in the recount of a multi-county contest must refund deposited funds depends on whether the overall outcome of the election has changed in the requestor's favor, not

on the results of the recount in that county.

**SECTION 20823.** (ISR, pages 5) The proposed regulation as originally noticed to the public, would have provided rules for the making and determination of challenges to ballots. It has been amended, pursuant to comments received during the 45-day public comment period, to reverse the order of subdivisions (a)(1) and (a)(2) and to clarify the language governing addition to the count of a previously uncounted ballot that the elections official determines was properly cast.

**SECTION 20830.** (ISR, pages 5 – 6) The proposed regulation as originally noticed to the public, would have required pre- and post-recount public logic and accuracy tests of vote tabulating devices used in the recount and rules on the manner in which the recount is conducted. It has been amended, pursuant to comments received during the 45-day public comment period, by making numerous wording changes for clarity that do not change the effect of the proposed regulation.

**SECTION 20831.** (ISR, page 6) The proposed regulation as originally noticed to the public, would have provided general rules for the procedure to be followed in manual recounts and requirements for the elections official to instruct and provide documentation on recount procedures and how to interpret and read votes. It has been amended, pursuant to comments received during the 45-day public comment period, to require that the documentation include a copy of these proposed regulations and any local documentation concerning recount procedures, and to require that the instructions and documentation include a statement that the determination of the elections official on challenges shall be final.

**SECTION 20832.** (ISR, page 6) The proposed regulation as originally noticed to the public, would have provided rules governing manual recount tabulation on a voting system in a “Vote for One” contest. It has been amended, pursuant to comments received during the 45-day public comment period, to clarify that a spokesperson who requests to inspect a ballot shall complete the inspection in a reasonable time, and to clarify that, in order for a tally sheet to be corrected if there is a discrepancy in the vote totals announced by special recount board members, it is only the special recount board, supervisor, elections official or his or her designee who may explain the discrepancy.

**SECTION 20833.** (ISR, page 6) The proposed regulation as originally noticed to the public, would have provided rules governing manual recount tabulation on a voting system in a “Vote for Multiple” contest. It has been amended, pursuant to comments received during the 45-day public comment period, to clarify that a spokesperson who requests to inspect a ballot shall complete the inspection in a reasonable time, and to clarify that, in order for a tally sheet to be corrected if there is a discrepancy in the vote totals announced by special recount board members, it is only the special recount board, supervisor, elections official or his or her designee who may explain the discrepancy.

**SECTION 20840.** (ISR, page 6) The proposed regulation as originally noticed to the public, would have required pre- and post-recount public logic and accuracy tests of direct recording electronic voting systems used in the recount and rules on the manner in which the recount is conducted. It has been amended, pursuant to comments received during the 45-day public comment period, by making numerous wording changes for clarity that do not change the effect of the proposed regulation.

**SECTION 20841.** (ISR, pages 6 – 7) The proposed regulation as originally noticed to the public, would have established requirements and procedures for recounts of votes cast on a direct recording electronic voting system based on an automated scan and tabulation of the voted ballots directly from the voter verified paper audit trail record, a method that could be employed only if the Secretary of State has tested and approved the automated scan method as part of the approval of the voting system. The proposed regulation would also require a pre-count public logic and accuracy test of each direct recording electronic voting system used in a recount employing this method. It has been amended, pursuant to comments received during the 45-day public comment period, to conform to terminology used in the Elections Code by replacing “voter verified paper audit trail record” with “voter verified paper audit trail paper copy,” and by making numerous other wording changes for clarity that do not change the effect of the proposed regulation.

**SECTION 20842.** (ISR, page 7) The proposed regulation as originally noticed to the public, would have established requirements and procedures for recounts of votes cast on a direct recording electronic voting system by manually counting the voter verified paper audit trail records, including special requirements and procedures uniquely applicable to voter verified paper audit trails: verifying the zero-results tapes printed before opening the polls, and noting but not counting paper audit trail records for ballots that were cancelled or cancelled and re-voted. It has been amended, pursuant to comments received during the 45-day public comment period, to conform to terminology used in the Elections Code by replacing “voter verified paper audit trail record” with “voter verified paper audit trail paper copy,” to provide for recounting a “printed ballot image” when no voter verified paper audit trail paper copy is available for a ballot due to printer malfunction, and by making numerous other wording changes for clarity that do not change the effect of the proposed regulation.

## **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

## **ALTERNATIVE DETERMINATIONS**

The Secretary of State has determined that no alternative would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF DECEMBER 30, 2008, THROUGH MARCH 13, 2009**

The original proposed text was made available for public comment for at least 45 days from December 30, 2008, through March 13, 2009. Six written comment letters were received during that period, three of which were received at the public hearing on March 4, 2009. Pursuant to Government Code section 11346.9(a)(3) and (a)(5), the Secretary of State summarizes and responds to those comments as follows:

**California Association of Clerks and Election Officials (CACEO) letter dated March 3, 2009**

**Comment A1: Subsection 20811(a):** The commenter states generally that a revision is necessary to clarify the meaning of “non-volatile” in the context of a digital storage device for ballot information and/or voting results information. Specifically, the commenter states that CACEO member, Los Angeles County, understands it to mean “a permanent form of secure/not changeable storage and therefore not susceptible to tampering.”

**Reject:** No clarification is needed. “Non-volatile” is a widely understood term for computer memory that can retain stored information even when not powered. The term is not used to describe secure/not changeable storage or to concern susceptibility to tampering.

**Comment A2: Subsection 20811(g) [now 20811(m)]:** The commenter states that a revision is necessary to improve clarity and suggests: “Some voting systems do not have redundant vote data on all tabulation devices.” The commenter also suggests that the proposed subsection requires an action some counties are incapable of performing, stating that those counties are unable to access redundant electronic records of election results stored in one module of a particular vendor's voting system, even if the vendor can access them. The commenter does not suggest a specific revision of the regulation.

**Accept in part/reject in part:** The proposed subsection has been revised for clarity by adding the commenter's suggested language. The comment concerning access to redundant electronic records is rejected, as a county's vendor could assist the county in gaining access to the records.

**Comment A3: Subsection 20811(h) [now 20811(i)]:** The commenter states that one vendor's voting system includes a vote recording device not covered by the proposed definition of “vote tabulating device,” and suggests expanding the definition to cover a “vote tabulating or recording device.” The commenter also states that CACEO member, Los Angeles County, seeks revision of the definition to exclude devices that are not used for tallying official vote results.

**Accept in part/reject in part:** The definition of “vote tabulating device” has been revised but with different language than suggested by the commenter. The definition now includes “any piece *or combination of pieces* of equipment, other than a voting machine operated by levers or other mechanical means, that compiles a total of votes cast by means of electronic data processing and ballot card sorting, ballot card scanning, or paper ballot scanning.” No revision has been made to exclude devices that compile a total of votes cast but are not used for tallying official results. Excluding such devices from the definition would exempt the vote totals they record from the definition of “voting system redundant vote data” (see revised proposed subsection 20811(m)) and therefore from disclosure as “relevant material” (see revised proposed subsection 20811(f), depriving recount requestors of information that would be relevant to decisions such as whether to request a hand or machine recount and the order in which to request precincts be recounted.

