



SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION

1500 11th Street, 5th Floor, Sacramento, CA 95814 | Tel 916.657.2166 | Fax 916.653.3214 | www.sos.ca.gov

September 3, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21147

TO: All County Clerks/Registrars of Voters

FROM: /s/ Raj Bathla
Sr. Legal Analyst

RE: Regulations: Risk Limiting Audits

The Secretary of State is providing notice of changes to the regulations originally published on June 21, 2021. The Secretary of State is proposing amendments to the originally-noticed proposed regulation text to address concerns raised during the 45-day public comment period.

Written Comment Period: September 3 – October 18, 2021

Any interested person, or their authorized representative, may submit written comments pertaining to the changes in the text of the proposed regulations. The Secretary of State will accept written comments on the changes from September 3, 2021, to October 18, 2021. The Secretary of State will consider only comments received at the Secretary of State's office by that date.

Hearing Date:

No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period i.e., October 4, 2021.

Following the close of the written comment period, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals provided by the public or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available from our office for 15 days prior to its adoption and will be mailed to those persons who submit written comments related to this proposal or who have requested notification of any changes to the proposal.

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Copies of the Notice of Modification to Proposed Regulations Rulemaking, the text of the proposed regulation, and addendum to the initial statement of reasons with changes identified in underline and strikeout are attached herewith, and can be accessed through the Secretary of State's website at:

<https://www.sos.ca.gov/administration/regulations/proposed-regulations/>

If you have any questions, please feel free to contact Raj Bathla at rbathla@sos.ca.gov or Taylor Kayatta at tkayatta@sos.ca.gov or (916) 657-2166. Thank you.

**California Secretary of State
Proposed Regulatory Action:
Risk Limiting Audits**

**NOTICE OF MODIFICATIONS TO TEXT OF
PROPOSED REGULATIONS**

Please take notice that the Secretary of State is proposing changes to the regulations that are the subject of this rulemaking action. The proposed revised text is enclosed with this notice. The proposed revisions to the originally-noticed text of the regulations are shown using ~~strikeout~~ for any text proposed for deletion and underlining for any text proposed to be added. (See Govt. Code, § 11346.8(c); Cal. Code Regs., tit. 1, § 44.)

**NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO
RULEMAKING FILE**

Please take notice that the Secretary of State is adding the following documents and other information to the rulemaking file in this rulemaking action:

- Addendum to Initial Statement of Reasons
(See Govt. Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1.)

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m., at this address:

California Secretary of State
Elections Division
1500 11th Street, 5th Floor
Sacramento, CA 95814

Website Access: Materials regarding this proposal can be found at:
<https://www.sos.ca.gov/administration/regulations/proposed-regulations>.

Due to restrictions related to COVID-19, the SOS' public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review

PUBLIC HEARING COMMENT PERIOD

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period i.e., October 4, 2021.

Public Comment Period: September 3, 2021, through October 18, 2021 (45-day comment period)

If you have any comments regarding the proposed changes to the regulations and/or the documents and other information added to the rulemaking file pursuant to this notice, the Secretary of State will accept written comments from September 3, 2021, through October 18, 2021. Only comments that relate to changes to the text noticed on June 18, 2021 (shown in underline or strikethrough in the proposed regulation text) will be considered during this public comment period.

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Taylor Kayatta
California Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95841
(916) 695-1530
tkayatta@sos.ca.gov

The backup contact person is:

Raj Bathla
California Secretary of State
1500 11th St., 5th Floor
Sacramento, CA 95814
(916) 695-1597
rbathla@sos.ca.gov

The Secretary of State will review and respond to all written comments that it has received by the close of the public comment period and that pertain only to the indicated changes and/or documents and other information added pursuant to this notice. The Secretary of State will include the comments in the public rulemaking file.

**California Secretary of State
Proposed Regulatory Action
Certificate of Compliance: Risk Limiting Audits
Proposed Regulation Text (Second 45-Day Notice)**

Changes to Permanent Regulation Text

Title 2. Administration
Division 7. Secretary of State
Chapter 2. Risk Limiting Audits

The Secretary of State is proposing to make emergency regulations related to this Chapter permanent with a Certificate of Compliance action. The Secretary of State is proposing several additional changes to the permanent regulation text beyond those effected by those emergency regulations. This document shows changes proposed to replace the current permanent regulations. Changes to the permanent regulation text (including those made by emergency regulation and separately proposed now) are shown as ~~strikethrough~~ for text removed and underlined for the text added. The entire chapter is presented here, including some sections that were not modified by the emergency regulations and are not proposed for modification now.

20110. General Provisions.

(a) The purpose of this chapter is to establish guidelines and procedures for an elections official to conduct a risk-limiting audit in accordance with the requirements of Division 15, Chapter 4, Article 5.5 of the Elections Code.

(b) Pursuant to Elections Code section 15367(a)(1), commencing with the statewide ~~primary~~ general election held on ~~March 3~~ November 3, 2020, the elections official conducting an election may conduct a risk-limiting audit ~~in place of the one-percent manual tally required by Elections Code section 15360~~ during the official canvass of any election.

(c) A participating county may exclude any contest that has been subject to a risk-limiting audit from the one-percent manual tally required by Section 15360.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Sections 15150, 15360 and 15367, Elections Code.*

20111. Definitions.

As used in this Chapter, the following terms have the following meanings:

(a) “Ballot” shall have the meaning set forth in Elections Code section 15366(a). A validly cast ballot is any ballot that is eligible to be counted in the canvass of an election, as specified in Division 15, Chapters 2 through 4 of the Elections Code.

(b) “Ballot card” means a card upon which is printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. A ballot may be comprised of multiple ballot cards.

(c) “Ballot-level comparison audit” shall have the meaning set forth in Elections Code section 15366(b). In performing this type of risk-limiting audit, the elections official shall export a cast vote record from the voting system for every cast ballot card and cast voter verified paper audit

trail containing the contest(s) under audit. The cast number of cast vote records must be exported in a way that enables the elections official to determine whether the number of cast vote records matches the number of ballot cards physically accounted for in the ballot manifest and to find the particular physical ballot card or voter-verified paper audit trail associated with each cast vote record.

(d) “Ballot manifest” means a detailed description of how the ~~ballots~~ballot cards are stored and organized, listing at minimum the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually.

(e) ~~“Ballot polling~~ Ballot polling audit” shall have the meaning set forth in Elections Code section 15366(c). In examining voter markings, the audit board shall perform a hand-to-eye, human interpretation of voter markings but shall not compare those interpretations to the corresponding cast vote records.

(f) “Batch comparison audit” means a type of risk-limiting audit in which the audit board examines voter markings on ballot cards, in randomly selected batches of ballot cards. This type of risk-limiting audit involves the following steps:

(1) The elections official divides the ballot cards cast in the contests under audit into physically identifiable batches, such as the ballot cards cast in different precincts or vote centers.

(2) The elections official exports vote subtotals from the voting system for each such physically identifiable batch of cast ballot cards.

(3) The elections official verifies that the number of ballot cards according to these subtotals does not exceed the number of ballot cards physically accounted for in the ballot manifest.

(4) The elections official compares some or all of those batch-level subtotals to subtotals derived by hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter or the voter verified paper audit trail, as defined by Elections Code section 19271.

~~(f)(g)~~ “Cast vote record” shall have the meaning set forth in Elections Code section 15366(d). The cast vote record shall be generated by the voting system.

~~(g) “Cross-jurisdictional contest” shall have the meaning set forth in Elections Code section 15366(e).~~

(h) “Elections official” shall have the meaning set forth in Elections Code section 320.

(i) “Electoral outcome” shall have the meaning set forth in Elections Code section 15366~~(f)~~(e).

~~(j) “Partial risk limiting audit” or “partial RLA” shall have the meaning set forth in Elections Code section 15366(g).~~

(j) “Hybrid audit” means a type of risk-limiting audit which involves, at a minimum, the following steps:

(1) The elections official divides the ballot cards cast in the contests under audit into physically identifiable batches, such as the ballot cards cast in different precincts or vote centers or ballot cards processed by different voting equipment.

(2) The elections official exports vote subtotals or cast vote records from the voting system for some of those batches of cast ballot cards from paragraph (1) and exports, at a minimum, aggregate results for the remaining batches of ballot cards.

(3) The elections official verifies that the number of ballot cards according to the subtotals in paragraph (2) does not exceed the number of ballot cards physically accounted for in the ballot manifest.

(4) The audit board compares some or all of the vote subtotals or cast vote records exported in paragraph (2) to a tabulation or interpretation derived by hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter, as defined by Elections Code section 19271.

(5) The audit board examines some or all of the ballot cards in the remaining batches from paragraph (2) and performs a hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter, as defined by Section 19271.

(k) “Public notice” means the release of information to the public through ~~one~~ two or more of the following readily available communication channels: a website update, a social media post, an email list mailing, a press release, and a notice posted at an office open to the public.

(1) Elections officials are encouraged to maintain an email mailing list of persons who would like to be notified about risk-limiting audits. If an elections official maintains such a list, public notice for the purposes of this Chapter must include sending an email to all persons on this list.

