

# California Code of Regulations

## Title 2. Administration

### Division 7. Secretary of State

#### Chapter 4.5. Uniform Vote Counting Standards

##### **20280.1. Purpose of This Chapter**

The purpose of this Chapter is to provide standards to define the circumstances under which “marking” of a ballot constitutes a vote and when a vote will or will not count in California.

*Note: Authority cited: Section 12172.5, Government Code. Reference: 52 U.S.C. 21081(a)(6); and Section 12172.5, Government Code.*

##### **20281. Definitions.**

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

- (a) A “blank ballot” is a ballot on which the voter has made no marks in any voting position target.
- (b) “Candidate” means a person who is seeking nomination or election to a specified office and who either has met the legal requirements to have their name printed on the ballot or is eligible to have their name written in on the ballot and counted as the voter's choice for the contest.
- (c) A “damaged ballot” is a ballot that has been torn, bent, or otherwise mutilated or rendered unreadable such that it cannot be processed by the ballot tabulating equipment designed for use with the ballot.
- (d) A “duplicated ballot” is a ballot which is a true copy of the originally cast ballot. It is created when damage, improper marking or some other action/defect prevents the original ballot from being read by a ballot tabulating machine and is used to properly process and count the votes originally cast by the voter. A duplicated ballot also is necessary for a ballot cast using a remote accessible vote-by-mail ballot.
- (e) A “listed candidate” is a candidate whose name appears on the ballot at the time the voter received the ballot, as opposed to a write-in candidate.
- (f) A “measure” is a ballot proposition, which appears on a ballot and requires voter action in order to enact or reject a proposed law.
- (g) An “overvote” occurs when a voter marks more than the maximum number of voting position targets allowed in the contest.
- (h) “Personal information” shall have the meaning set forth in Elections Code section 14287.

(i) An “undervote” occurs when a voter marks less than the maximum number of voting position targets allowed in a contest.

(j) A “voting position target” refers to that area of the ballot adjacent to each candidate or measure, or that area of the ballot, specifically designated to record the voter's choice for that contest. The term applies to all types of voting position targets on ballots, regardless of what form they may take, including, but not limited to, rectangle, oval, circle, square, hole punch, cross punch, slotting and open arrow.

*Note: Authority cited: Section 12172.5, Government Code. Reference: 52 U.S.C. 21081(a)(6); Sections 303.3, 14287 and 15210, Elections Code; and Section 12172.5, Government Code.*

### **20282. General Vote Counting Standards.**

The following general standards shall apply in the counting of all ballots and votes, regardless of the vote tabulation method used, for the initial count, 1 percent manual tally, and any recount.

(a) A ballot that is not marked as provided by law must be segregated and counted in the manner directed by the elections official and as required by law. Any ballot that contains personal information, or that is torn, bent, or mutilated shall be segregated as directed by the elections official and a duplicate ballot shall be prepared pursuant to Elections Code section 15210. A ballot that contains marks or markings not related to an indication of the vote choice for a contest and that are not personal information shall be counted. Duplication is not required unless the ballot contains personal information, or the condition of the ballot or markings on the ballot interfere with the ability of the vote tabulation equipment to tally the ballot.

(b) A vote for any candidate or ballot measure shall not be rejected solely because the voter failed to follow instructions for marking the ballot. If, for any reason, it is impossible to determine the choice of the voter for any candidate or ballot measure, the vote for that candidate or ballot measure shall be considered void.

(c) A mark is considered valid when it is clear that it represents the voter’s choice and is the technique consistently used by the voter to indicate their selections.

(1) Such marks may include, but are not limited to, properly filled-in voting position targets, checkmarks, X’s, circles, arrows, or any other clear indication of the voter’s choice, such as the word “yes” next to a candidate’s name or a voting position target for a ballot measure.

(2) Conversely, a mark crossed out by the voter, or the word “no” next to a candidate’s name or a voting position target for a ballot measure shall not be considered to be a valid vote but will, instead, be deemed an indication that the voter did not choose to cast a vote for that candidate or measure.

(d) In determining the validity of a partially filled-in voting position target, the consistency of a voter’s marks on the entire ballot shall be taken into consideration. A “hesitation mark” such as a

dot in the voting position target shall not be considered a valid mark unless it is demonstrated that the voter consistently marked their ballot in such a manner.

(e) If a contest is marked with more choices than there are offices to be filled or measures that may prevail, the vote shall not be counted for that contest, but shall be counted in all other contests in which there is no overvote and the voter's choice can be clearly determined.

(f) If a contest is marked with fewer choices than there are offices to be filled or measures that may prevail, the vote choice(s) for all otherwise properly marked candidates or measures shall be counted.

(g) Write-in votes shall be counted pursuant to the provisions established in Elections Code sections 14420, 15342 and 15342.5.