**Comment A4: Subsection 20811(l) [now 20811(m)]:** The commenter states that a revision is necessary to improve clarity and suggests adding a new final subsection: “Voter verified paper audit trail’ is defined as those voter verified paper audit trail rolls showing votes cast for the contest being recounted.”

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

**Comment A5: Subsection 20812(b):** The commenter states that some of its member counties read Elections Code section 15620, which requires the elections official to verify that the person requesting a recount is “registered to vote in this state,” as requiring that the person requesting the recount be a voter in the jurisdiction in which the recount is requested. The commenter suggests deleting “in this state” and inserting “the jurisdiction for which the recount is requested.” The commenter states that other member counties do not agree with this reading of Election Code section 15620 or the proposed change.

**Reject:** The Legislature has established in Elections Code section 15620 that the sole qualification for a person to request a recount is being registered to vote in this state.

**Comment A6: Subsection 20813(a):** The commenter states that the deadline to request to examine relevant material should be advanced to prevent the recount from being drawn out indefinitely, and suggests deleting “is complete” and inserting “commences.”

**Accept:** The proposed subsection has been revised to require the requestor to make the request to examine relevant material before the recounting of ballots commences.

**Comment A7: Subsection 20813(b) [now 20811(f)] :** The commenter states that a revision is necessary to improve clarity and to narrow the scope of the definition of the term “relevant material.” The commenter states that system redundant vote data, audit logs, system logs, logic and accuracy test plans, surveillance video recordings and chain of custody logs have no relevance to the counting of votes or a recount. According to the commenter, these items are relevant only to an election contest, which challenges the conduct of an election; including them in the definition of “relevant material” will blur the distinction between a recount and an election contest, slow down the recount process and render the recount process cost-prohibitive for all but the most well-financed voters and campaigns. The commenter suggests deleting these items and limiting the definition of “relevant material” to “voted ballots, rejected vote-by-mail ballot and provisional ballot envelopes, and voter verified paper tapes produced by DRE equipment that was used for the contest to be recounted.”

**Reject:** The items the commenter objects to including in the definition of “relevant material” are all relevant to a recount. These items are relevant to, among other things, deciding whether to request a hand or machine recount and the order in which to request precincts be recounted. The definition of “relevant material” in the proposed regulation incorporates the materials recently held by the California Court of Appeal to fall within the scope of that term as used in Elections Code section 15360. (See *Americans for Safe Access, et al., v. County of Alameda, et al.*, \_\_ Cal.App.4<sup>th</sup> \_\_ (First Dist., Div. One Nos. A121390, A122619, filed 5/22/09; part. pub. order 6/15/09). The availability of “relevant material” will not render recounts cost-prohibitive. Costs related to production and examination of “relevant material” will be incurred only if a requestor asks to examine them, and only as to those categories of “relevant material” requested.

**Comment A8: Subsection 20813(e):** The commenter states that an official should be present during the examination to ensure that materials are not altered or removed and suggests adding the following as subsection 20813(e): “The elections official, or his or her designee, shall be present during the examination of ballots or relevant material.”

**Accept in part:** The proposed subsection has been added but with different language than suggested by the commenter to clarify that no official is required to be present during examination of copies made at the behest of the requestor.

**Comment A9: Subsection 20813(f):** The commenter states that the regulation should be revised to limit viewing of confidential materials and to prohibit copying materials containing voters' signatures and suggests adding the following as subsection 20813(f): “The right to examine relevant materials does not override exclusions to the public records act. Further, to protect voters from the potential of identity theft, no materials containing voters' signatures shall be photocopied.”

**Accept in part:** The proposed subsection has been added but with different language than suggested by the commenter.

**Comment A10: Subsection 20814(c):** The commenter states that a revision is necessary to clarify that mid-recount requests to change the order in which precincts are recounted must be included in the costs charged to the requestor and suggests adding the following as subsection 20814(c): “Any additional costs associated with requests to change the order of precincts shall be added to the estimate and the requestor shall pay for such costs prior to the rearrangement of the precincts.”

**Accept in part:** The proposed subsection has been added but with different language than suggested by the commenter.

**Comment A11: Subsection 20815(a):** The commenter states that a revision is necessary to clarify that deposit of the estimated cost of producing relevant material should be made at least one day before the production.

**Accept:** The proposed subsection has been revised for clarity to require deposit of the estimated cost at least one day before the production.

**Comment A12: Subsection 20815(a):** The commenter states that a revision is necessary to clarify that an elections official may charge for the cost of preparing an estimate of the cost to produce requested relevant material. The commenter suggests adding the following sentence to the end of subsection 20815(a): “The election official may include the cost of the time necessary to compile the estimate in the estimated cost.”

**Reject:** There is no reason to treat the cost of preparing an estimate of the cost of producing relevant material differently than the cost of preparing the daily estimate of the cost of the next day's recount proceedings (see proposed subsection 20815(c)).

**Comment A13: Subsections 20815(b) and 20815(d):** The commenter states that a revision is necessary to clarify which checks are acceptable payment and suggests: “No checks, other than cashier's checks, will be accepted.” The commenter also suggests adding: “At the election official's discretion, electronic payment by credit or debit card may be accepted.”

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter. The commenter's proposed sentence concerning electronic payment has been added.

**Comment A14: Subsection 20815(c):** The commenter states that a revision is needed to clarify that estimates of daily recount costs may increase based on requested changes and the recount will not proceed until paid; the commenter suggests adding to the end of the proposed subsection: “Daily estimates may vary based upon changes in requests made during the course of the recount. Additional fees based upon such requests shall be estimated and paid prior to the implementation of the requested change.”

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

**Comment A15: Subsection 20815(e):** The commenter states that a revision is necessary to clarify that the cost of additional space rental is one of the costs the elections official may recover from a requestor.

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

**Comment A16: Subsection 20815(i):** The commenter states that there is precedent for requiring payment of the actual costs when they exceed the prepaid estimated costs and suggests adding a new subsection 20815(i): “In the event the actual costs exceed the prepaid estimated costs, the requestor shall be charged for and pay the additional amount.”

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter. This clarification does not change the effect of the proposed regulations, which already provides in subsection 20814(c) for recovery directly from the requestor of all actual costs of the recount..

**Comment A17: Subsection 20816(a):** The commenter states that elections officials should not be required to use a location larger than their existing facilities to accommodate the persons specified in the proposed subsection unless the requestor chooses to pay for it and suggests: “The elections official may use their existing facilities, or in the event the elections official's facilities are not deemed large enough, at the option of, and payment by the requestor, the elections official may designate a location that is large enough . . . .”

**Reject:** Accommodating the persons specified, including representatives of media organizations and citizen associations, is essential to maintaining public confidence in the recount process and should not

be left to the discretion of the elections official or the requestor. Under proposed subsection 20815(e), the requestor must pay for rental of additional space if it is required.

**Comment A18: Subdivision 20816(a)(1):** The commenter states that it makes no sense to have representatives of political parties at a recount of a non-partisan office or measure and suggests language stating political party representatives must be accommodated only “in the case of a recount of a partisan office.”

