California Secretary of State

Proposed Regulatory Action

Emergency Action: Risk Limiting Audits

Proposed Regulation Text

Inline comments and edited text by Harvie Branscomb [harvie@electionquality.com](mailto:harvie@electionquality.com) 8/15/2021

(in MS Word tracked changes)

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 20110, 20111, 20112, 20114, 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 strikethrough for text removed and underlined for the text added.

Sections 20113, 20115, 20116, 20117, 20118, 20123, and 20126 are unchanged by this emergency action, but are presented here for context.

# 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 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 must 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.

[Comment: cast vote records aren’t “cast” and they aren’t even a record of “casting”. They are a record resulting from tabulation – a step much separated from the casting.

(d) “Ballot manifest” means a detailed description of how the ballot cards 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. The ballot manifest may also identify the style(s) of the contents for efficiency in sorting ballots for purposes of audit and recount but only if this information is obtained prior to tabulation and not derived from the voting system.

(e) “~~Ballot-polling~~ Ballot polling audit” shall have the meaning set forth in Elections Code section 15366(c). In examining voter markings, the elections official shall perform a hand-to-eye, human interpretation of voter markings but shall not compare those interpretations to the corresponding cast vote records nor to how the voting system tabulated those ballots.

(f) “Batch comparison audit” means a type of risk-limiting audit in which elections officials examine voter markings on ~~randomly selected batches of~~ ballot cards, in randomly selected batches of ballot cards ~~seeking strong evidence that the reported tabulation outcome is correct~~. 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 and manageable groups, such as the ballots cast in different precincts or vote centers, taking care not to create linkages between voter and ballot card in the process.

[Comment: For example if batches of voter identified envelopes are kept separate but intact from identical batches of removed ballot cards, any rare style in that batch will be identifiable as to the identity of the voter.]

(2) The elections official exports vote subtotals from the voting system for each such physically identifiable group 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

[Comment: For this step to be meaningful, the “physical accounting” of the ballot manifest must not be a produce of a voting system step. If this accounting takes place after scanning, errors of ballot handling may not be caught by the audit.]

(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.

(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~~ 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 groups, labeled “batches”, such as the ballots cast in different precincts or vote centers or ballots processed by different voting equipment, or for example, card “one” separately batched from card “two of a multi-card ballot, taking care not to create linkages between voters and cards.

(2) The elections official exports cast vote records or if not available, vote subtotals from the voting system for all groups of cast ballot cards

[Comment: If this export is what makes the evidence accessible for further analysis and storage as an election record, it should take place for all cast vote records or batches. Apparently “export” does not mean publish. Perhaps it would be wise to explain what it means.]

(3) The elections official checks if the number of ballots according to these subtotals matches the number of ballots physically accounted for in the ballot manifest and provides an explanation if the number differs.

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

(5) The elections official examines some or all of the ballots in the remaining groups and perform a hand-to-eye, human interpretation of voter markings from the corresponding ballots marked by the voter or the voter verified paper audit trail, as defined by Section 19271, but does not compare those interpretations to the voting system interpretations ~~of~~ or tabulations of the same ballots.

[Comment: Somewhere the audit must include an aggregation of all vote counts for all audited contests and comparison to the unofficial election results under audit. I expected this to be the topic of #5, but apparently it claims not to compare to the voting system tabulations. The RLA Tool must not be relied upon exclusively to perform this aggregation and comparison.]

(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 ballots 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 or support 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 Secretary of State ~~SOS~~ 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.

[Comment: The “RLATool” ought not “perform” the audit. Software must not be relied upon to audit.]

(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 made by this regulatory action]

(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 the results of contests not subject to audit, including cross-jurisdictional contests, from the same election subject to audit by entering voter selections from those contests into the RLA software tool. The results of opportunistic reviews shall not be considered verification 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. [No changes made by this regulatory action]

(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.

[Comment- Ideally the audit board will not be comprised of people who performed any original interpretations (such as adjudication or remaking of ballots) during the tabulation, nor will they be managers of those personnel. The audit accuracy depends upon independence of the audit interpretations.]

(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 made by this regulatory action]

(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. [No changes made by this regulatory action]

(a) The elections official shall maintain an accurate ballot manifest, created independent of 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, 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 that have been tabulated before the first phase of the audit starts, followed by the final ballot manifest including all tabulated ballots.

(e) The content of the initial ballot manifest shall not be changed in the final manifest; accordingly, no ballots shall be added to the containers included in the initial manifest. Instead, the tabulated ballots 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 or batch if multiple batches are in the container.

Example: 1,000,000 ballots 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. Ultimately, 97,000 of the remaining 100,000 ballots are determined to be validly cast. These ballots 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 are stored, for a total count of 997,000 ballots 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. [No changes made by this regulatory action]

(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.

(c) The elections official shall establish written procedures to ensure the security, confidentiality, and integrity of any ballots, 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; 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 ~~this~~ the public meeting before generating the first random seed and public notice at least twenty four hours before generating a second random seed, should a second random seed be needed.