(l) “Random seed” means a randomly generated number consisting of at least 20 digits that is used to generate a random number sequence to select ballot cards or batches of ballot cards for audit.

(m) “Risk-limiting audit” or “RLA” shall have the meaning set forth in Elections Code section 15366~~(h)~~(f).

(n) “Risk-limiting audit software tool” or “RLA software tool” means software that can perform any of the audit types described in Section 20112. Pursuant to Elections Code section 15367(b)(2)(E), the algorithms and source code of the RLA software tool shall be disclosed to the public. ~~The SOS Secretary of State shall affect~~ effect this disclosure by posting the source code, or a link to the source code hosted on another publicly available website, on its website.

(o) “Voting system” shall have the meaning set forth in Elections Code section 362.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Sections 320, 362, 15302, ~~and~~ 15366, and 19271, Elections Code.*

20112. Audit Types.

The elections official shall use an RLA software tool provided by the Secretary of State to perform one of the following:

(a) A ballot-level comparison audit, with a five percent risk limit.

(b) A ballot polling audit, with a five percent risk limit.

(c) A batch comparison audit, with a five percent risk limit.

(d) A hybrid audit, with a five percent risk limit.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20113. Audit Initiation. [No changes to permanent regulations]

(a) If the audit commences after all validly cast ballot(s) within the jurisdiction have been tabulated, the audit shall be conducted in a single phase as described in section 20121.

(b) If the audit commences before all validly cast ballot(s) within the jurisdiction have been tabulated, it shall be conducted in two phases as described in section 20122.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20114. Contests to be Audited.

The election official who elects to conduct an RLA in accordance with the requirements of Division 15, Chapter 4, Article 5.5 of the Elections Code shall do so on each contest fully contained within its jurisdiction's borders, and a partial RLA on each cross-jurisdictional contest partially contained within its jurisdiction's borders.

Participating counties shall conduct a risk-limiting audit on one or more contests fully contained within the county's borders. Participating counties may conduct opportunistic reviews of contests not subject to audit, including cross-jurisdictional contests, from the same sample of ballot cards by entering voter selections from those contests into the RLA software tool. The results of opportunistic reviews shall not be considered confirmation to any risk limit of the outcomes of these contests.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Section 15150, Elections Code.*

20115. Audit Board Selection.

(a) The elections official shall appoint an audit board(s) to perform the duties specified in section 20123 that meets the following criteria:

(1) Audit boards shall consist of no fewer than three members. At all times, at least one member shall serve as an observer of the audit and may not make determinations of voter choices. At least two members, excluding the observer, shall make determinations of voter choices for each ballot card examined by the audit board. Audit board members may rotate roles.

(2) Audit board members may be comprised of election office full-time or temporary staff, volunteers or a combination of staff and volunteers. When feasible, audit board members involved in adjudicating voter intent during the tabulation shall not be involved in ascertaining voter intent during the audit.

(3) Prior to conducting the audit, each member of an audit board shall complete and sign a declaration of intent to faithfully discharge audit board duties. Each audit board member shall do so in the presence of the elections official on a form provided by the elections official. The elections official shall countersign the declaration. The declaration shall be in the following form:

State of California	}	
County of _____	}	ss.
<p>I do hereby solemnly declare that I will support the Constitution of the United States and the Constitution of the State of California, and that I will to the best of my ability, faithfully discharge the duties of an audit board member for the election held on _____, 20__.</p> <p>_____ (Printed Name) _____ (Signature) _____</p>		
Signed in the presence of the elections official listed below on _____, 20__.		

_____ (Printed Name) _____ (Signature) _____
Elections official name Elections official signature

(4) No fewer than two members of the audit board will be in possession of ballot cards at any time, including during the ballot card retrieval process.

(b) If the elections official appoints multiple audit boards, only one audit board shall evaluate each ballot card.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20116. Public Education on Risk-Limiting Audits. [No changes to permanent regulations]

(a) Prior to conducting an RLA, the elections official shall provide public notice that includes descriptions of how the process will be conducted, the difference between 1% manual tally and an RLA, and the methods for ensuring ballot security. The elections official shall also provide information regarding the process for selection of their audit boards and procedures used to ascertain voter intent manually.

(b) The Secretary of State shall make the same materials described in (a) above available on its website.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20117. Ballot Manifest and Ballot Handling.

(a) The elections official shall maintain an accurate ballot manifest, created ~~independent of~~ without reliance on the voting system. The ballot manifest shall uniquely identify the storage container in which each validly cast ballot card is stored after tabulation.

(b) The ~~format for the~~ ballot manifest shall be in the format required by the RLA software tool in the California Post-Election Risk-Limiting Audit Ballot Manifest Format document dated October 15, 2019, which is hereby incorporated by reference, and which the Secretary of State shall post on its website.

(c) If the audit commences after all validly cast ballot(s) have been tabulated, the elections official shall create only one ballot manifest.

(d) If the audit commences before all validly cast ballot(s) have been tabulated, the elections official shall create two ballot manifests, one before each phase of the audit: an initial ballot manifest that includes all ~~ballots~~ ballot cards that have been tabulated before the first phase of the audit starts, followed by the final ballot manifest including all tabulated ~~ballots~~ ballot cards.

(e) The content of the initial ballot manifest shall not be changed in the final manifest; accordingly, no ~~ballots~~ ballot cards shall be added to the containers included in the initial manifest. Instead, the tabulated ~~ballots~~ ballot cards that are not included in the initial ballot manifest shall be stored in new containers, and the final ballot manifest shall include all the rows in the initial ballot manifest plus a row for each new container.

Example: 1,000,000 ~~ballots~~ ballot cards were cast in the county, of which 900,000 had been tabulated when the elections official decided to start the first phase of a two-phase audit. The initial ballot manifest includes those 900,000 ~~ballots~~ ballot cards. Ultimately, 97,000 of the remaining 100,000 ~~ballots~~ ballot cards are determined to be validly cast. These ~~ballots~~ ballot

cards are tabulated and are stored in new containers. The final ballot manifest consists of the initial ballot manifest plus additional rows that describe the new containers in which these 97,000 ~~ballots~~ ballot cards are stored, for a total count of 997,000 ~~ballots~~ ballot cards in the ballot manifest for the second audit phase.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20118. Chain of Custody.

(a) The elections official shall maintain and document uninterrupted chain of custody for each ballot card and each ballot storage container. Chain of custody logs should, at a minimum, include an identifying number of each ballot storage container and the number of a tamper-evident seal affixed to each ballot storage container. Chain of custody logs shall be available for public inspection after the canvass of the election pursuant to Division 15, Chapters 2 through 4, of the Elections Code is complete.

(b) The elections official shall secure and maintain in sealed ballot containers all tabulated ~~ballots~~ ballot cards.

(c) The elections official shall establish written procedures to ensure the security, confidentiality, and integrity of any ~~ballots~~ ballot cards, cast vote records, or any other data collected, stored, or otherwise used pursuant to this section. These procedures shall be published on its website at least five days in advance of the audit.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20119. Data Publication Prior to Audit.

(a) When the elections official submits data to the RLA software tool before an audit phase begins they shall also publish the same data on their website before continuing with the audit. The elections official shall also publish any changes made to such data.

(b) Subject to Elections Code section 2194(a), cast vote record data shall not be posted to the elections official's website, but shall be made available to the public at the location where the audit is being conducted. The cast vote records made available to the public must include all contests selected for audit, and may also include cast vote records for any other contest in the election not subject to the audit.

Note: Authority cited: Section 12172.5, Government Code; ~~and~~ Section 15367, Elections Code.

Reference: Section 2194, Elections Code.

20120. Random Seed.

(a) The random seed shall be generated in order by sequential rolls of one or more fair 10-sided dice.

(b) The random seed shall be generated in a public meeting as follows:

(1) The elections official shall give at least five days public notice of the public meeting before generating the first random seed and public notice at least one hour before generating a second random seed, should a second random seed be needed when conducting a two-phase audit.

(2) The elections official shall randomly select members of the public who attend the meeting to take turns rolling a die, ~~and~~. At the election official's discretion, the elections official may designate one or more staff members to take turns rolling a die.

(3) In the event that no members of the public attend the meeting, the elections official ~~can~~ may designate someone or themselves to roll the die.

(4) Members of the public attending the public meeting shall be permitted to video record or photograph the random seed generation.

(c) After the random seed is generated, the elections official shall provide public notice of the random seed.

(d) The random seed shall be entered into the RLA software tool as provided in sections 20121(d) and 20122(e).

Note: Authority cited: Section 12172.5, Government Code; ~~and~~ Section 15367, Elections Code.

20121. Audit Procedures for Single-Phase Audit.

(a) The elections official conducting an RLA after all ~~ballots~~ ballot cards cast within the jurisdiction have been tabulated and reported shall enter the following information into the RLA software tool:

(1) ~~the~~ The ballot manifest for all ballot card(s);

(2) the The results for all ballot card(s) tabulated; ~~and~~

(3) ~~if a~~ For ballot-level comparison audits ~~is being conducted~~, the cast vote records for all ballot card(s) tabulated-;

(4) For batch comparison audits, vote totals from the voting system for each contest being audited for each batch; and

(5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.