**Reject:** Elections Code section 15004(a), which applies to all elections, provides: “Each qualified political party may employ, and may have present at the central counting place or places, not more than two representatives to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the representatives in attendance at any or all phases of the election.” Political parties have the right to have observers present at any election, whether the election includes one or more partisan offices or is limited to non-partisan offices and measures. When a recount is held, it is an integral part of the election process, and there is no reason to treat political party observers differently in a recount than in the election it follows due to the nature of the contest being recounted.

**Comment A19: Subsection 20817(a):** The commenter states that election security plans counties are currently required to file with the Secretary of State can be used for recounts, making costly development of separate security plans for recounts unnecessary. The commenter suggests the proposed subsection should require use of these security plans for recounts.

**Accept in part:** The proposed subsection has been revised to permit use of existing election security plans for recounts but with different language than suggested by the commenter.

**Comment A20: Subsection 20817(b):** The commenter states that performance or observation of security processes are the responsibility of supervisors who are permanent staff and should not be shifted to special recount board members. The commenter also states that sealing and resealing of materials should not be required if they are locked in a secure area.

**Accept in part:** This subsection has been deleted for clarity purposes. It is no longer necessary in light of the revision of proposed subsection 20817(a). See Response to Comment A19.

**Comment A21: Subsection 20817(c) [now 20817(b)]:** The commenter states that a revision is necessary to clarify that unreasonable demands on staff's time in connection with inspection of security seals must be limited and suggests inserting the word “reasonable” before “time and manner that does not interfere with the conduct of the recount.”

**Accept:** The proposed subsection has been revised by addition of the word “reasonable.”

**Comment A22: Subsection 20818(b):** The commenter states that the proposed subsection requires one supervisor for every two special recount boards rather for every four, the current practice, and that this change will make the costs of recounts prohibitive for requestors.

**Accept:** The proposed subsection has been revised to require one supervisor for every four special recount boards.

**Comment A23: Subsection 20818(c):** The commenter suggests that a revision is necessary to clarify the meaning of “running tally.” The commenter states that requiring the elections official to calculate and report a daily running tally of the recount total for all precincts recounted to date would be burdensome and unreasonable and could confuse the public if there is not a full and complete recount. The commenter suggests revising the proposed subsection to make the running total discretionary and to require a complete re-calculation of results only “when and if the recount is completed.”

**Accept in part/reject in part:** The proposed subsection has been revised for clarity but the suggestions to make running totals discretionary and to require re-calculation of results only if the recount is completed have been rejected. Daily re-calculation and reporting of totals for the recount and certified results for the precincts recounted to date involves simple addition computations and is not burdensome. Reporting running totals involves simple statements of fact and will not confuse the public.

**Comment A24: Section 20819:** The commenter states that it could take up to five hours to recount a single precinct and states: “Prohibiting breaks would violate state law, union agreements, biological necessity, and an administrative practice to break the entire group at one time for security reasons.” The commenter suggests deleting the sentence: “A special recount board shall not stop for a break or lunch while recounting a precinct.”

**Accept:** The sentence has been deleted as suggested by the commenter.

**Comment A25: Section 20819:** The commenter states that it sometimes does not make sense to adhere rigidly to the schedule for breaks and suggests adding the following sentence to the end of the proposed section: “Times posted shall be approximate.”

**Accept in part:** The proposed section has been revised for clarity but with different language than suggested by the commenter.

**Comment A26: Subsection 20820(a):** The commenter states that it is unclear why limitations on who may observe are imposed in proposed section 20816, only to be undermined in this section, and suggests revising the proposed subsection to allow observation by persons indicated in section 20816, rather than any persons, subject to the space limitations of the recount location selected pursuant to section 20816.

**Reject:** Proposed section 20816 does not limit who may observe a recount; rather, it specifies certain

persons who must be allowed to observe. It establishes a floor, not a ceiling. Proposed subsection 20820(a) requires the local elections official to permit additional observers only if and to the extent the recount location selected to meet the requirements of section 20816 has sufficient space to accommodate them.

**Comment A27: Subsection 20820(b):** The commenter states that a revision is necessary for clarity, distinguishing appropriate levels of observation access for an interested party's spokesperson, depending on whether the recount is conducted by hand or by machine. The commenter points to Elections Code section 15204 which states: "Access to the area where electronic data processing equipment is being operated may be restricted to those authorized by the elections official." The commenter suggests adding the following sentence to the proposed subsection: "In the event of a machine recount, the spokesperson shall have full visual access to areas where ballots are tabulated by machine, and at the discretion of the election official, may be provided a supervised, one-on-one tour of the counting area."

**Reject in part/accept in part:** The proposed subsection grants physical access to all areas where ballots are tabulated to only a single spokesperson for each interested party, and only when accompanied by an elections official. The proposed subsection has been revised to clarify that the spokesperson has access to areas where ballots are recounted by hand as well as where they are tabulated by machine, and to permit a designee of the elections official to accompany the spokesperson. The presence of the elections official or designee, together with the prohibition in proposed subsection 20820(e) on touching any voting system components, ballots, tally sheets or other special recount board materials or interfering in any way with the conduct of the recount, provides sufficient security against tampering with, or alteration or removal of, voting system components or other materials. The proposed subsection does not conflict with Elections Code section 15204, which applies to the original automated count in a central location, not to a recount.

**Comment A28: Subsection 20820(b):** The commenter states that a revision is necessary to clarify that the elections official has authority to deny access if a person impedes the recount or does not follow procedures and suggests adding the following sentence to the proposed subsection: "The election official may deny access to any person who impedes the recount or declines to follow established procedures."

**Reject:** The proposed revision is unnecessary. Under proposed subsection 20820(f), the elections official already has authority to "deny entry to the recount location to any person who fails to comply with the requirements of this section."

**Comment A29: Subsection 20820(e):** The commenter states that a revision is necessary to authorize the elections official to designate a contact person to whom questions and comments regarding the recount may be directed and suggests deleting the word "may" from the first sentence and inserting in its place "shall direct all questions and comment to one or more specified liaisons designated by the elections official and shall..."

**Reject in part/accept in part:** The proposed revision regarding designation of contact persons is

unnecessary. Proposed subsection 20820(c) already states in relevant part: “Questions other than ballot challenges shall be routed through the spokesperson, who shall then direct the question to the elections official or his or her designee.” Proposed subsection 20820(e) has been revised to replace the word “may” with the word “shall.”

**Comment A30: Subsection 20820(e):** The commenter states that a revision is necessary to clarify which “recount workers” requestors, interested parties, representatives and observers may not speak to while the those recount workers are processing ballots or other recount materials and suggests deleting “talk to recount workers” and inserting “engage in conversation, nor talk to members of the special recount boards and supervisors (other than those who may be designated as the specified liaisons).”

**Accept in part:** The proposed section has been revised for clarity but with different language than suggested by the commenter.

**Comment A31: Subsection 20821(a):** The commenter states that photography of sensitive information such as voter signatures on mail ballot and provisional envelopes should be prohibited and that some counties prohibit the use of cameras in ballot counting areas for fear of possible security breaches and suggests inserting after the phrase “in a manner that will not interfere with the recount” the words “violate the privacy of a voter, or compromise the security of the recount location.”

**Accept in part/reject in part:** The proposed subsection has been revised to require that the media access policy prevent use of cameras or audio or video recording devices in a manner that would “compromise the anonymity of any ballot or record the signature of any voter.” The commenter’s suggested revision regarding compromising the security of the recount location has not been made. The suggested revision is based on the unsupported assumption that recording an image of what can be seen by any person authorized to be present in the recount location creates a security risk that would not otherwise exist.