*Note: Authority cited: Section 12172.5, Government Code. Reference: 52 U.S.C. 21081(a)(6); Sections 13204, 14287, 14420, 15154, 15208, 15210, 15342, 15342.5 and 15360, Elections Code; and Section 12172.5, Government Code.*

### **20283. Optical Scan Voting Systems.**

(a) When optical scan technology is used to count the votes on a ballot, the provisions of this section shall apply.

(b) The following standards shall be used to determine whether there is a clear indication on the ballot that the voter has made a definite choice. The examples used in this section refer to the "voting position target" as defined in Section 20281. The same principles demonstrated in the examples below shall apply to all types of voting position targets on optical scan ballots, regardless of what form they may take (e.g., rectangle, oval, circle, square, open arrow).

(c) A voter's choice shall be considered a valid vote if the voter:

(1) Indicates their vote choice by consistently filling inside the entire voting position target.

(2) Indicates their vote choice by consistently filling in less than the entire voting position target for all vote choices on the ballot and the ballot is processed in a manner consistent with the use procedures provided and approved for the voting system used in the county.

(3) Indicates their vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), inside the associated voting position target for a candidate choice or ballot measure.

(4) Indicates their vote choice by consistently placing a distinctive mark, such as (X) or (√) or (←), in the corresponding space directly above, below or beside the associated voting position target for a candidate or ballot measure.

(5) Marks their vote choices by encircling the entire voting position target for a candidate or ballot measure, or the candidate's name or Yes/No option for a measure.

(6) Indicates a voting error correction by using correction tape, strikeover, white-out or generic written note of instruction and marks another vote choice for the same contest on the ballot.

(7) Writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, in the designated write-in spaces directly below the list of candidates for that office and marks the associated write-in voting target position.

(8) Writes in a listed candidate's name in the designated write-in space and marks the associated write-in voting target position. In such case, the vote shall be counted as a single vote for the listed candidate.

(9) Marks a voting target position for a listed candidate and also enters the listed candidate's name in the designated candidate write-in space. In such case, the vote shall be counted as a single vote for the listed candidate.

(10) Writes in a qualified write-in candidate's name, or a reasonable facsimile of the spelling of the name, on the secrecy sleeve envelope or stub and indicates the contest for which the vote is being cast, in the case of voting systems where write-in spaces appear separately from the list of candidates for an office and do not provide voting position targets.

(d) A voter's choice shall be considered an invalid vote if the voter:

(1) Uses random markings, indentations, punctures, impressions, squiggly lines, dimple or crimp marks, pinholes, or pinpricks on a ballot, and there is no distinctive and consistent voting pattern to clearly indicate the voter's choice(s).

(2) Indicates vote choice by filling in less than the entire voting position target, and the voter has not consistently marked the entire ballot in the same manner, making the voter's choice unclear.

(3) Inconsistently places a mark above, below, or beside the associated voting position target on a ballot, instead of inside the voting position target, and the voter's choice cannot be clearly determined.

(4) Writes in the name of a person who has not qualified as a write-in candidate.

(5) Writes in a listed candidate's name in the designated write-in space and fills in the associated voting position target for a different listed candidate in the same contest.

(6) Writes in a candidate name that is unrecognizable/undecipherable and it cannot be determined for whom the vote is intended to be cast.

(7) Writes in a qualified write-in candidate's name in the designated write-in space and does not fill in the associated voting position target for the write-in candidate. However, in the event of a manual tally pursuant to Title 2, Division 7, Chapter 4.6 of the California Code of Regulations, or a manual recount, pursuant to Elections Code section 15342.5 if the intent of the voter can be

determined, the vote shall be counted regardless of whether the voter has filled in the associated voting position target for the write-in candidate.

(8) Uses pressure-sensitive stickers, rubber stamps, glued stamps, or any other device not provided for in the voting procedures for the approved voting system used by the county to indicate the name of the voter's choice for a write-in candidate.

(e) If the voter leaves the voting booth without casting the ballot, the precinct official shall cause the ballot to be cast without examining the ballot.

*Note: Authority cited: Section 12172.5, Government Code. Reference: 52 U.S.C. 21081(a)(6); Sections 15154 and 15342.5, Elections Code; and Section 12172.5, Government Code.*

#### **20284. Other Paper Systems.**

(a) A paper ballot shall be subject to the standards in the section applicable to the voting system on which it is processed.

(b) When paper ballots, or voting responses on paper other than a ballot, are counted by manual tally, the provisions of Title 2, Division 7, Chapter 4.6 of the California Code of Regulations shall apply.

*Note: Authority cited: Section 12172.5, Government Code. Reference: 52 U.S.C. 21081(a)(6); and Section 12172.5, Government Code.*

### **Chapter 4.6. Manual Tally Standards**

#### **20296. Purpose of This Chapter.**

The purpose of this Chapter is to provide standards and requirements for conducting a manual tally of votes cast by voters.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15270, 15270.1 and 15270.3, Elections Code; and Section 12172.5, Government Code.*

#### **20297. Definitions.**

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

(a) A "manual tally" is the process of counting the votes cast by voters by hand-to-eye, human interpretation of voter markings from the corresponding ballot, under the provisions of Chapter 4.5. As used in this Chapter, "manual tally" has the same meaning as "manual count" and "manual vote count" as those terms are used in Elections Code sections 15270.1 and 15270.3.