(b) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (a), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and note the inconsistencies and their cause(s) in the final audit report in section 20125.

(c) After the data have been submitted under subdivisions (a) and (b), the elections official shall generate a random seed pursuant to section 20120.

(d) The elections official shall enter the random seed into the RLA software tool. The RLA software tool will ~~randomly~~ generate a list of particular ballot card(s) or batches of ballot card(s) from the ballot manifest to examine manually.

(e) The elections official may at any point decide to conduct a full manual tally of any contest(s) whose outcomes have not yet been confirmed by the RLA. In the event that the elections official conducts a full manual tally, the RLA of that contest shall be suspended. Such a manual tally shall follow the procedure specified in Elections Code section 15290.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

Reference: Section 15290, Elections Code.

20122. Audit Procedures for Two-Phase Audit.

(a) An elections official conducting a ~~two-phase~~ two-phase audit under subdivision (d) of section 20117 shall do so in accordance with this section.

(b) In the first phase of the audit, the elections official shall enter the following information into the RLA software tool:

- (1) ~~the~~ The initial ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
- (2) the The results for all ballot card(s) tabulated that are included in the initial ballot manifest;
- (3) ~~If a For~~ For ballot-level comparison ~~audit is being conducted~~ audits, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest; ~~and~~
- (4) For batch comparison audits, vote totals from each contest being audited for each batch;
- (5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111; and
- (6) ~~The~~ the maximum number of ~~ballots~~ ballot cards that remain to be tabulated.

(c) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (b), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and report the inconsistencies and their cause(s) in the final audit report in section 20125.

(d) After the data have been submitted under subdivisions (b) and (c), the elections official shall generate the first random seed pursuant to section 20120.

(e) The elections official shall enter the first random seed into the RLA software tool. The RLA software tool will randomly generate a list of particular ballot card(s) or batches of ballot card(s) from the ballot manifest to examine manually.

(f) In the second phase of the audit, the elections official shall enter the following information into the RLA software tool:

- (1) ~~the~~ The final ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
- (2) the The results for all ballot card(s) tabulated that are included in the final ballot manifest; ~~and~~
- (3) ~~If a ballot level~~ For ballot level comparison ~~audit or a hybrid audit with a ballot level comparison audit component is being conducted~~ audits, the cast vote records for all ballot card(s) tabulated ~~that are included in the final ballot manifest;~~
- (4) For batch comparison audits, vote totals from each contest being audited for each batch; and
- (5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.

(g) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (f), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and report the inconsistencies and their cause(s) in the final audit report in section 20125.

(h) After the data have been submitted under subdivisions (f) and (g), the elections official shall generate the second random seed pursuant to section 20120.

(i) The elections official shall enter the second random seed into the RLA software tool. The RLA software tool will identify ~~whether the audit can stop or~~ whether further auditing is required to meet the risk limit. If further auditing is required, the RLA software tool will randomly select additional particular ballot card(s) from the final ballot manifest to be examined manually.

(j) The elections official may at any point decide to conduct a full manual tally of any contest(s) whose outcomes have not yet been confirmed by the RLA. In the event that the elections official

conducts a full manual tally, the RLA of that contest shall be suspended. Such a manual tally shall follow the procedure specified in Elections Code section 15290.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Section 15290, Elections Code.*

20123. Ballot Retrieval and Manual Examination. [No changes to permanent regulations]

- (a) The audit board shall locate and retrieve, or observe the location of and retrieval by elections official or election staff of, each randomly selected ballot card from the appropriate storage container. The audit board shall verify that the seals on the appropriate storage containers are those recorded on the applicable chain of custody log.
- (b) The audit board shall examine each randomly selected ballot card. If the selected ballot card was duplicated prior to tabulation, the audit board shall retrieve the original ballot card and report how the original (rather than the duplicate) was marked.
- (c) The audit board shall interpret voter markings on ballot cards selected for audit in accordance with Elections Code section 15154. If the audit board members cannot unanimously agree on the voter's intent, they shall indicate their disagreement in the final report in section 20125. They shall then notify the elections official of the disagreement, who shall arbitrate the issue. The elections official may:
 - (1) Instruct the audit board members to replace the ballot card with another ballot card, selected at random, that contains the same contests as the previously selected ballot card;
 - (2) Instruct the audit board members to submit to the RLA software tool that no consensus can be reached on the voter choices; or
 - (3) Make a final determination of the voter markings and instruct the audit board to submit the voter markings or choices in all audited contests to the RLA software tool.
- (d) The audit board shall record the voters' choices in every contest on every ballot card selected for audit. Those choices shall be entered into the RLA tool.
- (e) The audit shall continue until the risk limit is met for every contest being audited pursuant to section 20114. If the RLA software tool specifies that further auditing is required to meet the risk limit, it will randomly select additional ballot card(s) from the ballot manifest to be examined manually. The elections official shall retrieve those additional ballot card(s) as described in (a), examine those additional ballot card(s) as described in (b) and (c), and record the voters' choices as described in (d).
- (f) If the elections official chooses to perform a full manual tally of one or more contests, the audits of those contests will be deemed to have met the risk limit and the results of the full manual tally shall be the official results for those contest(s).
- (g) The RLA shall be completed no later than the canvass deadline, as specified by Section 15372 of the Elections Code.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.
Reference: Sections 15154 and 15360, Elections Code.*

20124. Public Observation and Verification of Audit.

- (a) The elections official shall ensure that the audit process is observable and verifiable ~~to~~ by the public. The elections official shall:

(1) Provide at least five days public notice prior to the first phase of the RLA. This notice shall include the time and place of the random seed generation described in section 20120 and the date the ballot cards will be retrieved and manually examined.

(2) Describe in writing the process of manually examining ballot cards and the selection of the ~~ballots~~ ballot cards to be used in the audit.

(3) Provide observers with an oral and/or written explanation of the RLA process, a written code of conduct for observation, and any documentation they will need for informed and effective observation.

(A) The code of conduct for observation shall be determined by the elections official. The code of conduct for observation shall explain the rights and responsibilities of observers.

(B) Documentation needed for informed and effective observation shall include but not be limited to any data the audit relies upon, including ~~the ballot manifest and the cast vote records for ballot level comparison audits:~~

(i) The ballot manifest;

(ii) For ballot-level comparison audits, the cast vote records;

(iii) For batch comparison audits, vote totals from each contest being audited for each batch; and

(iv) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.

(4) Disclose the methods used to select samples and to calculate the risk.

(5) Provide the public the opportunity to observe ballot cards being retrieved and examined during the audit.

(6) Provide the public the opportunity to observe the voters' marks on every audited ballot card during the audit.

(b) Observers ~~can~~ may ask questions of the audit board, ~~as long as provided~~ they do not interfere with the conduct of the audit ~~procedures~~. The elections official, at their discretion, may designate an alternate person to receive and respond to observer questions in lieu of the audit board, and this person shall confer with the audit board to obtain answers to questions to which this person does not know the answers.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20125. Certification of Contest Results and Reporting of Audit Results.

(a) The elections official conducting an RLA shall report the results of the audit in the certification of the official canvass of the vote specified by Section 15372 of the Elections Code. The report shall contain the following:

(1) The type of RLA conducted (e.g. ballot comparison, ~~or~~ ballot polling, batch comparison, or hybrid);

(2) The date and time the RLA commenced and finished, and the number of rounds of sampling;

(3) A list of contests audited, with final reported results for those contests and the final measured risk for each contest;

(4) A link to the website where the ballot manifest can be found;

(5) The random seed(s) the elections official generated for use with the RLA software tool, and when and how the random seed(s) was generated;

(6) Any inconsistencies between the number of ballot cards and the number of cast vote records, or inconsistencies in the data reported by the RLA software tool, and—when possible—the reason(s) for those inconsistencies.

~~(6)~~(7) The number of ballot card(s) examined for each contest under audit, noting whether a full manual tally was conducted. If the audit was conducted in stages or continued beyond the first sample, a description of how the sample was drawn and the number of ballot card(s) selected at each stage.

~~(7)~~(8) Notes regarding any ballot card(s) for which the audit board could not determine the voter's intent, as described in subdivision (c) of section 20123;

~~(8)~~(9) A link to the website where the list of the particular ballot card(s) examined can be found;

~~(9)~~(10) For ballot-level comparison audits:

(A) The number of discrepancies between ballot card(s) and the cast vote record, and a description of each discrepancy; and

(B) A link to the website where the cast vote record file only for the ballot card(s) examined in the audit can be found;

(11) For batch comparison audits, discrepancies between batches and batch totals, and a description of each discrepancy;

(12) For opportunistic reviews of contests not subject to audit, as described in Section 20114, a list of contests reviewed and the result of the reviews.