**Comment A32: Subsection 20822(a):** The commenter points out that the requirements of the proposed subsection are also requirements in proposed subsection 20818, making the proposed subsection 20822(a) redundant and unnecessary.

**Accept:** The proposed subsection has been deleted.

**Comment A33: Subsection 20822(b) [now subsection 20822(a)]:** The commenter states that the elections official should post the results of any completed recount regardless of whether the outcome changes and suggests deleting the words “the outcome of the election changes” and deleting as superfluous the words “do all of the following”.

**Accept :** The proposed subsection has been revised to require the elections official to post results whether or not the outcome of the election changes. Further, Elections Code section 15633 actually requires posting of a “copy of the results of any recount conducted pursuant to this chapter,” regardless of whether the recount is “completed” according to section 15632 or whether the outcome of the

election changes. The subsection has been revised for consistency with Elections Code section 15633 on this point, deleting the reference to Elections Code section 15632.

**Comment A34: Subdivisions 20822(a)(2) [now subsection 20822(b)] and 20822(b)(3) [now subdivision 20822(c)(2)]:** The commenter states that revisions are necessary for clarity. First, the term “contest” would include an election for either an office or a proposition, and suggests replacing “statewide office” with “statewide contest.” Second, the commenter suggests edits to streamline and shorten the proposed section.

**Accept in part:** The proposed subdivisions have been revised for clarity but with different language than suggested by the commenter.

**Comment A35: Subdivision 20822(b)(2)(A) [now subdivision 20822(c)(1)]:** The commenter states that revisions are necessary to avoid placing counties in a position where they are unable to comply with the regulation due to limitations of the voting system utilized. Specifically, CACEO member, Los Angeles County, states that, in an automated recount, its voting system is incapable of producing a revised official bulletin or statement of the vote. The commenter also states that a canvass cannot be updated, as it is a procedure, not a document.

**Accept:** The proposed subdivision has been revised by deleting the words “including updating the canvass, the official bulletin, and the statement of vote, as needed.”

**Comment A36: Subdivision 20822(b)(4) [now subdivision 20822(c)(3)]:** The comment states that a revision is necessary to clarify the circumstances under which elections officials are required to refund monies deposited by recount requestors. Specifically, the commenter states that clarification is needed on whether any refund is required if the results change in one county but the outcome of the election is not changed. In addition, clarification is needed on whether any refund is owed by a county whose recount confirms that its outcome was correct but another county’s recount changed the overall outcome of the election. The commenter suggests adding the following to the subdivision: “In a recount of a contest involving multiple counties, if the overall outcome of the election changes, all monies deposited in all affected counties shall be refunded. No refund shall be made, regardless of a change in the vote totals, if the overall outcome of the election is not changed.” As an alternative to the last suggested sentence, the commenter suggests: “If the recount fails to change the outcome of the election by demonstrating a new winner, the results will not be recertified and the funds will not be reimbursed.”

**Accept in part:** The proposed subdivision has been revised for clarity but with different language than suggested by the commenter.

**Comment A37: Subdivisions 20823(a)(1) and 20823(a)(2):** The commenter states that a revision is necessary for clarity, reversing the order of the two subdivisions. The commenter also states that the text of subdivision (a)(1) should be deleted because “the disposition of challenged vote by mail and provisional ballots is correctly made during the Official Canvass.”

**Reject in part/accept in part:** The suggestion to delete the text of subdivision (a)(1) is rejected. The purpose of a recount is to determine whether the count was correct. Whether voted ballots in unopened vote by mail or provisional ballot envelopes were incorrectly excluded from the count is part of that determination. As suggested by the commenter, the order of the proposed subdivisions has been reversed for clarity. Also for purposes of clarity, the language of proposed subdivision (a)(1) [now subdivision (a)(2)] has been revised.

**Comment A38: Subsection 20823(c):** The commenter states that a revision is necessary because it is not always possible to resolve a challenge to a ballot the same day. The commenter suggests allowing the elections official to set a schedule to resolve challenges so long as all challenges are resolved before the recount is finished.

**Reject:** Daily resolution of ballot challenges may be a significant consideration for a requestor deciding whether to proceed with another day of recount activity and make the required deposit of estimated costs. Elections officials can and have conducted recounts in which they resolved all ballot challenges the same day the challenges were made. The proposed subsection already makes allowance for extraordinary circumstances in which daily resolution might be infeasible, qualifying the requirement for daily resolution with the language “but in any event before the conclusion of all recount proceedings.”

**Comment A39: Section 20830 generally:** The commenter states that revisions are necessary because some voting systems used in California include devices that read or record but do not tabulate votes cast on ballot cards or paper ballots while the proposed section refers only to vote tabulating devices, and suggests replacing “vote tabulating device” with either “vote tabulating or recording device” or “vote tabulating or recording device or card reader.”

**Accept in part:** The commenter's point is valid and has been addressed by revising the definition of “vote tabulating device” (See response to Comment A3 and revised proposed subsection 20811(h).) A corresponding revision has been made to the heading for proposed Article 2.

**Comment A40: Subsection 20830(a):** The commenter states that a revision is necessary for clarity because the proposed subsection could be interpreted as requiring a logic and accuracy test that would cover all contests on the ballot and would as a result be time and cost prohibitive. The commenter suggests deleting “applying the same test method used prior to the election subject to recount pursuant to Elections Code section 15000” with “using a test deck created to check the logic for the contest subject to recount.”

**Accept:** The proposed subdivision has been revised for clarity but with different language than suggested by the commenter.

**Comment A41: Subsection 20830(a):** The commenter states that a revision is necessary for clarity to avoid delaying the recount because all of the persons entitled to inspect the results of the test and the test deck used are not present before the commencement of the recount. The commenter suggests

deleting from the last sentence of the proposed subsection the words “for their inspection before the commencement of the recount” and inserting the words “present at the time the recount is scheduled to commence as posted, for their inspection before any ballots are counted.”

**Accept in part:** The proposed subsection has been revised for clarity but with different language than suggested by the commenter.

**Comment A42: Subdivision 20830(b)(1):** The commenter states that requiring vote tabulating devices used for the recount to be set to election mode and not test mode would require use of separate equipment and separate installations of voting system applications that were not used in the election, increasing costs.

**Accept:** The proposed subdivision has been deleted.

**Comment A43: Subdivision (20830(b)(2) [now 20830(b)(1)]:** The commenter states that a revision is necessary because requiring a zero results tape to be printed from each tabulating device before any recount tabulation on that device is not feasible with one vendor’s voting system when it is running “mixed mode” or with another vendor’s voting system without new election coding. The commenter suggests inserting the words “[o]n equipment that produces a paper tape or print-out” at the beginning of the proposed subdivision.

**Accept in part:** The proposed subdivision has been revised for clarity but with different language than suggested by the commenter.

**Comment A44: Subdivision 20830(b)(3) [now 20830(b)(2)]:** The commenter states that a revision is necessary for clarity because the requirement to capture the recount vote results on “the same memory media that was used in the election” could be interpreted to require re-use of the same individual memory device used to record the vote results in the election. The commenter suggests inserting the words “type of,” so the phrase quoted above would instead read “the same type of memory media used in the election.”