(b) "Chain of Custody" means a process used to track the movement and control of all election materials related to the conduct of a manual tally through its lifecycle by documenting each person and organization who handles the manual tally election materials, the date and time it was

collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of the manual tally election materials is uncertain and during which actions taken with the manual tally elections materials are unaccounted for or unconfirmed.

(c) A “counting board” is the group(s) of individuals appointed by the elections official pursuant to Elections Code sections 339, 15205, 15207, and 15290 to participate in the conduct of the manual tally of votes cast.

(d) A “cumulating board” is the group(s) of county election employees appointed by the elections official to participate in the conduct of the manual tally of votes cast to compile the total results from the counting boards for each contest.

(e) A “hash mark” refers to a tally mark, which is a form of numeral used for counting.

(f) “Qualified political party” means a political party qualified pursuant to Elections Code, Division 5 of the California Elections Code.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 338, 339, 15102, 15205, 15207, 15270, 15270.1 and 15270.3, Elections Code.*

### **20298. General Provisions.**

(a) An elections official may conduct a manual tally of the ballots voted in an election by utilizing one or more of the following methods:

(1) A full manual tally, which counts all contests on the ballot, at a county designated central return location(s) pursuant to Elections Code section 15270.1;

(A) For any election consolidated pursuant to Division 1 or Division 10 of the Elections Code, the registered voters who are eligible to participate in that election for the purpose of Elections Code section 15270.1(b)(1) and (2) shall include all eligible voters for the consolidated election.

(B) For any election not voted for wholly within one jurisdiction, the registered voters who are eligible to participate in that election for the purpose of Elections Code section 15270.1(b)(1) and (2) shall include all eligible voters for the entire contest.

(2) A manual tally recount, which counts a specified number of contests on the ballot, as determined by the elections official;

(3) A 1 percent manual tally pursuant to Elections Code section 15360; or

(4) A full manual tally, which counts all contests on the ballot, at a county designated central return location(s) pursuant to Elections Code section 15270.3.

(A) If an elections official conducts a manual tally pursuant to this subsection 20298(a)(4), then the elections official shall comply with section 20306 of these regulations.

(b) If an elections official conducts a manual tally pursuant to paragraph (1) or (4) of subsection (a), the elections official shall:

(1) Conduct the manual tally at a county designated central return location(s) pursuant to Elections Code sections 15260 and 15261. Ballots shall not be tallied at a voting location, except for manual tallies conducted pursuant to Elections Code sections 15270-15281. The location(s) of the manual tally selected by the elections official shall be large enough to accommodate the presence of all counting boards, other manual tally staff, and election observers. If multiple manual tally locations are selected and designated by the elections official, every location shall have sufficient space:

(A) To accommodate the presence of all counting boards, supervisors, and other manual tally staff assigned to that location; and

(B) For election observers; and

(C) For chain of custody and continuous security.

(2) Process vote-by-mail ballots received prior to election day, such as opening of envelopes and adjudication, beginning at 5:00 p.m. the day before the election but under no circumstance shall vote-by-mail ballots be counted prior to the close of polls on election day pursuant to Elections Code section 15101(b). However, beginning 29 days before the election, the elections official may process vote-by-mail return ballot envelopes, such as signature verification and updating voter history records, pursuant to Elections Code section 15101(a).

(3) Not begin the manual tally until the close of polls on election day pursuant to Elections Code sections 15150 and 15152.

(4) Count all ballots pursuant to Division 15 of the Elections Code.

(5) Comply with the provisions of this Chapter.

(c) If an elections official conducts a manual tally pursuant to paragraph (2) of subsection (a), the manual tally shall be conducted pursuant to Chapter 4.8 of these regulations.

(d) If an elections official conducts a manual tally pursuant to paragraph (3) of subsection (a), the manual tally shall be conducted pursuant to Chapter 4.7 of these regulations.

(e) The chain of custody of ballots shall be maintained at all times, including, but not limited to, during transport, serializing, scanning, sorting and manual counting.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15101, 15150, 15152, 15260, 15261, 15270, 15270.1, 15270.2, 15270.3, 15271, 15272 and 15273, Elections Code.*

**20299. Manual Tally Plan.**

(a) Prior to conducting a manual tally pursuant to paragraph (1) of subsection (a) of section 20298 the elections official shall submit a Manual Tally Plan to the Secretary of State no later than 80 calendar days prior to the date of the election.

(b) The Secretary of State shall approve or reject the Manual Tally Plan, no later than 70 calendar days prior to the date of the election.

(c) The Secretary of State shall reject a Manual Tally Plan if:

(1) It is missing any of the specified requirements listed below in subsection (f).

(2) The provided requirements lack sufficient detail to fully describe each element listed below in subsection (f).