[If the second seed is initaiting the sampling for the only audit of all the ballots in the election, it should be treated with respect and due process.]

(2) The elections official shall randomly select members of the public who attend the meeting to take turns rolling a die, and designate one or more staff members to take turns rolling a die if needed.

(3) In the event that no members of the public attend the meeting, the elections official can 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; Section 15367, Elections Code.*

**20121. Audit Procedures for Single-Phase Audit.**

(a) The elections official conducting an RLA after all ballots 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 each contest being audited for each batch.

(b) If ~~the RLA software tool identifies any~~ inconsistencies in the information entered under subdivision (a) are found, the elections official shall resolve and report on the inconsistencies before the audit proceeds.

[Comment: It is undesirable to halt the audit to investigate inconsistencies, other than those of the type that render the audit meaningless such as a failure to pull the correct ballots due to a systematic recordkeeping error.]

(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~~ verified 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 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 ~~or a hybrid audit with a ballot-level comparison audit component~~ is being conducted, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest;

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

(5) The maximum number of ballots 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 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 ~~or a hybrid audit with a ballot-level comparison audit component~~ is being conducted, the cast vote records for all ballot card(s) tabulated; and

(4) If a batch comparison audit ~~or a hybrid audit with a batch comparison audit component~~ is being conducted, vote totals from each contest being audited for each batch.

(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), and have been committed to in public, 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 verified~~ accepted 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.

[Comment: “verified” is preferable to “confirmed” but both are inaccurate. Accepted is better.]

*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 made by this regulatory action]

(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:

[Comment: Arbitration by the DEO involves a failure of independence of the audit. Ideally a separate authority will be used for escalation of any controversy.]

(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 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 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 and verification.

(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 o~~r hybrid audits with a ballot-level comparison audit 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.

(4) Disclose the methods used to select sufficient samples and to achieve the risk limit.

(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 voter marks on every audited ballot card during the audit.

[Comment: It is always better to avoid an implication of links between voter and ballots, marks – anything physical in the record. “Voter’s intent” and “voter’s choices” and “voter’s votes” are all acceptable. Here “voter marks” is best.]

(b) Observers can ask questions of the audit board as long as 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 when they cannot provide an answer.

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

[Comment: It seems unfortunate to circumscribe the availability of CVRs by the public here. At a minimum the local official should decide if the entire election of CVRs will be made available to the public. At best, the rule will require all CVRs to be made public and they would be made public by the SOS.]

(10) 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;

(11) 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.

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

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

(13) The number of members of the public who observed the audit;

(14) 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) 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 made by this regulatory action]

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.

[Comment: I highlighted this because in my original comments I was strongly critical of this paragraph that I recognize is too similar to a mistake that Colorado has made. This does not make sense in combination with the access proposed for images and cast vote records elsewhere in this regulation. Redaction may never be necessary if best practices and appropriate safeguards are used to prevent linkage of ballot cards to voters. This linkage occurs at three places-

* once where rare styles inevitably result from coordination of chaotically overlapping districts and coordination decisions to place those slightly overlapping districts on the same card;
* second where ballots and envelopes are mistakenly handled in such a way that rare styles (sometimes rare because of voter options) create linkages; and
* third where voters themselves create evidence for linkage –

When voters create evidence for their identity on the ballot, sometimes it can be used by third parties who are unaware (e.g. signatures and initials) and sometimes it can only be used in cooperation with the voter – e.g. pattern voting, purposeful stray marks, etc.

The first two categories are within the purview of officialdom and best policy and practice will remedy any substantive harm. The third is entirely within the control of the voter and only substantive provable instances should result in redaction – such as obvious signatures, and that redaction should take place prior to scanning for obvious reasons.

Ideally such redaction will be by a non destructive means such as redaction tape that can be removed under court order. All other instances of conceivably identifiable marks must be treated with a robust policy defining substantive identifiability. DNA, fingerprints, rip patterns where identifiable stubs have been removed, patterns of votes, and marking styles should all be regarded as non-substantive linkages. Names in write-in areas should also be regarded as non-substantive. California should have a resilient and robust policy regarding the definition of PII on a ballot such that officials can operate in a transparent manner without fear of litigation for their own interpretations of what is substantive identifiability.

The following papers were written to advise the Colorado Secretary of State during similar rulemaking:

The following on means of conducting full hand count in conjunction with RLA:

[20170718BranscombMcCarthy.pdf (state.co.us)](https://www.sos.state.co.us/pubs/rule_making/written_comments/2017/20170718BranscombMcCarthy.pdf)

This one about the anonymity of the cast vote record:

[20180309BranscombEtAl.pdf (state.co.us)](https://www.sos.state.co.us/pubs/rule_making/written_comments/2018/20180309BranscombEtAl.pdf)

Thank you once again for the opportunity to make suggestions to improve the RLA regulation.

Harvie Branscomb, [harvie@electionquality.com](mailto:harvie@electionquality.com)

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