**Accept:** The proposed subdivision has been revised by inserting the words “type of” at the place suggested by the commenter. “If necessary” has also been inserted at the beginning of the subdivision.

**Comment A45: Subdivision 20830(b)(4) [now 20830(b)(3)]:** The commenter states that ballot cards in one vendor’s voting system are not fed through or scanned by vote tabulating devices but are read by card readers and subsequently interpreted and tabulated by servers. The commenter suggests deleting “the designated vote tabulating device” and inserting in its place “a vote tabulating or recording device or card reader.”

**Accept in part:** The proposed subdivision has been revised for clarity but with different language than suggested by the commenter. In addition, the terminology concern raised in the comment has been addressed by the revision of the definition of “voting tabulating device.” (See Comment A3 and revised proposed subsection 20811(h).)

**Comment A46: Subdivision 20830(b)(5) [now 20830(b)(4)]:** As in Comment A45, the commenter suggests replacing “vote tabulating device” with “vote tabulating or recording device or card reader.” In addition, the commenter assumes that possible “ballot fatigue” underlies the requirement to correct or duplicate ballots that cannot be read by machine and asks what procedure would apply if many ballots required duplication and counties ran short of duplicate ballot stock.

**Accept in part/reject in part:** The proposed subdivision has been revised for clarity but with different language than suggested by the commenter. In addition, the terminology concern raised in the comment has been addressed by the revision of the definition of “voting tabulating device.” (See Comment A3 and revised proposed subsection 20811(h).) The request for a procedure to address a possible shortage of duplicate ballot stock is rejected. No evidence has been offered that such shortages have occurred or been narrowly averted in actual machine recounts.

**Comment A47: Subdivision 20830(b)(6):** The commenter raises multiple concerns and suggests multiple changes to the proposed subdivision. In addition, the commenter states that CACEO member, Los Angeles County, uses a “tally system that was not designed to support machine recounts of individual contests” and contends that adoption of section 20830 without unspecified clarifying language will force Los Angeles County into a noncompliance situation.

**Accept in part/reject in part:** The proposed subdivision has been deleted. The revision to proposed subdivision 20830(b)(4) [now 20830(b)(3)] (see Comment A45) render the proposed subdivision unnecessary and address all of the commenter’s concerns except the specific concern of Los Angeles County regarding the limitations of its voting system. The County’s request for revisions to the regulation that would exempt it from providing the option of an automated recount is rejected. The County’s concern with possible noncompliance is more properly addressed to the Legislature, which has afforded every recount requestor the statutory right to choose either a manual recount or an automated recount using the same vote counting system used in the election. (See Elections Code sections 358 and 15627(a).)

**Comment A48: Subsection 20830(c):** The commenter states that a revision is necessary because some vote tabulating devices used in California cannot be “closed” so as to reject further ballots for a precinct after all eligible ballots for that precinct have been processed, as required by the proposed subsection. The commenter suggests with respect to one device that the subsection should require closing the precinct, not the device.

**Accept in part:** The proposed subsection has been revised but with different language than suggested by the commenter. The revision states in relevant part that “the device shall, if supported by the voting system, be rendered incapable of accepting further ballots for that precinct.”

**Comment A49: Subsection 20830(d):** The commenter states that a revision is necessary because requiring another complete logic and accuracy test at the conclusion of tabulation of all precincts designated for the recount will be cost prohibitive for recount requestors. The commenter suggests

deleting “applying the same test method used prior to the election subject to the recount pursuant to Elections Code section 15000” and inserting in its place “using a test deck created to check the logic for the contest subject to the recount.” The commenter also suggests language changes on the scope of the term “tabulating device” (see Comment A3 and response) and to avoid interpretation of the proposed subsection in a manner that could delay recount proceedings because absent persons have not inspected materials the proposed regulations require the elections official to make available to them (see Comment A41 and response).

**Accept in part:** The proposed subsection has been revised but with different language than suggested by the commenter.

**Comment A50: Subsection 20831(a):** The commenter states that a revision is necessary to clarify that, in the event of a challenge to the manner in which votes cast on a ballot are interpreted and read, the determination of the elections official is final. The commenter suggests adding to the end of the proposed subsection “and shall include a statement that in the event of a challenge, the determination of the elections official shall be final.”

**Accept:** The proposed subsection has been revised by adding the language suggested by the commenter.

**Comment A51: Subsections 20832(a) through (f):** The commenter states that revisions are necessary to clarify whether or not the proposed regulation mandates use of the “sort and stack” method of manually recounting paper ballots because it uses the terms “is subject to the following requirements,” “may” and “should” at different points. The commenter states that the sort and stack method is more time-consuming than the “ballot tally” method and asserts at one point that it is “arguably no more accurate” and at another that it “appears to be more . . . prone to errors resulting in more frequent recounts for the same contest.” The commenter suggests deleting all language in the proposed regulation through the end of the second sentence in subdivision (g) and inserting in its place the following: “The elections official may conduct the recount using a ballot tally, sort and stack, or other generally accepted method of counting, provided that a comparison check is performed after each 10 or 25 ballots are recounted.”

**Reject in part/accept in part:** Uniform use of a single method for manual recounting throughout the state is arguably mandated by the Fourteenth Amendment's equal protection guarantee. Uniformity is also highly desirable as a practical matter in a recount of any contest that involves ballots cast in two or more counties. In addition, while one county's elections official may not be affected by a neighboring county's use of a different method to recount ballots for an office voted upon in multiple counties, recount requestors, their representatives, members of the media and public observers certainly are affected. They clearly benefit if the same recount method is used in all of the counties they are simultaneously monitoring. Finally, no evidence is presented to support the assertion that the “sort and stack” method is more prone to errors or more time-consuming or, assuming it is more time-consuming, whether the difference is significant. The proposed section has been revised to use mandatory language consistently, removing any ambiguity as to whether use of the “sort and stack” method is required.

**Comment A52: Subsection 20832(e):** The commenter states that, if use of the “sort and stack” method is mandatory and the detailed provisions governing its use remain in the regulation, a revision to the proposed subsection is required to avoid an interpretation that would allow an authorized spokesperson who requests to inspect a ballot to unduly delay the recount by taking an unreasonable amount of time for the inspection.

**Accept:** The proposed subsection has been revised by adding at the end of the second sentence the words “which the spokesperson shall complete in a reasonable amount of time.”

**Comment A53: Subsection 20832(g):** The commenter states that a revision is necessary to clarify that only the special recount board, a supervisor or the elections official or his or her designee is authorized to provide an explanation of a difference between results reported by different members of the special recount board that permits correction of the tally sheet, not the observers, representatives or spokespersons and suggests inserting the phrase “by the special recount board, supervisor or the elections official or his or her designee.”

**Accept:** The proposed subsection has been revised by insertion of the language suggested by the commenter.

**Comment A54: Section 20833:** The commenter notes that the proposed section is identical to proposed section 20832 except that section 20832 concerns “Vote for One” contests while section 20833 concerns “Vote for Multiple” contests. The commenter states the same opposition (see Comment A51) to mandating use of the “sort and stack” method in “Vote for Multiple” contests, adding that the requirement will be more burdensome in “Vote for Multiple” contests.