(3) Any element of the Manual Tally Plan does not comply with state or federal law.

(4) The Manual Tally Plan is insufficient to ensure that the elections official will be able to comply with state or federal law.

(d) If the Manual Tally Plan is rejected the Secretary of State shall provide a written list of any deficiencies in the plan and:

(1) The elections official shall have 10 calendar days from the date of the rejection to amend and resubmit the plan to the Secretary of State.

(2) The Secretary of State shall then have 10 calendar days from the date of resubmission to approve or reject the resubmitted Manual Tally Plan. If the Manual Tally Plan is rejected after resubmittal, the elections official shall tabulate the ballots using a certified voting system and consistent with state and federal law.

(e) If the Manual Tally Plan is approved, the elections official shall:

(1) Post the Manual Tally Plan in a conspicuous place at the office of the elections official, the location(s) where the manual tally takes place, and on the elections official's website, if available. If the elections official's website is available, the Manual Tally Plan shall be posted on the website within 5 calendar days of the Secretary of State approval.

(2) Provide status updates to the Secretary of State on the implementation of the Manual Tally Plan at regular intervals:

(A) At a minimum of every 15 calendar days from the date of approval until election day.

(B) Weekly from election day until submission of the certified statement of the results pursuant to Elections Code section 15375.

(C) If sufficient progress in implementation has not been made and it appears to the Secretary of State that the elections official's compliance with state and federal laws is at risk, the Secretary of State's approval of the Manual Tally Plan shall be revoked unless the jurisdiction can quickly remediate the lack of progress through actions like hiring additional staff, increasing hours of operation, or modifying the manual tally process, and the elections official shall be required to:

(i) Use a voting system certified by the Secretary of State for purposes of tabulating and reporting election results; and

(ii) Implement the contingency plan as required in subsection 20299(f)(3) of these regulations.

(3) At least 15 calendar days before election day, certify to the Secretary of State that the jurisdiction has successfully obtained the resources identified in its Manual Tally Plan, including but not limited to staff, plans, facilities, security measures, and scanning and tabulating capabilities. If such certification is not provided, the Secretary of State's approval of the Manual Tally Plan shall be revoked, and the jurisdiction shall be required to use a voting system certified by the Secretary of State for purposes of tabulating and reporting election results.

(f) The Manual Tally Plan shall include, but not be limited to:

(1) The name of the jurisdiction submitting the manual tally plan and the contact information for the elections official, which shall include a phone number and email address.

(2) A detailed description of the outreach and education that will be conducted to voters about how the voters' ballots will be counted and the timing for election results. The description shall include details on how the outreach and education will meet accessibility and language requirements pursuant to state and federal law.

(3) A detailed description of how the manual tally will be conducted in order to meet the deadlines set forth in these regulations and the Elections Code. The elections official shall also include a detailed description of the contingency process in the event that deadlines set forth in these regulations are not met or if the manual tally plan approval is revoked.

(4) The daily work schedule for the manual tally, which shall include the hours of operation, daily estimated number of ballots to be processed, approximate breaks, and lunch times.

(5) A detailed description of how the counting boards, supervisors, cumulating boards, and any other staff assigned to participate in the manual tally will be trained and organized to conduct the tally.

(6) The total number of counting boards, supervisors, cumulating boards, and any other assigned staff that will be required to complete the manual tally accurately, timely, and securely. The total number shall include sufficient back-up staff to account for unknowns or uncertainties, which includes but is not limited to unexpected high voter turnout, failure for counting board members to report for counting, and slowness in counting board performance.

(7) A detailed description of the process to check in, check out, and monitor the members of the counting boards, supervisors, cumulating boards, and any other staff assigned to participate in the manual tally. This plan shall include a description of how the use of cell phones, cameras, and audio or video recording devices in the location where the manual tally is conducted shall be restricted.

(8) A detailed description of the physical location(s) where the manual tally will be conducted. The description shall include:

(A) The security at the location for ballots, forms, counting boards, supervisors, cumulating boards, and other staff assigned to participate in the manual tally; and

(B) The planned setup of the location, including but not limited to the spacing of the tables and designated observation spaces.

(9) A detailed description of the process to prepare the ballots for counting, including but not limited to the sequential serial numbering of ballots, capturing of ballot images, and sorting the ballots into batches.

(10) A detailed description of how the chain of custody will be maintained for the ballots, manual tally forms, and cumulating board documentation, including how they will be collected, transported, delivered, distributed, monitored, stored, and secured.

(11) A detailed description of how the manual tally will work in conjunction with the use of the voting system. This description shall include at a minimum how ballot set up, accessible voting devices, and tabulation will work together in accordance with the certified voting system use procedures, including compliance with Elections Code section 15003.

(12) A detailed description of how the manual tally results will be verified and audited using a certified voting system tabulator.

(13) A detailed description of the process to distribute, monitor, collect, and secure the manual tally forms as described in section 20301 of these regulations.