~~(10)~~(13) The person-hours required to prepare for the audit, and number of people involved;

~~(11)~~(14) The person-hours required to conduct the audit, and number of people involved;

~~(12)~~(15) The number of members of the public who observed the audit;

~~(13)~~(16) Notes on anything unusual or problematic, or that would be useful to improve the process, or that might be of value to the Secretary of State or other elections officials; and

~~(14)~~(17) An attestation from the elections official that the RLA was conducted in accordance with Title 2, Division 7, Chapter 2 of the California Code of Regulations.

(b) The certification of the official canvass of the vote shall be conducted in accordance with Section 15372 of the Elections Code.

(c) The Secretary of State shall publish any report under this section received from an elections official on its website no later than five days after the date it publishes the certification of the official canvass of the vote in accordance with Section 15372 of the Elections Code. This subdivision shall not prohibit the elections official from publishing the same report on its website.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20126. Redaction of Personally Identifiable Voter Choices. [No changes to permanent regulations]

No later than the third business day following the expiration of the deadline to request a recount under Elections Code sections 15620 or 15621, or the completion of any recount, whichever is later, an elections official who conducted an RLA shall review its cast vote records file that was published and redact from the public record, but not its own files, the voter choices corresponding to any ballot susceptible to being personally identified with an individual voter.

*Note: Authority cited: Section 12172.5 Government Code; Section 15367, Elections Code.
Reference: Sections 15620, 15621 Elections Code.*

**California Secretary of State
Proposed Regulatory Action
Certificate of Compliance: Risk Limiting Audits
Proposed Regulation Text (Second 45-Day Notice)**

Changes to Proposed Regulation Text Noticed June 18, 2021

Title 2. Administration
Division 7. Secretary of State
Chapter 2. Risk Limiting Audits

The California Secretary of State is proposing to amend the following existing regulations: Sections 20111, 20112, 20114, 20115, 20117, 20118, 20119, 20120, 20121, 20122, 20124, and 20125. The proposed changes to these existing regulations were originally noticed on June 18, 2021. The following additional changes are proposed. Changes to the proposed regulation text noticed on June 18, 2021 are shown as ~~strike through~~ for text removed and underlined for the text added.

Sections 20110, 20113, 20116, 20123, and 20126 are unchanged by this action, but are presented here for context.

20110. General Provisions. [No changes proposed, but changes were made by June 18, 2021 noticed text]

- (a) The purpose of this chapter is to establish guidelines and procedures for an elections official to conduct a risk-limiting audit in accordance with the requirements of Division 15, Chapter 4, Article 5.5 of the Elections Code.
- (b) Pursuant to Elections Code section 15367(a)(1), commencing with the statewide general election held on November 3, 2020, the elections official conducting an election may conduct a risk-limiting audit during the official canvass of any election.
- (c) A participating county may exclude any contest that has been subject to a risk-limiting audit from the one-percent manual tally required by Section 15360.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

Reference: Sections 15150, 15360 and 15367, Elections Code.

20111. Definitions.

As used in this Chapter, the following terms have the following meanings:

- (a) “Ballot” shall have the meaning set forth in Elections Code section 15366(a). A validly cast ballot is any ballot that is eligible to be counted in the canvass of an election, as specified in Division 15, Chapters 2 through 4 of the Elections Code.
- (b) “Ballot card” means a card upon which is printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. A ballot may be comprised of multiple ballot cards.
- (c) “Ballot-level comparison audit” shall have the meaning set forth in Elections Code section 15366(b). In performing this type of risk-limiting audit, the elections official shall export a cast

vote record from the voting system for every cast ballot card and cast voter verified paper audit trail containing the contest(s) under audit. The cast number of cast vote records must be exported in a way that enables the elections official to determine whether the number of cast vote records matches the number of ballot cards physically accounted for in the ballot manifest and to find the particular physical ballot card or voter-verified paper audit trail associated with each cast vote record.

(d) “Ballot manifest” means a detailed description of how the ~~ballots~~ ballot cards are stored and organized, listing at minimum the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually.

(e) “~~Ballot polling~~ Ballot polling audit” shall have the meaning set forth in Elections Code section 15366(c). In examining voter markings, the audit board shall perform a hand-to-eye, human interpretation of voter markings but shall not compare those interpretations to the corresponding cast vote records.

(f) “~~Batch comparison audit~~” means a type of risk-limiting audit in which elections officials examine voter markings on randomly selected batches of ballots seeking strong evidence that the reported tabulation outcome is correct.

(f) “Batch comparison audit” means a type of risk-limiting audit in which the audit board examines voter markings on-ballot cards, in randomly selected batches of ballot cards. This type of risk-limiting audit involves the following steps:

(1) The elections official divides the ballot cards cast in the contests under audit into physically identifiable batches, such as the ballot cards cast in different precincts or vote centers.

(2) The elections official exports vote subtotals from the voting system for each such physically identifiable batch of cast ballot cards.

(3) The elections official verifies that the number of ballot cards according to these subtotals does not exceed the number of ballot cards physically accounted for in the ballot manifest.

(4) The audit board compares some or all of those batch-level subtotals to subtotals derived by hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter or the voter verified paper audit trail, as defined by Elections Code section 19271.

(g) “Cast vote record” shall have the meaning set forth in Elections Code section 15366(d). The cast vote record shall be generated by the voting system.

(h) “Elections official” shall have the meaning set forth in Elections Code section 320.

(i) “Electoral outcome” shall have the meaning set forth in Elections Code section 15366(e).

(j) “~~Hybrid audit~~” means a combination of multiple risk-limiting audit types.

(j) “Hybrid audit” means a type of risk-limiting audit which involves, at a minimum, the following steps:

(1) The elections official divides the ballot cards cast in the contests under audit into physically identifiable batches, such as the ballot cards cast in different precincts or vote centers or ballot cards processed by different voting equipment.

(2) The elections official exports vote subtotals or cast vote records from the voting system for some of those batches of cast ballot cards from paragraph (1) and exports, at a minimum, aggregate results for the remaining batches of ballot cards.

(3) The elections official verifies that the number of ballot cards according to the subtotals in paragraph (2) does not exceed the number of ballot cards physically accounted for in the ballot manifest.

(4) The audit board compares some or all of the vote subtotals or cast vote records exported in paragraph (2) to a tabulation or interpretation derived by hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter, as defined by Elections Code section 19271.

(5) The audit board examines some or all of the ballot cards in the remaining batches from paragraph (2) and performs a hand-to-eye, human interpretation of voter markings from the corresponding ballot cards marked by the voter, as defined by Section 19271.

(k) “Public notice” means the release of information to the public through ~~one~~ two or more of the following readily available communication channels: a website update, a social media post, an email list mailing, a press release, and a notice posted at an office open to the public.

(1) Elections officials are encouraged to maintain an email mailing list of persons who would like to be notified about risk-limiting audits. If an elections official maintains such a list, public notice for the purposes of this Chapter must include sending an email to all persons on this list.

(l) “Random seed” means a randomly generated number consisting of at least 20 digits that is used to generate a random number sequence to select ballot cards or batches of ballot cards for audit.

(m) “Risk-limiting audit” or “RLA” shall have the meaning set forth in Elections Code section 15366(f).

(n) “Risk-limiting audit software tool” or “RLA software tool” means software that can perform any of the audit types described in Section 20112. Pursuant to Elections Code section 15367(b)(2)(E), the algorithms and source code of the RLA software tool shall be disclosed to the public. The ~~SOS~~ Secretary of State shall ~~affect~~ effect this disclosure by posting the source code, or a link to the source code hosted on another publicly available website, on its website.

(o) “Voting system” shall have the meaning set forth in Elections Code section 362.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Sections 320, 362, 15302, ~~and~~ 15366, and 19271, Elections Code.*

20112. Audit Types.

The elections official shall use an RLA software tool provided by the Secretary of State to perform one of the following:

(a) A ballot-level comparison audit, with a five percent risk limit.

(b) A ballot polling audit, with a five percent risk limit.

(c) A batch comparison audit, with a five percent risk limit.

(d) A hybrid audit, ~~combining two or more of the audit types in subdivisions (a) through (c),~~ with a five percent risk limit.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20113. Audit Initiation. [No changes proposed now or by the June 18, 2021 noticed text]

(a) If the audit commences after all validly cast ballot(s) within the jurisdiction have been tabulated, the audit shall be conducted in a single phase as described in section 20121.

(b) If the audit commences before all validly cast ballot(s) within the jurisdiction have been tabulated, it shall be conducted in two phases as described in section 20122.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20114. Contests to be Audited.

Participating counties shall conduct a risk-limiting audit on one or more contests fully contained within the county’s borders. Participating counties may conduct opportunistic reviews of contests not subject to audit, including cross-jurisdictional contests, from the same sample of ballot cards by entering voter selections from those contests into the RLA software tool. The results of opportunistic reviews shall not be considered confirmation to any risk limit of the outcomes of these contests.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Section 15150, Elections Code.*

20115. Audit Board Selection.

(a) The elections official shall appoint an audit board(s) to perform the duties specified in section 20123 that meets the following criteria:

(1) Audit boards shall consist of no fewer than three members. At all times, at least one member shall serve as an observer of the audit and may not make determinations of voter choices. At least two members, excluding the observer, shall make determinations of voter choices for each ballot card examined by the audit board. Audit board members may rotate roles.