**Reject:** See response to Comment 51.

**Comment A55: Subsection 20833(e):** The commenter raises the same concern it raised with respect to subsection 20832(e) (see Comment A52).

**Accept:** See response to Comment A52.

**Comment A56: Subsection 20833(g):** The commenter states that same revision is necessary to clarify the proposed subsection that it suggested with respect to subsection 20832(g).

**Accept:** The proposed subsection has been revised by insertion of the language suggested by the commenter.

**Comment A57: Subsection 20840 general:** The commenter states that the proposed section, establishing procedures for automated recounts using direct recording electronic (DRE) voting systems, is redundant because jurisdictions are required by the conditions of re-approval for use of their voting systems to conduct a 100% manual count of the voter verifiable paper audit trail (VVPAT) from every DRE used in the election as part of the canvass. The commenter also states that smaller, statistical sampling would suffice and not unduly burden counties.

**Reject:** First, the conditions of re-approval for use of one vendor’s DRE voting system used in California do not require a manual count of the VVPAT as part of the canvass. Second, under Elections Code section 15632, the results of a recount are null and void unless the votes in every precinct are

recounted. Even if a 100% manual tally had been conducted as part of the canvass, neither that nor a statistical sampling could lawfully substitute for the separate, complete count required by statute. The Secretary of State cannot eliminate a statutory requirement by promulgating a regulation. A recount in which such a substitution was attempted would be null and void.

**Comment A58: Subsection 20840(a):** The commenter states that conducting a logic and accuracy test on DREs prior to the recount using the same method used prior to the election would risk loss of the prior results stored on some DREs and loss of results stored on some portable memory devices used in the election. New portable memory devices might be needed, increasing costs. The commenter suggests deleting the proposed subsection while keeping proposed section 20841.

**Reject in part/accept in part:** The suggestion to delete the proposed subsection is rejected. The Legislature has mandated that voters be given a choice of automated or manual recount (see Elections Code section 15627(a)). The automated recount method authorized by proposed section 20841 does not yet exist. Revisions have been made to delete the requirement for use of the same logic and accuracy test method used prior to the election. (See also Comment A49 and response.)

**Comment A59: Subsection 20840(b):** CACEO member, Los Angeles County, states that its voting system does not support automated transfer of voting results from a DRE to its central tally system for automatic incorporation into the final results. The County states that manual entry of recount vote results from DREs would be costly, tedious and error prone.

**Accept in part/reject in part:** The concerns raised by Los Angeles County are only theoretical as the County does not currently use DREs to record votes. The proposed subsection has nonetheless been revised to exempt a county using a voting system that does not support the function from the requirement to re-import and re-tabulate DRE vote results directly from the vote recording electronic media into the election management system. The proposed subsection has also been revised to allow generation of the report of aggregated DRE vote results by some means other than an election management system report.

**Comment A60: Subsection 20841(a):** Los Angeles County repeats the concerns specific to its voting system that it raised with respect to proposed sections 20830 (see Comment A47) and 20840 (see Comment A59). In addition, the commenter states that the proposed subsection would unnecessarily require re-certification of the entire voting system to approve use in recounts of a device that scans and tabulates VVPAT records. The commenter states that the regulation should provide a way to certify VVPAT scanners separately.

**Accept in part/reject in part:** See responses to Comments A47 and A59. The proposed subsection has been revised but with different language than suggested by the commenter. The commenter's proposal to permit separate approval of VVPAT scanners is rejected. Elections Code section 362 defines "voting system" as "any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast or tabulate votes, or both." Because the results could change the outcome of an election, a device used in a recount to scan and/or tabulate VVPAT records comes within this definition. Elections Code section 19250 bars approval or use in California elections of any voting

system that is not federally certified, and the federal system does not certify voting system components separately but only as parts of an entire voting system.

**Comment A61: Subsection 20841(b):** The commenter repeats the concerns raised with respect to proposed subsection 20840(a) (see Comment A58) concerning the scope of logic and accuracy testing and use of the term “test deck.” The commenter states that the proposed section, establishing procedures for automated recounts using the voter verifiable paper audit trail (VVPAT), is redundant because jurisdictions are required by the conditions of re-approval for use of their voting systems to conduct a 100% manual count of the voter verifiable paper audit trail (VVPAT) from every DRE used in the election as part of the canvass. The commenter also states that the proposed subsection could be interpreted to require public access to the cartridge containing the vote simulation test deck or pattern, creating “an opening for attackers to gain knowledge of how votes could be injected into an Edge [(DRE)] unit given the correct series of circumstances.”

**Accept in part:** The proposed subsection has been revised but with different language than suggested by the commenter. Revisions have been made to delete the requirement for use of the same logic and accuracy test method used prior to the election, replacing it with a requirement for use of a test verified paper audit trail record deck or roll created to test the logic and accuracy for the contest of the automated scan and tabulation device to be used in the recount. This revision eliminates any possible interpretation that would require public access to a cartridge containing a vote simulation test deck or pattern.

**Comment A62: Section 20842 :** The commenter states that a revision is necessary to clarify and narrow the meaning of the term “voter verified paper audit trail records” and suggests “those records as defined by the election official.”

**Accept in part:** The proposed section has been revised but with different language than suggested by the commenter. The word “records” has been replaced by the words “paper copies” to correspond to the statutory terminology used in sections 15627(b) and 19251(e) of the Elections Code.

**Comment A63: Section 20842 :** The commenter states that the proposed regulation does not address how to challenge a voter verified paper audit trail paper copy, implying that a procedure for this purpose should be added.

**Reject:** A procedure to challenge a voter verified paper audit trail paper copy is unnecessary. It is true that ballots cast on paper can be challenged, but “only on grounds of disqualifying identifying marks or some other grounds visible on the face of the ballot so that the ballot can be isolated and removed from the count if the elections official determines that the ballot was not properly cast.” (Proposed subsection 20823(a)(1).) Voter verified paper audit trail paper copies, by contrast, are displayed under a transparent cover that prevents the voter or an unauthorized person from placing identifying marks on a paper copy. Nothing else is visible on the face of a voter verified paper audit trail paper copy that could support a determination that the ballot itself was not properly cast.

**Comment A64: Subsection 20842(a):** The commenter states that some counties prefer to cut their voter verified paper audit trail tapes and suggests inserting “or cut” after “respooled” in the proposed subsection.

**Reject:** All direct recording electronic voting systems currently used in the state print voter verified paper audit trail paper copies on thin, thermal paper that is kept in a roll. If the roll is cut to separate the paper copies of the ballots cast by individual voters, the pieces tend to curl up, making them difficult to handle. The proposed subsection has been revised to expressly prohibit cutting paper copies for individual voters from the roll.

**Comment A65: Subsection 20842(b):** The commenter states that one of the direct recording electronic voting systems in use in the state prints the zero-results tape on a separate piece of paper from the voter verified paper audit trail paper copies and implies that a revision is necessary to address this as a special case.

**Reject:** No revision is necessary. The proposed subsection does not require the zero-results tape and the voter verified paper audit trail paper copies to be printed on the same piece of paper.

**Comment A66: Subsection 20842(b):** The commenter states that a revision is necessary to establish a procedure to be followed in pollworkers failed to print a zero-results tape and suggests adding a requirement in this event to obtain an affidavit from pollworkers that they observed that the tape showed zero votes prior to the opening of the polls.