(14) A description of the distribution, monitoring and collection of writing devices to be provided by the elections official for the counting boards to use when conducting a manual tally. No member of a counting board shall use or bring their own writing device to the physical location where the ballots will be counted. The writing device shall be provided by the elections officials and the assigned color shall change daily for security purposes. Additionally, the elections official may limit the presence of personal items, such as food and beverages, backpacks, purses, and bags.

(15) A detailed description of how the elections official will provide reasonable access to the manual tally process for observation consistent with Title 2, Division 7, Chapter 8.2 of the California Code of Regulations.

(16) A detailed description of how the elections official will record, document, and resolve issues and discrepancies, which shall at a minimum include the difference in totals between the two tally keepers, the difference in totals between the tally keepers and the cumulating board, and the difference in totals between what was calculated from the manual tally forms and the certified voting system tabulator results during the conduct of the manual tally.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15003, 15270, 15270.1, 15270.2, 15271, 15272, 15273, 15274, 15275, 15276, 15277, 15278, 15278.5, 15279 and 15280, Elections Code; and Section 12172.5, Government Code.*

### **20300. Counting Boards.**

(a) When conducting a manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, the elections official shall establish a sufficient number of counting boards to conduct the manual tally.

(b) For each contest (i.e., office or proposition) to be counted, the counting board shall consist of no less than four individuals and be bipartisan in composition, to include representation from more than one qualified political party and representation from voters with no party preference, if feasible.

(c) The individuals appointed to each counting board shall meet the same general provisions and qualifications of a precinct board member as outlined in Elections Code sections 12300-12303, 15205, 15207, and 15290. The appointment of counting boards shall comply with all applicable:

(1) County ordinances, codes, and policies; and

(2) State and federal laws.

(d) The roles of the counting board members shall be as follows at all times:

(1) At least one counting board member shall serve as the reader and shall read from the ballot.

(2) At least one counting board member shall serve as the observer and shall keep watch of each vote read to check for any possible error or omission on the part of the reader.

(3) At least two of the counting board members shall each keep a manual tally form prescribed by the elections official. Each tally keeper of the counting board shall, with the provided writing device, record a hash mark for each name or measure as the name of each candidate or measure voted upon is read aloud by the reader and verified by the observer from the respective ballot.

(e) Prior to conducting the manual tally, each member of a counting board shall complete and sign a declaration of intent to faithfully discharge the counting board duties. Each counting board member shall do so in the presence of the elections official on a form prescribed 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 counting board member for the counting board number \_\_\_\_\_ for the election to be held on \_\_\_\_\_, 20\_\_.

Signed in the presence of \_\_\_\_\_ (Signature) \_\_\_\_\_

on \_\_\_\_\_, 20\_\_.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 12320, 15102, 15270, 15270.1, 15270.3, 15271, 15272, 15273, 15275, 15276, 15277, 15278, 15278.5, 15279, 15280 and 15290, Elections Code.*

### **20301. Manual Tally Forms.**

(a) When conducting a manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, the elections official shall prescribe and provide the forms for tallying the results of the manual tally. The manual tally form shall contain all the following:

(1) The title of the election and date on which the election was conducted.

(2) Name of jurisdiction conducting the election and manual tally of votes.

- (3) The precinct, serialized ballot numbers, and ballot stack number.
- (4) For a presidential primary election, the manual tally form must distinguish between qualified political party ballots and nonpartisan ballots, which each type of ballot must be tallied separately.
- (5) The name of each candidate, including any qualified write-in candidates, voted for and the specific office for which each candidate is voted for. The offices shall be listed on the tally form in the same order as they appear on the ballot.
- (6) A list of each measure being voted upon in the same order as the ballot type being tallied.
- (7) Sufficient space to permit the tallying of no more than 100 ballots per stack, including the full vote cast for each candidate and for and against each measure, per assigned stack of ballots.
- (8) Sufficient space to permit the tallying of no more than 100 ballots per stack, including all undervotes and overvotes cast for each candidate and for and against each measure.
- (9) A certificate of performance to be filled in upon completion of the each assigned ballot stack, which includes space for the printed and signed names of each counting board member, their designated role, and the date and time signed.
- (10) Designated space for the manual tally cumulating board to sign and acknowledge receipt of ballot stacks and manual tally forms, which includes space for the printed and signed names of each cumulating board member, and the date and time signed.
- (11) A watermark provided by the elections official that shall change daily for security purposes.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15270, 15270.1, 15270.3, 15271, 15272, 15273, 15275, 15276, 15277, 15278, 15278.5 and 15279, Elections Code.*

### **20302. Other Responsibilities.**

When conducting a manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, in addition to the appointment of counting board members the elections official shall appoint:

- (a) At least one supervisor for every four counting boards, to oversee the overall conduct of the manual tally, including but not limited to tracking the progress of the manual tally, ensuring compliance with the requirements of this Chapter, inclusive, of this regulation and reporting any issues or concerns to the elections official.