(2) Audit board members may be comprised of election office full-time or temporary staff, volunteers or a combination of staff and volunteers. When feasible, audit board members involved in adjudicating voter intent during the tabulation shall not be involved in ascertaining voter intent during the audit.

(3) Prior to conducting the audit, each member of an audit board shall complete and sign a declaration of intent to faithfully discharge audit board duties. Each audit board member shall do so in the presence of the elections official on a form provided by the elections official. The elections official shall countersign the declaration. The declaration shall be in the following form:

State of California County of _____	}	ss.
I do hereby solemnly declare that I will support the Constitution of the United States and the Constitution of the State of California, and that I will to the best of my ability, faithfully discharge the duties of an audit board member for the election held on _____, 20___.		
_____ (Printed Name) _____ (Signature) _____		
Signed in the presence of the elections official listed below on _____, 20___.		

_____ (Printed Name) _____ (Signature) _____
Elections official name Elections official signature

- (4) No fewer than two members of the audit board will be in possession of ballot cards at any time, including during the ballot card retrieval process.
- (b) If the elections official appoints multiple audit boards, only one audit board shall evaluate each ballot card.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20116. Public Education on Risk-Limiting Audits. [No changes proposed now or by the June 18, 2021 noticed text]

- (a) Prior to conducting an RLA, the elections official shall provide public notice that includes descriptions of how the process will be conducted, the difference between 1% manual tally and an RLA, and the methods for ensuring ballot security. The elections official shall also provide information regarding the process for selection of their audit boards and procedures used to ascertain voter intent manually.
- (b) The Secretary of State shall make the same materials described in (a) above available on its website.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20117. Ballot Manifest and Ballot Handling.

- (a) The elections official shall maintain an accurate ballot manifest, created ~~independent of~~ without reliance on the voting system. The ballot manifest shall uniquely identify the storage container in which each validly cast ballot card is stored after tabulation.
- (b) The ~~format for the~~ ballot manifest shall be in the format required by the RLA software tool in the California Post-Election Risk-Limiting Audit Ballot Manifest Format document dated October 15, 2019, which is hereby incorporated by reference, and which the Secretary of State shall post on its website.
- (c) If the audit commences after all validly cast ballot(s) have been tabulated, the elections official shall create only one ballot manifest.
- (d) If the audit commences before all validly cast ballot(s) have been tabulated, the elections official shall create two ballot manifests, one before each phase of the audit: an initial ballot manifest that includes all ~~ballots~~ ballot cards that have been tabulated before the first phase of the audit starts, followed by the final ballot manifest including all tabulated ~~ballots~~ ballot cards.
- (e) The content of the initial ballot manifest shall not be changed in the final manifest; accordingly, no ~~ballots~~ ballot cards shall be added to the containers included in the initial manifest. Instead, the tabulated ~~ballots~~ ballot cards that are not included in the initial ballot manifest shall be stored in new containers, and the final ballot manifest shall include all the rows in the initial ballot manifest plus a row for each new container.
- Example: 1,000,000 ~~ballots~~ ballot cards were cast in the county, of which 900,000 had been tabulated when the elections official decided to start the first phase of a two-phase audit. The initial ballot manifest includes those 900,000 ~~ballots~~ ballot cards. Ultimately, 97,000 of the

remaining 100,000 ~~ballots~~ ballot cards are determined to be validly cast. These ~~ballots~~ ballot cards are tabulated and are stored in new containers. The final ballot manifest consists of the initial ballot manifest plus additional rows that describe the new containers in which these 97,000 ~~ballots~~ ballot cards are stored, for a total count of 997,000 ~~ballots~~ ballot cards in the ballot manifest for the second audit phase.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20118. Chain of Custody.

(a) The elections official shall maintain and document uninterrupted chain of custody for each ballot card and each ballot storage container. Chain of custody logs should, at a minimum, include an identifying number of each ballot storage container and the number of a tamper-evident seal affixed to each ballot storage container. Chain of custody logs shall be available for public inspection after the canvass of the election pursuant to Division 15, Chapters 2 through 4, of the Elections Code is complete.

(b) The elections official shall secure and maintain in sealed ballot containers all tabulated ~~ballots~~ ballot cards.

(c) The elections official shall establish written procedures to ensure the security, confidentiality, and integrity of any ~~ballots~~ ballot cards, cast vote records, or any other data collected, stored, or otherwise used pursuant to this section. These procedures shall be published on its website at least five days in advance of the audit.

Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.

20119. Data Publication Prior to Audit.

(a) When the elections official submits data to the RLA software tool before an audit phase begins they shall also publish the same data on their website before continuing with the audit. The elections official shall also publish any changes made to such data.

(b) Subject to Elections Code section 2194(a), cast vote record data shall not be posted to the elections official's website, but shall be made available to the public at the location where the audit is being conducted. The cast vote records made available to the public must include all contests selected for audit, and may also include cast vote records for any other contest in the election not subject to the audit.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.
Reference: Section 2194, Elections Code.*

20120. Random Seed.

(a) The random seed shall be generated in order by sequential rolls of one or more fair 10-sided dice.

(b) The random seed shall be generated in a public meeting as follows:

(1) The elections official shall give at least five days public notice of the public meeting before generating the first random seed and public notice at least one hour before generating a second random seed, should a second random seed be needed when conducting a two-phase audit.

(2) The elections official shall randomly select members of the public who attend the meeting to take turns rolling a die, ~~and~~. At the election official's discretion, the elections official may designate one or more staff members to take turns rolling a die.

(3) In the event that no members of the public attend the meeting, the elections official ~~can~~ may designate someone or themselves to roll the die.

(4) Members of the public attending the public meeting shall be permitted to video record or photograph the random seed generation.

(c) After the random seed is generated, the elections official shall provide public notice of the random seed.

(d) The random seed shall be entered into the RLA software tool as provided in sections 20121(d) and 20122(e).

Note: Authority cited: Section 12172.5, Government Code; ~~and~~ Section 15367, Elections Code.

20121. Audit Procedures for Single-Phase Audit.

(a) The elections official conducting an RLA after all ~~ballots~~ ballot cards cast within the jurisdiction have been tabulated and reported shall enter the following information into the RLA software tool:

(1) The ballot manifest for all ballot card(s);

(2) The results for all ballot card(s) tabulated;

(3) For ballot-level comparison audits ~~or hybrid audits with a ballot-level comparison audit component is being conducted~~, the cast vote records for all ballot card(s) tabulated; ~~and~~

(4) For batch comparison audits ~~or hybrid audits with a batch comparison audit component is being conducted~~, vote totals from the voting system for each contest being audited for each batch; ~~and~~

(5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.

(b) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (a), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and note the inconsistencies and their cause(s) in the final audit report in section 20125.

(c) After the data have been submitted under subdivisions (a) and (b), the elections official shall generate a random seed pursuant to section 20120.

(d) The elections official shall enter the random seed into the RLA software tool. The RLA software tool will ~~randomly~~ generate a list of particular ballot card(s) or batches of ballot card(s) from the ballot manifest to examine manually.

(e) The elections official may at any point decide to conduct a full manual tally of any contest(s) whose outcomes have not yet been confirmed by the RLA. In the event that the elections official conducts a full manual tally, the RLA of that contest shall be suspended. Such a manual tally shall follow the procedure specified in Elections Code section 15290.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Section 15290, Elections Code.*

20122. Audit Procedures for Two-Phase Audit.

- (a) An elections official conducting a ~~two-phase~~ two-phase audit under subdivision (d) of section 20117 shall do so in accordance with this section.
- (b) In the first phase of the audit, the elections official shall enter the following information into the RLA software tool:
- (1) The initial ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
 - (2) The results for all ballot card(s) tabulated that are included in the initial ballot manifest;
 - (3) ~~If a For~~ ballot-level comparison ~~audit or a hybrid audit with a ballot-level comparison audit component is being conducted~~ audits, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest;
 - (4) ~~If a For~~ batch comparison ~~audit or a hybrid audit with a batch comparison audit component is being conducted~~ audits, vote totals from each contest being audited for each batch; ~~and~~
 - (5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111; and
 - (6) The maximum number of ballots ballot cards that remain to be tabulated.
- (c) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (b), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and report the inconsistencies and their cause(s) in the final audit report in section 20125.
- (d) After the data have been submitted under subdivisions (b) and (c), the elections official shall generate the first random seed pursuant to section 20120.
- (e) The elections official shall enter the first random seed into the RLA software tool. The RLA software tool will randomly generate a list of particular ballot card(s) or batches of ballot card(s) from the ballot manifest to examine manually.
- (f) In the second phase of the audit, the elections official shall enter the following information into the RLA software tool:
- (1) The final ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
 - (2) The results for all ballot card(s) tabulated that are included in the final ballot manifest; and
 - (3) ~~If a For~~ ballot-level comparison ~~audit or a hybrid audit with a ballot-level comparison audit component is being conducted~~ audits, the cast vote records for all ballot card(s) tabulated; ~~and~~
 - (4) ~~If a For~~ batch comparison ~~audit or a hybrid audit with a batch comparison audit component is being conducted~~ audits, vote totals from each contest being audited for each batch; ~~and~~
 - (5) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.
- (g) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (f), the elections official shall, if possible, resolve the inconsistencies before the audit proceeds and report the inconsistencies and their cause(s) in the final audit report in section 20125.
- (h) After the data have been submitted under subdivisions (f) and (g), the elections official shall generate the second random seed pursuant to section 20120.