**Reject:** Seeking affidavits weeks after an election from pollworkers on whether they observed a zero-results tape prior to the opening of the polls could result in statements that are unreliable. The commenter’s own framing of this back-up procedure—“get affidavit from pollworkers *that they observed it at zero* prior to opening polls” (emphasis added)—highlights the problem. The proposed subsection has instead been revised to clarify that the recount shall proceed even if the zero-results tape was not printed and retained.

**Comment A67: Subsection 20842(d):** The commenter objects to the requirement in the proposed subsection stating that “the board member reviewing and calling out the vote results shall draw a distinct line on the continuous voter verified paper audit trail record between the individual voter verified paper audit trail record containing the 10th or 25th counted vote and the individual voter verified paper audit trail record for the next voted ballot . . . .” The commenter states that no marking should be allowed.

**Reject:** The marking requirement aids in assuring that the 10- or 20-count intervals on the tally sheets and the voter verified paper audit trail paper record roll correspond. The marks will be added in view of interested parties and observers. Counting boards are authorized to mark original ballots in other

carefully defined circumstances, such as when the voter’s intent is clear but the ballot scanner cannot read the voter’s marks. (See Elections Code section 15210.)

**Position Paper by John Tuteur, Napa County Registrar of Voters, submitted March 4, 2009**

**Comment B1: Subsection 20813(b) [now 20811(f)]:** The commenter states that the proposed regulations will result in a “perversion of the recount process” and requests that they be withdrawn and completely rewritten. The commenter states that the proposed regulations ignore the statutory difference between a recount (Elections Code section 15620 et seq.) and an election contest (Elections Code section 16000 et seq.). According to the commenter, the definition of “relevant material” improperly includes things that are relevant only to an election contest, and the Superior Court's findings to the contrary in *Americans for Safe Access, et al. v. County of Alameda, et al.* are illogical and should be overturned on appeal.

**Reject:** See response to Comment A7.

**Remcho, Johansen & Purcell letter dated March 13, 2009**

**Comment C1: Proposed Section 20813:** The commenter objects to the breadth of the definition of “relevant materials,” stating that it appears to be based on the ruling of the trial court in *Americans for Safe Access, et al. v. County of Alameda, et al.* The comment requests postponement of implementation of the proposed regulation until the Court of Appeal decided the appeal of that ruling.

**Reject:** The request is now moot, as the Court of Appeal has published its decision in *Americans for Safe Access, et al. v. County of Alameda, et al.*, which is contrary to the commenter's position. See response to Comment A7.

**Valerie Lane (SAVElections Monterey County) e-mail dated March 13, 2009**

**Comment D1: Section 20813:** The commenter states that the definition of “relevant materials” should be comprehensive and that the regulation should define reasonable costs and timelines for their production. The commenter also states that the regulation should clarify which electronic records the vendor may redact.

**Accept in part/reject in part:** The definition of “relevant materials” has been broadened based on specific recommendations by other commenters. See responses to Comments E1 and F1. Costs and timeliness issues are addressed in other sections of the proposed regulations. It is not necessary to revise the proposed regulation to establish standards for redaction of electronic documents by vendors, as existing legal and equitable remedies in the courts are available to a vendor who believes disclosure of an un-redacted electronic document would harm its interests.

**Comment D2: Proposed Section 20815:** The commenter states that recount costs a jurisdiction many charge a requestor should be limited to the compensation of special recount board members pursuant to Elections Code section 15625.

**Reject:** Elections Code section 15625 does not purport to define the recount costs jurisdictions may charge requestors.

**Comment D3: Subsection 20820(d):** The requestor states that a revision is necessary to require every recount attendee to wear a badge indicating name and party affiliation, and to clarify that observers must be allowed to remain in viewing areas for as long as procedures are being performed.

**Reject:** Party affiliation is irrelevant to several of the classifications determining who may attend a recount. (See proposed section 20816 and Elections Code section 15004.) It is unnecessary to specify the length of time observers must be allowed to be present in viewing areas, as the proposed regulations broadly allow all persons, subject to space limitations, to “observe the recount proceedings,” and specifically allow the accompanied spokesperson designated by each interested party access to all areas where ballots are recounted by hand or tabulated by machine. (See proposed section 20820, subsections (a) and (b).)

**Comment D4: Section 20821:** The commenter states that the argument for media access with cameras and audio recording equipment applies equally to citizen access, and implies that a revision should be made to the proposed regulation to grant citizens the same access as the media.

**Accept:** The proposed regulation has been revised to allow interested parties and observers the same access as the media.

**Comment D5: Subsection 20822(b):** The commenter states that the proposed regulation should be revised to require the elections official to post the recount tally daily on a website in addition to announcing it, and to provide a written copy of each announcement that can be archived for those who cannot attend and those without Internet access.

**Reject:** Daily website posting would be an undue burden for many elections officials. Those unable to attend a recount can obtain copies of daily announcements from those in attendance if they are not provided by the elections official.

**Comment D6: Subdivision 20830(b)(5) [now 20830(b)(4)]:** The commenter describes the duplication of ballots that cannot be read by the vote tabulating device as a problematic practice that provides a window for fraud, and implies that the proposed subdivision providing for this practice should be deleted.

**Reject:** As stated in the proposed subdivision, the duplication of ballots that cannot be read by the tabulation device is required by the Elections Code section 15208 *et seq.* The Secretary of State may not promulgate a regulation that is contrary to statute.

**Comment D7: Subdivision 20831(c)(1):** The commenter states that a revision is necessary to eliminate on security grounds electronic upload of ballots from memory cartridges as a step in the procedure for automated electronic recount of ballots cast on direct recording electronic (DRE) voting machines. The commenter states that electronic upload should not be permitted because of Secretary of State requirements for all voter verified paper audit trail (VVPAT) records of the same ballots to be manually tallied.

**Reject:** The proposed subdivision concerns recount of paper ballots using vote tabulating devices, not recount of electronic ballots cast on DRE voting systems.

**Comment D8: Subsection 20840(b):** The commenter states that a revision is necessary to eliminate on security grounds electronic upload of ballots from memory cartridges as a step in the procedure for automated electronic recount of ballots cast on direct recording electronic (DRE) voting machines. The commenter states that electronic upload should not be permitted because of Secretary of State requirements for all voter verified paper audit trail (VVPAT) records of the same ballots to be manually tallied.

**Reject:** The Secretary of State has mitigated security risks posed by electronic upload of DRE ballots by imposing several requirements and restrictions as conditions of use of DRE voting systems. Contrary to the commenter's statement, hand counting of VVPAT records is not required for all DRE voting systems.

**Comment D9: Section 20841:** The commenter states that the process for automated recount of ballots cast on DRE voting systems using digital scans of VVPAT records will not fix security vulnerabilities reported in the Secretary of State's 2007 "Top-To-Bottom Review" of voting systems. The commenter requests removal of this process from the proposed regulations, contending that it "will only serve to provide a placebo to cover up the DRE systemic security problems."

**Reject:** The proposed regulation would permit this form of automated recount only if and when the Secretary of State "has tested and approved the automated scan method as part of the certification of the voting system." A central purpose of such testing would be to ensure that the results of an automated recount using scanned VVPAT records would be as accurate as a manual count of those records. If such a method received approval, it would simply provide recount requestors with an alternative to the manual recount option, to which the commenter does not object, an alternative that might be faster and less expensive.