(b) At least one supervisor for each location to supervise and ensure compliance with the public observation of the manual tally, including, without limitation, ensuring that the public is able to observe the manual tally and that the public does not distract or interfere with the conduct of the manual tally.

(c) A cumulating board pursuant to section 20304 of these regulations.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15102, 15207, 15270, 15270.1 and 15270.3, Elections Code.*

**20303. Conducting a Manual Tally.**

(a) Prior to beginning the manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, the elections official shall:

(1) Sequentially serialize each ballot;

(2) Electronically capture the ballot images on a scanner certified pursuant to Elections Code section 19202;

(3) Sort each ballot by precinct;

(4) Further sort the ballots by qualified political party and nonpartisan ballots if the ballots are for a presidential primary election; and

(5) Divide the ballots into separate stacks containing not more than 100 ballots per stack. Each stack must be read and tallied separately. Each stack of ballots shall be:

(A) Secured with a rubber band, binder clip, or equivalent; and

(B) Clearly labeled and numbered consecutively.

(b) The elections official may process all ballots through a tabulator certified pursuant to Elections Code section 19202, prior to beginning the manual tally.

(c) At all times, no fewer than two members of the counting board shall maintain chain of custody of ballots during the manual tally.

(d) While handling the ballots or participating in the manual tally, all individuals may be asked to wear medical style exam gloves provided by the elections official.

(e) At all times while handling the ballots or participating in the manual tally, the tally keepers shall be the only members of the counting board to utilize the writing device provided by the elections official.

(f) Each counting board shall be positioned at a designated counting area with sufficient spacing to minimize interference with other counting boards.

(g) The ballot shall be tallied one contest at a time within each batch, unless a different method or process is authorized by the elections official.

(h) All undervotes and overvotes for all contests shall be tallied.

(i) A manual tally of the ballots shall be tallied separately by each tally keeper of the counting board for each contest on the ballot. The results of each tally keeper's form for each contest must match exactly. If the results do not match, the counting shall be conducted again until the results match. If the tallies do not match after the third manual tally count of the contest, the elections official shall have a process in place to review and resolve the discrepancy.

(j) Unless otherwise directed by the elections official, the counting board supervisors shall distribute the writing devices, manual tally forms, and one stack of ballots to each counting board at a time, as directed by the elections official.

(k) The counting board shall verify that the precinct and serialized numbers recorded on the manual tally form are the same as what is contained in the stack provided by the counting board supervisor prior to counting.

(l) The reading of the ballots shall be conducted as follows:

(1) The reader of the counting board shall read from the ballot the choice of the voter.

(2) After reading each ballot, the reader shall place the counted ballot in a separate pile on the table in a manner to distinguish the counted ballots from the uncounted ballots. After each stack of ballots is counted, the ballots shall be resecured.

(3) The observer shall observe the reader and ensure the reader is calling the votes correctly.

(m) The tallying of the ballots shall be conducted as follows:

(1) The tally keepers shall record the votes on the prescribed manual tally form. If the election is a presidential primary election, the tallied votes shall be noted on the manual tally form that is designated for the applicable qualified political party or the nonpartisan manual tally form.

(2) As directed by the elections official, the tally keepers shall manually tabulate on the manual tally form by either:

(A) Placing a short vertical hashmark opposite the name of the candidate or ballot measure voted for the first through fourth vote for the same candidate or ballot measure. For every fifth vote for the same candidate or ballot measure, the tally keepers shall place a horizontal hash mark through the previous four vertical hashmarks; or

(B) Placing a diagonal slash (/) through the numbered tally box under the name of the candidate or ballot measure voted for. For every fifth vote for the same candidate or ballot measure, the tally keepers shall place an (X) through the numbered tally box.

(3) Once each counting board has read and tallied one contest, the tally keepers shall verify that the total number of votes for each candidate or ballot measure match, prior to moving onto the next contest.

(4) If a tally keeper makes a mistake while marking the manual tally form, the counting board shall halt counting and notify the supervisor. If the supervisor determines that the manual tally shall be halted and the manual tally restarted, the supervisor shall provide the counting board's tally keepers with two new manual tally forms and the counting board shall start the manual tally over. The supervisor shall document on the voided manual tally forms the reason for why the forms were voided. All manual tally forms, including voided forms, shall be kept together with the stack of ballots.

(5) If the tally matches for the contest, then the counting board may proceed to counting the next contest.

(6) If the tally does not match for the contest:

(A) The counting board shall notify the counting board supervisor of the discrepancy.

(B) The counting board supervisor shall clearly document the discrepancy on the manual tally forms and provide the counting board with a new set of manual tally forms. The counting board shall count the contest a second time. If the tallies do not match after the second manual tally count of the contest, the counting board shall notify the counting board supervisor, who shall clearly document the discrepancy on the manual tally forms. The counting board supervisor shall provide the counting board with a new set of manual tally forms and shall join the counting board to assist with the third manual tally of the contest. If the tallies do not match after the third manual tally count of the contest, the elections official shall have a process in place to review and resolve the discrepancy.