(i) The elections official shall enter the second random seed into the RLA software tool. The RLA software tool will identify whether the audit can stop or whether further auditing is required to meet the risk limit. If further auditing is required, the RLA software tool will randomly select additional particular ballot card(s) from the final ballot manifest to be examined manually.
(j) The elections official may at any point decide to conduct a full manual tally of any contest(s) whose outcomes have not yet been confirmed by the RLA. In the event that the elections official conducts a full manual tally, the RLA of that contest shall be suspended. Such a manual tally shall follow the procedure specified in Elections Code section 15290.

*Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.
Reference: Section 15290, Elections Code.*

20123. Ballot Retrieval and Manual Examination. [No changes proposed now or by the June 18, 2021 noticed text]

- (a) The audit board shall locate and retrieve, or observe the location of and retrieval by elections official or election staff of, each randomly selected ballot card from the appropriate storage container. The audit board shall verify that the seals on the appropriate storage containers are those recorded on the applicable chain of custody log.
- (b) The audit board shall examine each randomly selected ballot card. If the selected ballot card was duplicated prior to tabulation, the audit board shall retrieve the original ballot card and report how the original (rather than the duplicate) was marked.
- (c) The audit board shall interpret voter markings on ballot cards selected for audit in accordance with Elections Code section 15154. If the audit board members cannot unanimously agree on the voter's intent, they shall indicate their disagreement in the final report in section 20125. They shall then notify the elections official of the disagreement, who shall arbitrate the issue. The elections official may:
- (1) Instruct the audit board members to replace the ballot card with another ballot card, selected at random, that contains the same contests as the previously selected ballot card;
 - (2) Instruct the audit board members to submit to the RLA software tool that no consensus can be reached on the voter choices; or
 - (3) Make a final determination of the voter markings and instruct the audit board to submit the voter markings or choices in all audited contests to the RLA software tool.
- (d) The audit board shall record the voters' choices in every contest on every ballot card selected for audit. Those choices shall be entered into the RLA tool.
- (e) The audit shall continue until the risk limit is met for every contest being audited pursuant to section 20114. If the RLA software tool specifies that further auditing is required to meet the risk limit, it will randomly select additional ballot card(s) from the ballot manifest to be examined manually. The elections official shall retrieve those additional ballot card(s) as described in (a), examine those additional ballot card(s) as described in (b) and (c), and record the voters' choices as described in (d).
- (f) If the elections official chooses to perform a full manual tally of one or more contests, the audits of those contests will be deemed to have met the risk limit and the results of the full manual tally shall be the official results for those contest(s).
- (g) The RLA shall be completed no later than the canvass deadline, as specified by Section 15372 of the Elections Code.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15367, Elections Code.
Reference: Sections 15154 and 15360, Elections Code.*

20124. Public Observation and Verification of Audit.

(a) The elections official shall ensure that the audit process is observable and verifiable ~~to~~ by the public. The elections official shall:

(1) Provide at least five days public notice prior to the first phase of the RLA. This notice shall include the time and place of the random seed generation described in section 20120 and the date the ballot cards will be retrieved and manually examined.

(2) Describe in writing the process of manually examining ballot cards and the selection of the ~~ballots~~ ballot cards to be used in the audit.

(3) Provide observers with an oral and/or written explanation of the RLA process, a written code of conduct for observation, and any documentation they will need for informed and effective observation.

(A) The code of conduct for observation shall be determined by the elections official. The code of conduct for observation shall explain the rights and responsibilities of observers.

(B) Documentation needed for informed and effective observation shall include but not be limited to any data the audit relies upon, including:

(i) The ballot manifest;

(ii) For ballot-level comparison audits ~~or hybrid audits with a ballot-level comparison audit component~~, the cast vote records;

(iii) For batch comparison audits ~~or hybrid audits with a batch comparison audit component~~, vote totals from each contest being audited for each batch; and

(iv) For hybrid audits, all vote subtotals or cast vote records that were exported pursuant to paragraph (2) of subdivision (j) of Section 20111.

(4) Disclose the methods used to select samples and to calculate the risk.

(5) Provide the public the opportunity to observe ballot cards being retrieved and examined during the audit.

(6) Provide the public the opportunity to observe the voters' marks on every audited ballot card during the audit.

(b) Observers ~~can~~ may ask questions of the audit board, ~~as long as provided~~ they do not interfere with the conduct of the audit ~~procedures~~. The elections official, at their discretion, may designate an alternate person to receive and respond to observer questions in lieu of the audit board, and this person shall confer with the audit board to obtain answers to questions to which this person does not know the answers.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20125. Certification of Contest Results and Reporting of Audit Results.

(a) The elections official conducting an RLA shall report the results of the audit in the certification of the official canvass of the vote specified by Section 15372 of the Elections Code.

The report shall contain the following:

(1) The type of RLA conducted (e.g. ballot comparison, ballot polling, batch comparison, or hybrid);

(2) The date and time the RLA commenced and finished, and the number of rounds of sampling;

- (3) A list of contests audited, with final reported results for those contests and the final measured risk for each contest;
- (4) A link to the website where the ballot manifest can be found;
- (5) The random seed(s) the elections official generated for use with the RLA software tool, and when and how the random seed(s) was generated;
- (6) Any inconsistencies between the number of ballot cards and the number of cast vote records, or inconsistencies in the data reported by the RLA software tool, and—when possible—the reason(s) for those inconsistencies.
- ~~(6)~~(7) The number of ballot card(s) examined for each contest under audit, noting whether a full manual tally was conducted. If the audit was conducted in stages or continued beyond the first sample, a description of how the sample was drawn and the number of ballot card(s) selected at each stage.
- ~~(7)~~(8) Notes regarding any ballot card(s) for which the audit board could not determine the voter’s intent, as described in subdivision (c) of section 20123;
- ~~(8)~~(9) A link to the website where the list of the particular ballot card(s) examined can be found;
- ~~(9)~~(10) For ballot-level comparison audits ~~or hybrid audits with a ballot-level comparison audit component:~~
 - (A) The number of discrepancies between ballot card(s) and the cast vote record, and a description of each discrepancy; and
 - (B) A link to the website where the cast vote record file only for the ballot card(s) examined in the audit can be found;
- ~~(10)~~(11) For batch comparison audits ~~or hybrid audits with a batch comparison audit component,~~ discrepancies between batches and batch totals, and a description of each discrepancy;
- (12) For opportunistic reviews of contests not subject to audit, as described in Section 20114, a list of contests reviewed and the result of the reviews.
- ~~(11)~~(13) The person-hours required to prepare for the audit, and number of people involved;
- ~~(12)~~(14) The person-hours required to conduct the audit, and number of people involved;
- ~~(13)~~(15) The number of members of the public who observed the audit;
- ~~(14)~~(16) Notes on anything unusual or problematic, or that would be useful to improve the process, or that might be of value to the Secretary of State or other elections officials; and
- ~~(15)~~(17) An attestation from the elections official that the RLA was conducted in accordance with Title 2, Division 7, Chapter 2 of the California Code of Regulations.

- (b) The certification of the official canvass of the vote shall be conducted in accordance with Section 15372 of the Elections Code.
- (c) The Secretary of State shall publish any report under this section received from an elections official on its website no later than five days after the date it publishes the certification of the official canvass of the vote in accordance with Section 15372 of the Elections Code. This subdivision shall not prohibit the elections official from publishing the same report on its website.

Note: Authority cited: Section 12172.5, Government Code; Section 15367, Elections Code.

20126. Redaction of Personally Identifiable Voter Choices. [No changes proposed now or by the June 18, 2021 noticed text]

No later than the third business day following the expiration of the deadline to request a recount under Elections Code sections 15620 or 15621, or the completion of any recount, whichever is later, an elections official who conducted an RLA shall review its cast vote records file that was published and redact from the public record, but not its own files, the voter choices corresponding to any ballot susceptible to being personally identified with an individual voter.

*Note: Authority cited: Section 12172.5 Government Code; Section 15367, Elections Code.
Reference: Sections 15620, 15621 Elections Code.*

**California Secretary of State
Proposed Regulatory Action
Risk Limiting Audits
Addendum to Initial Statement of Reasons**

On June 18, 2021, the Secretary of State gave notice of a proposal to make permanent emergency regulations related to Risk Limiting Audits. This is known as a Certificate of Compliance action. The Secretary of State proposed to adopt most of the emergency regulations as well as make some additional changes. The initial public comment period for this proposed regulation text ended on August 5, 2021. In response to comments received in response to the originally proposed regulation text, the Secretary of State is now proposing additional changes to the proposed regulation text. This public comment period will be open for 45 days. Only comments that relate to changes to the text noticed on June 18, 2021 (shown in underline or strikethrough in the proposed regulation text) will be considered during this public comment period.