**Comment D10: Subsection 20842(j):** The commenter states that a revision is necessary to require the elections official to post the recount tally daily on a website in addition to announcing it, and to provide a written copy of each announcement that can be archived for those who cannot attend and those without Internet access.

**Reject:** See response to Comment D5.

**Written statement of Judy Alter (Protect California Ballots) submitted March 4, 2009**

**Comment E1: Subsection 20831(b) [now 20811(f)]:** The commenter states that a revision is required to include “the jurisdiction's central electronic repository of results for that election” and “unused ballots” in the definition of “relevant materials” and to prohibit destruction of unused ballots.

**Accept in part/Reject in part:** The proposed regulation has been revised to include “the jurisdiction's central electronic repository of results for that election” and “unused ballots” in the definition of “relevant materials.” No revision has been made concerning destruction of unused ballots. The proposed regulation governs recounts, not requirements for retention of election materials. The rules governing retention, destruction or recycling of unused ballots are set forth in Elections Code sections 14404 and 14405.

**Comment E2: Section 20832:** The commenter states that a revision is required because the manual recount method in the proposed regulation is prone to error. The commenter proposes replacing that method with one of two alternative methods. In the first proposed method, the ballots would not be presorted by candidate or position but would, as provided in the proposed regulation, be tallied by one special recount board member reading the votes aloud, observed by a second member, while the two other recount board members mark the votes on a tally sheet one by one. The commenter describes the first method as “read, observe, tally, tally.” In the second method proposed by the commenter, the ballots would be presorted by candidate or position, as provided in the proposed regulation, but would be tallied by two members of the special recount board counting each stack independently,. The commenter describes the second method as “sort, stack, count, count.”

**Reject:** The commenter provides no evidence concerning the accuracy of any manual recount method. Specifically, the commenter offers no evidence that the method in the proposed regulation is error-prone or that either of the commenter's proposed alternative methods is more accurate.

**Comment E3: Subsection 20815(e):** The commenter objects to including security, supervision, staff and administrative costs in the chargeable costs of the recount. According to the commenter, Elections Code section 15625 “states that the cost of the recount is only the cost of the counting boards at the poll worker rate.” The commenter states that charging requestors for additional costs makes recounts prohibitively expensive and that conducting recounts is the job of elections officials, who are paid with tax dollars.

**Reject:** Elections Code section 15625 does not establish a comprehensive definition of recount costs. Rather, it states, in relevant part: “Each member of a recount board shall receive the same compensation per day as is paid in the jurisdiction within which the recount is being conducted to members of precinct boards, other than inspectors, to be paid out of the appropriate public treasury.”

Costs chargeable to the requestor are addressed in Elections Code section 15624, which states: “The voter filing the request seeking the recount shall, before the recount is commenced and at the beginning of each day following, deposit with the elections official a sum as required by the elections official to cover the cost of the recount for that day.” Section 15624 goes on to provide that deposited funds are to be refunded only when the requestor prevails in the recount. By requiring the requestor to bear the cost of a recount unless it changes the outcome of the election, the Legislature made clear that it did not intend to finance recounts with tax dollars except in the small percentage of recounts that change the result.

**Comment E4: Section 20818:** The commenter states that a revision is necessary to clarify that an employee of a county elections office should not be permitted to receive compensation as a member of a special recount board pursuant to Elections Code section 15625 (see response to Comment E3) for a day that individual receives compensation as an employee of the elections office. To accept compensation under Elections Code section 15625, the county employee should be required to take a vacation day.

**Accept:** Subsection 20818(a) has been revised to permit a jurisdiction to compensate a jurisdiction employee as a member of a special recount board only if the employee uses a vacation day.

**Comment E5: Section 20840:** The commenter states that a revision is necessary to add a requirement for a check on the accuracy of a recount using the portable memory devices on which votes were stored in the election. The elections official would be required, without the use of a portable memory device, to print the data/vote totals from each DRE from the non-volatile memory in each DRE using its built-in printer. This internally generated printout of results would be compared to the results stored on the portable memory device.

**Reject:** A requestor concerned about the accuracy of the data contained on portable memory devices already has two options available. First, the requestor can specify that the recount is to be conducted by counting the VVPAT paper copies that are generated by each DRE. Second, the requestor can inspect the data recorded in the non-volatile memory of one or more of the DREs through a request to examine relevant materials pursuant to Elections Code section 15630 and proposed regulation 20813.

**Joseph Lorenzo Hall (UC Berkeley/Princeton/ACCURATE) e-mail dated February 27, 2009**

**Comment F1: Subsection 20813(b) [now 20811(f)]:** The commenter recommends a revision to include in the definition of “relevant material” a copy of the “EMS database.” The commenter states that access to a copy of the database of election results itself and not just a report generated in the voting system's format would enable the requestor to analyze the data and produce reports in the requestor's preferred format.

**Accept:** The definition of “relevant materials” in the proposed regulation has been revised by adding “central database or other electronic repository of results for the election in which the contest subject to

recount occurred” and “precinct tally results, central count tally results and consolidated results in a structured, non-proprietary format.”

**Comment F2: Section 20821:** The commenter states that a revision is necessary to prohibit photographing ballots with unique identifying numbers in order to avoid compromising the anonymity of the ballot. The commenter singles out provisional ballots used with a particular vendor’s voting system as an area of particular concern.

**Reject:** The proposed regulation requires generally that guidelines developed by the elections official shall not permit use of cameras or audio or video recording devices in the recount location in a manner that will compromise the anonymity of any ballot. The elections official must develop guidelines that will meet this requirement in a manner that is appropriate to the particular qualities of the voting system used in his or her jurisdiction.

**Comment F3: Subsection 20831(b):** The commenter states that a revision is necessary to require the elections official to provide copies of the recount regulations and any local procedural documentation used in recounts.

**Accept:** The proposed regulation has been revised as suggested by the commenter.

**Comment F4: Section 20842:** The commenter states that a revision is necessary to allow cutting VVPAT paper copies so they can be recounted using the sort and stack method (see proposed regulation 20832 and Comment E2). Jurisdictions that use the sort and stack method for other purposes, e.g., the 1% manual tally required by Elections Code section 15360, could use this familiar method for recounts.

**Reject:** See response to Comment A64.

**Comment F5: Subsection 20842(d):** The commenter states that a revision is necessary to clarify whether a comparison of the tally sheets is required after 10 or 25 ballots are counted or after 10 or 25 votes for the same candidate or position are marked. The commenter suggests revising the language to require comparison after 10 or 25 votes are marked for the same candidate or position, because the benefit of periodically calling out a number is to easily roll back the count when there is a discrepancy between the two tallies for the same candidate.

**Accept in part/reject in part:** The proposed regulation has been revised to clarify that, after 10 or 25 ballots are called out, comparison of the tally sheets is required to determine if the counts for each candidate or position match exactly. The commenter's recommendation has not been adopted because it would result in different frequencies of tally sheet comparisons in manual recounts of voter verified paper trails and manual recounts of ballot cards or paper ballots (see proposed regulations 20832(d) and 20833(d)).