(C) All manual tally forms shall be clearly marked and retained with the corresponding stack of ballots.

(n) Once all contests for all ballots in the stack of ballots have been tallied and all results verified, the counting board shall:

- (1) Draw lines through the empty spaces on the manual tally form.
- (2) Fill in the certificate of performance section.
- (3) Secure all ballots, manual tally forms, and writing devices, and return them as directed by the elections official.
- (o) The distribution of ballot stacks and tallying shall continue until all ballots are manually counted.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15102, 15270, 15270.1, 15270.3, 15271, 15272, 15273, 15275, 15276, 15277, 15278, 15278.5, 15279 and 15280, Elections Code.*

**20304. Manual Tally Cumulating Board.**

- (a) When conducting a manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, the elections official shall appoint a board to cumulate the results of the manual tally forms comprised of county elections employees.
- (b) The manual tally cumulating board shall compile the results by:
  - (1) Hand, without use of any mechanical, electromechanical, or electronic system, or its software; or
  - (2) The use of a mechanical, electromechanical, or electronic system and its software or any combination of these, that has been conditionally approved or certified by the Secretary of State pursuant to Elections Code sections 362 and 19202; or
  - (3) A combination of subsection 20304(b)(1) and subsection 20304(b)(2) above.
- (c) Once a counting board has completed the manual tally of all contests on their assigned stack of ballots and returned them to the counting board supervisor, the stacks of ballots and manual tally forms shall be provided to the manual tally cumulating board.
- (d) Upon receipt of each stack of ballots and manual tally forms, the manual tally cumulating board shall maintain a cumulative total by precinct for each contest being counted pursuant to Elections Code section 15321.
- (e) The elections official shall report the results of the manual tally cumulating board in compliance with section 20306 of these regulations, if applicable.

(f) The manual tally cumulating board shall sign the designated space on each manual tally form once the results have been compiled and recorded. All stacks of ballots and their associated manual tally forms shall then be secured by the elections official.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 362, 15270, 15270.1, 15270.3, 15272, 15275, 15276, 15277, 15278, 15278.5, 15279, 15280, 15281 and 19202, Elections Code.*

**20305. Auditing the Manual Tally.**

(a) When conducting a manual tally pursuant to paragraph (1) or (4) of subsection (a) of section 20298, the elections official shall use a voting system tabulator certified pursuant to Elections Code section 19202 to conduct an audit of all ballots counted in the manual tally.

- (1) The audit shall be performed prior to the certification of the official canvass of the vote.
- (2) The elections official shall conduct a test or series of tests pursuant to Elections Code section 15000.
- (3) All ballots shall be audited using the certified voting system tabulator.
- (4) Any discrepancies between the results of the certified voting system tabulator and the manual tally shall be clearly documented.
- (5) A 1 percent manual tally pursuant to Elections Code section 15360 is not required.

(b) In the event that the Manual Tally Plan has been revoked by the Secretary of State or the elections official determines that completing the manual tally is not feasible:

- (1) Any ballots that have been manually tallied shall be audited pursuant to subsection 20305(a); and
- (2) Any remaining ballots shall be tabulated using a voting system tabulator certified pursuant to Elections Code section 19202 and audited pursuant to Elections Code section 15360.
- (3) Any discrepancies between the results of the certified voting system tabulator and the 1 percent manual tally shall be clearly documented.

(c) The official conducting the election shall include a report on the results of the audit in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 362, 15270, 15270.1, 15270.3, 15277, 15278, 15360 and 19202, Elections Code.*

**20306. Reporting Elections Results by Manual Tally.**

(a) When conducting a manual tally pursuant to paragraph (4) of subsection (a) of section 20298 for any state or federal election, the elections official shall submit to the Secretary of State through key data entry:

- (1) The semi-official canvass results pursuant to Elections Code section 353.5.
- (2) Updates to election results pursuant to Elections Code section 15302(e).
- (3) The official canvass results pursuant to Elections Code section 335.5.
- (4) The statement of vote and any supplement to the statement of vote pursuant to Elections Code section 15374.

(b) Following the closing of the polls, the elections official shall submit to the Secretary of State through key data entry a detailed semifinal official canvass report of their cumulative election result totals for each contest and ballot measure as defined in Elections Code section 353.5 and set forth in Elections Code section 15151. The report shall include all of the following:

- (1) The date and time of the report.
- (2) The number of precincts reporting and ballots cast.
- (3) Cumulative vote totals for every contest and ballot measure, as prescribed in Elections Code section 15151.
- (4) For presidential primary elections, vote results for Democratic and Republican presidential candidates by each congressional district within the county's jurisdiction, including the number of precincts reporting and votes cast within each congressional district.
- (5) For multiple-county district contests, the number of precincts reporting with ballots cast for each multiple-county district contest(s).
- (6) For special elections only, the number of registered voters contained in that special election jurisdiction.

(c) The official canvass shall commence no later than the Thursday following the election, and for state or statewide elections shall result in a report of results to the Secretary of State, pursuant to Elections Code section 15301.