This document is intended to be read alongside the document noticed simultaneously entitled “Proposed Regulation Text: Changes to Proposed Regulation Text Noticed June 18, 2021.” The changes shown in that document are explained here.

PUBLIC HEARING AND COMMENT

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: September 3, 2021, through October 18, 2021 (45-day comment period)

Subject Matter of Proposed Regulations: Risk Limiting Audits

Section(s) Affected: Sections 20111, 20112, 20114, 20115, 20117, 20118, 20119, 20120, 20121, 20122, 20124, and 20125 of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations

PURPOSE AND NECESSITY

The purpose of these additional changes to the proposed regulation text as part of this Certificate of Compliance action are to address comments the Secretary of State received during the initial public comment period. These changes are necessary to address those concerns and to allow for an efficient and effective risk limiting audits pilot program in California.

FACTUAL BASIS / RATIONALE

The factual basis and rationale for each section of the proposed regulations that are changed in this notice period are as follows:

20111. Definitions.

Subdivision (c). The definition of “ballot-level comparison audit” is expanded to explain how this type of audit is performed. The purpose of this change is to expand on the referenced statutory definition (while not changing that definition), to better illustrate to the public and elections officials how this audit functions. This change is necessary to ensure this audit type is performed properly and understood by the public. This audit type compares ballots represented in the cast vote record with the audit trail, and this definition makes that process clear.

Subdivision (d). The definition of “ballot manifest” is modified to change the word “ballots” to “ballot cards” and to add the words “at minimum” to the contents of a ballot manifest. The purpose of changing to the words “ballot cards” is to clarify that individual ballot cards should be noted rather than ballots, and this change is necessary to avoid confusion around multi-page ballots and how multi-page ballots are handled during an audit. The purpose of adding the words “at minimum” is to clarify that a ballot manifest is not limited to the items that must be included in such a manifest and is necessary to allow elections officials’ the flexibility to add additional fields to ballot manifests.

Subdivision (e). The definition of “ballot-polling audit” is expanded to explain how this type of audit is performed. The purpose of this change is to expand on the referenced statutory definition (while not changing that definition), to better illustrate to the public and elections officials how this audit functions. This change is necessary to ensure this audit type is performed properly and understood by the public. The hyphen is also removed from between the words “ballot” and “polling” for consistency throughout these regulations and with the Elections Code section 15366(c).

Subdivision (f). The definition of “batch comparison audit” is revoked and replaced. The new definition is largely similar to the previous definition, but structurally reworded and slightly clarified to avoid confusion and expanded to include the steps involved in conducting this audit. The purpose of this change is to address comments received that felt the original definition was potentially confusing and to better illustrate to the public and elections officials how this audit functions. This change is necessary to ensure this audit type is performed properly and understood by the public. Paragraphs (1) through (4) describe the specific steps involved in this type of audit. These paragraphs describe how ballot cards are organized into batches, how the vote subtotals are prepared, how vote subtotals must not exceed the count of ballot cards, and how the batches are compared to the ballot-level subtotals. Each of these steps is necessary to describe how this audit type works. The step described in paragraph (3) is necessary because if the number of ballot cards exceeds the vote subtotals then the vote subtotals are not prepared accurately, so the audit will not be accurate. It is not necessary for these two numbers to match exactly (in other words, there can be fewer ballot cards than the vote subtotals), because if the audit identifies a missing ballot then that would be an exception that may expand the audit but would not make the results of the audit invalid.

Subdivision (j). The definition of “hybrid audit” is revoked and replaced. Public comment indicated that the initial definition was inaccurate in how it described this audit type. It was

necessary to replace this definition to accurately describe the audit type. The new definition describes the audit type by describing its steps; a simple summary statement like originally proposed was determined to be potentially misleading. The steps are listed in paragraphs (1) through (5). Each of these steps is necessary to accurately describe how the audit works: ballot cards are divided into batches, vote subtotals or cast vote records are prepared, the totals are compared to ensure the audit can proceed (for the same reason as described in the discussion for subdivision (f), paragraph (3) above), and ballot cards are evaluated. Each of these steps is necessary to describe how this audit type works.

Subdivision (k). The definition of public notice is modified to require the use of two rather than one communication channels. The purpose of this change is to ensure notice is given in a way that is most likely to reach interested parties, and was made at the request of public comment. This change is necessary to ensure the public has adequate notice to allow participation in the audit process. Paragraph (1) is added to this subdivision to state a preference for email communication to known interested parties, though not to require this type of communication or the maintenance of a list of known parties. The purpose of this statement is to ensure that those most interested in risk limiting audits are directly contacted for all notice purposes. This provision is necessary to express this preference and to ensure full public participation in the risk limiting audit process.

Subdivision (l). The definition of “random seed” is clarified to note that a random seed itself is randomly generated (not solely a number used to generate other random numbers), and that it is used not just to select ballot cards but to select batches of ballot cards for audit. The addition of “randomly generated” is necessary to clarify that the random seed itself is random, ensuring the randomness of the audit and the purpose of random seed generation. The clarification of how the random seed is used (also for batches of ballot cards) is necessary to clarify that this random seed is used not just for instances when individual ballot cards are drawn but also for selection of batches in applicable audit types.

Subdivision (n). The acronym “SOS” is changed to “Secretary of State” as that acronym had not been defined, and the word “affect” is changed to “effect” to correct a grammatical error. Both changes are non-substantive.

Note and Reference. An additional reference citation is added. The purpose of this is to provide an accurate citation, and this is necessary to comply with the Administrative Procedure Act.

20112. Audit Types.

Subdivision (d). The description of the hybrid audit type is modified to be consistent with the revised definition of this audit type in subdivision 20111(j), for the same purpose and necessity describing the changes in that definition, above.

20114. Contests to be Audited.

Text is added to describe and allow the concept of an opportunistic review of contests not subject to audit. The purpose of this change is to explicitly allow those participating in the risk limiting

audit program to engage in this activity alongside the audit. Opportunistic reviews allow the review of results of contests not subject to audit, and offer additional public confidence in reported results of these contests even though that review is not subject to the risk limit. This type of review is especially poignant given the change in the original emergency regulations, and in recent law changes, to remove cross-jurisdictional contests from the pilot program. This change is necessary to avoid a challenge to this practice in concert with the audit.

20115. Audit Board Selection.

Subdivision (a), paragraph (2). Text is added to express a preference for audit board members to not have been involved in adjudicating voter intent during tabulation. The purpose of this addition is to state such a preference. The reason this is a preference rather than a requirement is based on feedback received from elections officials that there may not be sufficient people available to participate on audit boards who have not been involved in tabulation. However, the use of the term “if feasible” is intended to be stronger than a purely optional provision. This provision is necessary to express this preference.

20117. Ballot Manifest and Ballot Handling.

Subdivision (a). The term “independent of” is changed to “without reliance on.” The purpose of this change is to clarify how the ballot manifest is maintained. This is not intended to be a substantive change, merely clarification. This change is necessary to avoid confusion and allow proper administration of risk limiting audits.

Subdivision (b). The word “and” is added to correct a grammatical error. This is a non-substantive change.

Subdivisions (d) and (e). The word “ballots” is changed to “ballot cards.” The purpose of changing to the words “ballot cards” is to clarify that individual ballot cards should be noted rather than ballots, and this change is necessary to avoid confusion around multi-page ballots and how multi-page ballots are handled during an audit.

20118. Chain of Custody.

Subdivisions (b) and (c). The word “ballots” is changed to “ballot cards.” The purpose of changing to the words “ballot cards” is to clarify that individual ballot cards should be noted rather than ballots, and this change is necessary to avoid confusion around multi-page ballots and how multi-page ballots are handled during an audit.

20119. Data Publication Prior to Audit.

Subdivision (b). This provision is clarified to state what contests must and may be included in cast vote records made available to the public. The purpose of this change is to avoid confusion among elections officials and observers about what data should be made available. Only records used in the audit are mandatory because these are ones that members of the public would use to recreate the audit. This is a primary reason that certain audit data such as the random seed and

the source code of the RLA software tool are made available to observers and the public: so that those groups can do so. Other records are voluntary to give elections officials discretion. This provision is necessary to clarify the intent of this subdivision.

Note and Reference. The word “and” is removed for grammatical purposes. This is a non-substantive change.

20120. Random Seed.

Subdivision (b), paragraph (1). This provision is revised to create two distinct notice periods for the first random seed and for the second random seed. Five days’ notice, as contemplated in the original regulation text, is appropriate both to allow time for potential observers to arrange to attend the audit and—more importantly—to serve as a general announcement that the county will be starting the risk limiting audit. A separate, shorter notice period for the second random seed is necessary due to the practicalities of conducting a risk limiting audit during the compressed election canvass period. Due to election timelines in California, elections officials may only have a few days to conduct a second phase audit – which would not allow for 5-days’ notice before a die roll. The intent here is that anyone interested in observing the audit would have sufficient notice before the first die roll and that they would remain close by before the second die roll, knowing that the audit was not completed after the first phase. One hour would allow observers to return to the audit location if they were away but would not interfere with the ability for the audit to conclude in a compressed time frame. This provision is necessary to clarify notice periods, balancing the interests of observers with the practicalities of the election canvass timeline.

