



ALEX PADILLA | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION

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September 16, 2020

County Clerk/Registrar of Voters (CC/ROV) Memorandum #20213

TO: All County Clerks/Registrars of Voters

FROM: /s/ Raj Bathla
Sr. Legal Analyst

RE: Emergency Regulations: Risk Limiting Audits

The Secretary of State has adopted emergency regulations that amend Sections 20110, 20111, 20114, and 20122 of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations. These regulations are in effect as of September 10, 2020 and will expire on July 10, 2021, unless that date is extended, or the emergency regulations are made permanent by regulatory action.

On August 27, 2020, Governor Newsom signed Assembly Bill (AB) 2400 (Quirk, 2020) to make changes to the Risk Limiting Audits pilot program created by AB 2125 (Quirk, 2018). AB 2400 permits a county to conduct a risk-limiting audit on one or more contests fully contained in the county rather than all contests held in the county as was required under AB 2125; deletes the AB 2125 requirement to conduct partial risk-limiting audits for each cross-jurisdictional contest; and extends the sunset date of the pilot program from January 1, 2021 to January 1, 2023. These changes address concerns with AB 2125 raised by the working group the Secretary of State convened pursuant to AB 2125 and allows counties to participate in the pilot program without risking a full hand count.

These emergency regulations conform to the regulations the Secretary of State promulgated pursuant to AB 2125 to the updated statutory provisions made by AB 2400.

The final text of the emergency regulations is attached to this memorandum and is available on our website at: <https://www.sos.ca.gov/administration/regulations/>

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

Enclosed: Notice of Approval of Emergency Regulations, including the text of the emergency regulations showing changes to the current regulations
Emergency Regulation Text, effective 9/10/20 through 7/10/21

**State of California
Office of Administrative Law**

In re:
Secretary of State

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections:

Amend sections: 20110, 20111, 20114,
20122

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

OAL Matter Number: 2020-0902-01

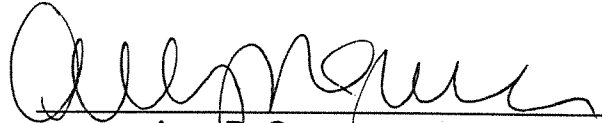
OAL Matter Type: Emergency (E)

In this emergency rulemaking action the Secretary of State amends four sections related to risk limiting audits pursuant to Assembly Bill 2400 (Stats. 2020, Ch.33) as well as updates requirements related to procedures in conducting a two-phased audit.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 9/10/2020 and will expire on 7/10/2021. The Certificate of Compliance for this action is due no later than 7/9/2021.

Date: September 10, 2020


Amy R. Gowan
Attorney

For: Kenneth J. Pogue
Director

Original: Alex Padilla, Secretary of State
Copy: Raj Bathla

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-0902-01	EMERGENCY NUMBER 01
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

SEP 10 2020

2020 SEP -2 P 4:32

1:24 p.m.

OFFICE OF
 ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY SECRETARY OF STATE	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER
			PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) RISK LIMITING AUDITS	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 20110, 20111, 20114, 20122,
TITLE(S) TITLE 2	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

\$100 Changes Without Regulatory Effect

Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

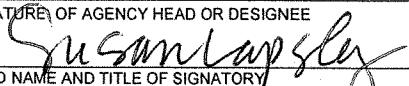
Fair Political Practices Commission

State Fire Marshal

Other (Specify) _____

7. CONTACT PERSON RAJ BATHLA	TELEPHONE NUMBER (916) 695-1597	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rbathla@sos.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE August 27, 2020
TYPED NAME AND TITLE OF SIGNATORY Susan Lapsley, Deputy Secretary of State	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 10 2020

Office of Administrative Law

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

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 20110, 20111, 20114, and 20122. Changes to existing regulation text are shown in strikethrough and underline, with eliminated text struck and new text underlined.

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).
- (d) "Ballot manifest" means a detailed description of how the ballots are stored and organized, listing 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 audit" shall have the meaning set forth in Elections Code section 15366(c).
- (f) "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)~~(g) "Elections official" shall have the meaning set forth in Elections Code section 320.

~~(i)~~(h) "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)~~.

~~(k)~~(i) "Public notice" means the release of information to the public through one 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.

~~(l)~~(j) "Random seed" means a number consisting of at least 20 digits that is used to generate a random number sequence to select ballot cards for audit.

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

~~(n)~~(l) "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 shall affect this disclosure by posting the source code, or a link to the source code hosted on another publicly available website, on its website.

~~(o)~~(m) "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, 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.

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

20122. Audit Procedures for Two-Phase Audit.

(a) An elections official conducting a 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 ballot-level comparison audit is being conducted, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest; and
- (4) the maximum number of ballots to be tabulated.

(c) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (b), the elections official shall resolve the inconsistencies before the audit proceeds.

(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 ballot-level comparison audit is being conducted, the cast vote records for all ballot card(s) tabulated that are included in the final ballot manifest.

(g) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (f), the elections official shall resolve the inconsistencies before the audit proceeds.

~~(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)(h) 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.~~

~~(i)(i) 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.