Subdivision (b), paragraph (2). This provision is revised to clarify that the elections official has discretion in designating staff members to roll the die. The purpose of this provision is to confirm that the elections official has the discretion both in selection members of the public or their own staff to role a die. This provision is necessary to avoid confusion.

Subdivision (b), paragraph (3). The word “can” is changed to “may” as a grammatical correction. The purpose of this change is to avoid confusion. This provision is necessary for the same reason.

Subdivision (b), paragraph (4). This paragraph is added at the request of commenters. This provision explicitly allows video recording or photography of the random seed selection process. This is not intended to be a change in audit procedure but rather a clearly defined option for observers. This provision is necessary to ensure observers may exercise this option.

Note and Reference. The word “and” is removed for grammatical purposes. This is a non-substantive change.

20121. Audit Procedures for Single-Phase Audit.

Subdivision (a). The word “ballots” is changed to “ballot cards.” The purpose of changing to the words “ballot cards” is to clarify that individual ballot cards should be noted rather than ballots,

and this change is necessary to avoid confusion around multi-page ballots and how multi-page ballots are handled during an audit.

Subdivision (a), paragraphs (3) and (4). The phrase concerning hybrid audits with a ballot-level comparison audit component are revoked to conform with the revised definition of this audit type in subdivision 20111(j), for the same purpose and necessity describing the changes in that definition, above.

Subdivision (a), paragraph (4). A change here provides that vote totals are extracted from the voting system before being entered into the RLA software tool. The purpose of this change is to ensure that it is clear the vote totals must come from the voting system, and this change is necessary to ensure other vote totals are not used for this purpose. Additionally, the end of this paragraph changes from a period to a semicolon to allow for the addition of a new paragraph (5).

Subdivision (a), paragraph (5). This new section addresses the information that must be entered into the RLA software tool for hybrid audits. The purpose of this addition clarifies what information the RLA software tool will need to conduct this audit type. This is necessary to ensure the correct data is entered into the RLA software tool and that those reading these regulations are aware in advance of starting the audit of what will be required.

Subdivision (b). The words “if possible” are added with respect to resolving inconsistencies. The purpose of this addition is to address situations where an inconsistency that would not necessarily be a reason to stop the audit cannot be resolved, or cannot be resolved in a timely manner, would not prevent the audit from stopping. This addition is necessary to allow audits to continue in this situation. Additionally, a new requirement that inconsistencies be noted in the final audit report is added. The original regulations already intended this type of reporting in Section 20125, subdivision (16) in this version of the text (this relates to reporting anything unusual or problematic), but this addition makes this type of reporting explicitly required. This change is necessary to ensure such information is adequately disclosed.

Subdivision (d). The word “randomly” is removed to accurately reflect how the RLA software tool functions. The purpose of this change is to clarify that the tool does not randomly generate a list of ballot cards or batches of ballot cards, but rather that it systematically generates this list while using a random number. The randomness exists with the random seed, not the RLS software tool itself. To wit: if the same random seed is entered multiple times the result would be the same; only if the random seed changes would the result differ. This structure allows members of the public to recreate the audit using the same random seed and their own audit tools and get the same results, which allows confirmation that the RLA software tool is functioning properly. This provision is necessary to avoid confusion in this area and to confirm how the RLA software tool should function.

20122. Audit Procedures for Two-Phase Audit.

Subdivision (a). A hyphen is added to the term “two phase.” This is a non-substantive change.

Subdivision (b), paragraphs (3) and (4) and subdivision (f), paragraphs (3), (4), and (6). The phrase concerning hybrid audits with a ballot-level comparison audit component are revoked to conform with the revised definition of this audit type in subdivision 20111(j), for the same purpose and necessity describing the changes in that definition, above.

Subdivision (b), paragraph (5). This new section addresses the information that must be entered into the RLA software tool for hybrid audits. The purpose of this addition clarifies what information the RLA software tool will need to conduct this audit type. This is necessary to ensure the correct data is entered into the RLA software tool and that those reading these regulations are aware in advance of starting the audit of what will be required.

Subdivision (c). The words “if possible” are added with respect to resolving inconsistencies. The purpose of this addition is to address situations where an inconsistency that would not necessarily be a reason to stop the audit cannot be resolved, or cannot be resolved in a timely manner, would not prevent the audit from stopping. This addition is necessary to allow audits to continue in this situation. Additionally, a new requirement that inconsistencies be noted in the final audit report is added. The original regulations already intended this type of reporting in Section 20125, subdivision (16) in this version of the text (this relates to reporting anything unusual or problematic), but this addition makes this type of reporting explicitly required. This change is necessary to ensure such information is adequately disclosed.

Subdivisions (d) and (e). The word “first” is re-added after having been removed in the June 18, 2021 proposed text. This word was removed on the mistaken assumption that a two-phase audit may not need to random seeds. The concept of two distinct random seeds for the two phases of a two-phase audit has been restored throughout these regulations. With this correction, the word “first” is once again relevant.

Subdivision (f). The changes here mirror those in subdivision (b), with the same purpose and necessity. What occurs in the first phase of the audit should occur in the second phase of the audit.

Subdivision (g). The changes here mirror those in subdivision (c), with the same purpose and necessity. What occurs in the first phase of the audit should occur in the second phase of the audit.

Subdivision (h). This provision is re-added after having been removed in the June 18, 2021 proposed text. This provision was removed on the mistaken assumption that a two-phase audit may not need to random seeds. The concept of two distinct random seeds for the two phases of a two-phase audit has been restored throughout these regulations. With this correction, the provision is once again relevant.

Subdivision (i). This subdivision is renumbered with the insertion of a new subdivision (h) above. The provision related to entering the second random seed into the RLA software tool is re-added after having been removed in the June 18, 2021 proposed text. This provision was removed on the mistaken assumption that a two-phase audit may not need to random seeds. The concept of two distinct random seeds for the two phases of a two-phase audit has been restored

throughout these regulations. With this correction, the provision is once again relevant. Additionally, the phrase “whether the audit can stop” is removed as it did not add any requirement and could be confusing to elections officials and observers. The concept of an audit “stopping” and whether “further auditing” is not needed are one and the same and so the potentially confusing duplication of these concepts is resolved with this removal.

Subdivision (j). This subdivision is renumbered with the addition of the new subdivision (h) above. This is a non-substantive change.

20124. Public Observation and Verification of Audit.

Subdivision (a). The word “to” is changed to “by.” This is a non-substantive grammatical change.

Subdivision (a), paragraph (2). The word “ballots” is changed to “ballot cards.” The purpose of changing to the words “ballot cards” is to clarify that individual ballot cards should be noted rather than ballots, and this change is necessary to avoid confusion around multi-page ballots and how multi-page ballots are handled during an audit.

Subdivision (a), paragraph (3). The phrase concerning hybrid audits with a ballot-level comparison audit component are revoked to conform with the revised definition of this audit type in subdivision 20111(j), for the same purpose and necessity describing the changes in that definition, above. A new requirement to provide documentation related to hybrid audits is added to conform to information required in such audits, as described in subdivision 20111(j) above. This addition is necessary to ensure observers have access to this information.

Subdivision (b). This provision is changed to allow elections officials to designate a person other than the audit board to answer public questions about the audit. The purpose of this provision is to allow the elections official to exercise this option. The earlier version of these regulations could be read to mean that if the audit board would be interfered with by answering questions than there would be no one designated to answer their questions. This allows (but does not require) the elections official to designate someone to assist with such questions. This provision is necessary to balance the public need to ask questions with the ability of the audit board to engage in audit activities without interference.

20125. Certification of Contest Results and Reporting of Audit Results.

Subdivision (a), paragraph (6). A new requirement that inconsistencies be noted in the final audit report is added. The original regulations already intended this type of reporting in Section 20125, subdivision (16) in this version of the text (this relates to reporting anything unusual or problematic), but this addition makes this type of reporting explicitly required. This change is necessary to ensure such information is adequately disclosed.

Subdivision (a), paragraph (10) of the new regulation text. The phrase concerning hybrid audits with a ballot-level comparison audit component are revoked to conform with the revised definition of this audit type in subdivision 20111(j), for the same purpose and necessity describing the changes in that definition, above.

Subdivision (a), paragraphs (6) through (15) are renumbered to accommodate the addition of new paragraphs. These changes are non-substantive.

Subdivision (a), paragraph (12). With the addition of opportunistic reviews of contests not subject to audit in Section 20114, it is necessary for information about these reviews to be disclosed to ensure full transparency into the audit process and any information identified as a result of such audits and reviews. This provision is necessary to ensure full public disclosure of information discovered during the audit.

ECONOMIC IMPACT STATEMENT

The Economic Impact Statement in the Initial Statement of Reasons noticed on June 18, 2021 is unchanged.