(d) During the official canvass period, the elections official shall submit to the Secretary of State, through key data entry, any updated election results on the same day that the elections official publicly releases the updated results.

(e) At the end of the official canvass period as defined in Elections Code section 335.5, the elections official shall submit to the Secretary of State, through key data entry, the statement of vote of their cumulative election result totals for each contest and ballot measure and set forth in Elections Code section 15374. The report shall include:

(1) All of the above information in subsection (c) of section 20306; and

(2) The total vote-by-mail ballots cast.

(f) At the end of the official canvass period as defined in Elections Code section 335.5, the elections official shall submit to the Secretary of State through key data entry the supplement to the statement of vote of their cumulative election result totals for each contest and ballot measure and set forth in Elections Code section 15502. The report shall include:

(1) The date and time of the report; and

(2) A breakdown of vote totals for every contest and ballot measure, as prescribed in Elections Code section 15502.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 335.5, 353.5, 6020, 6220, 6420, 6461, 15000, 15150, 15151, 15270.2, 15270.3, 15301, 15305, 15371, 15372, 15373, 15374, 15375, 15501 and 15502, Elections Code.*

#### **20307. Observing the Manual Tally.**

All observations of a manual tally shall be conducted pursuant to Title 2, Division 7, Chapter 8.2 of the California Code of Regulations.

*Note: Authority cited: Section 12172.5, Government Code; and Section 15270.2, Elections Code. Reference: Sections 15270, 15270.1, 15270.3 and 15272, Elections Code.*

### **Chapter 4.7. One Percent Manual Tally**

#### **20310. General Provisions.**

(a) Pursuant to Elections Code section 15360, during the official canvass of every election in which a voting system is used, the elections official conducting the election shall conduct a one percent manual tally of the ballots tabulated by those devices, including vote-by-mail ballots.

(b) The elections official shall not randomly choose the initial precincts or select an additional precinct for the manual tally until after the close of the polls on election day.

(c) An elections official conducting a one percent manual tally shall do so in accordance with the provisions of this chapter.

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

**20311. 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 301.

(b) “Chain of Custody” means a process used to track the movement and control of all election materials related to the conduct of a one percent manual tally through its lifecycle by documenting each person and organization who handles the one percent manual tally election materials, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of the one percent manual tally election materials is uncertain and during which actions taken with the one percent manual tally elections materials are unaccounted for or unconfirmed.

(c) “Election management system” shall have the meaning set forth in Elections Code section 2500.

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

(e) “One-part manual tally” is the process described in Elections Code section 15360, subdivision (a), paragraph (1).

(f) “One percent manual tally” shall have the meaning set forth in Elections Code section 336.5.

(g) “Public notice” means the release of information to the public through 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 a building open to the public. This public notice shall comply with Elections Code section 15360(d).

(1) Elections officials are encouraged to maintain an email mailing list of persons who would like to be notified about the one percent manual tally. 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.

(h) “Two-part manual tally” is the process described in Elections Code section 15360(a)(2).

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

*Note: Authority cited: Section 12172.5, Government Code; and Section 15360, Elections Code.  
Reference: Sections 301, 320, 336.5, 362, 2500 and 15360, Elections Code.*

**20312. Public Notice and Observation.**

(a) The elections official shall ensure that the one percent manual tally is observable by the public. The elections official shall provide:

(1) At least five days public notice prior to selection of ballots to tally pursuant to Elections Code section 15360(d). This notice shall include descriptions of how the one percent manual tally will be conducted, the methods for ensuring ballot security, information regarding the process for selecting ballots, the time and place of the selection of ballots to tally and the date the ballots will be tallied.

(2) Observers with an oral or written explanation of the one percent manual tally, a written code of conduct for observation, and any documentation they will need for informed and effective observation.

(3) The public the opportunity to observe ballots being retrieved and tallied.

(4) The public the opportunity to observe the voters’ marks on every tallied ballot.

(b) Observers may ask questions of a person designated by the elections official, provided the observers do not interfere with the conduct of the one percent manual tally.

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

**20313. Selection of Ballots for Manual Tally.**

(a) The elections official shall select precincts and batches of vote-by-mail ballots for the one percent manual tally independent of both the voting system and the election management system.

(b) The elections official shall use one of the following methods to randomly select precincts and batches of vote-by-mail ballots for the one percent manual tally:

(1) The elections official creates one identical, labeled object such as a slip of paper or ball for each item (precinct or batch of vote-by-mail ballots) to tally; places all of these items into a container; shuffles those items within the container; and then draws items one after the other until all required tally items are selected. Example: There are 123 possible precincts to select from. The elections official labels 123 table tennis balls with an identifier for each precinct and then places these balls into a large hopper. The elections official shakes the hopper for one minute to ensure the balls have been sufficiently shuffled. The elections official then reaches in

and randomly grabs one ball to identify a precinct. The elections official then draws another ball, and so on.

(2) The elections official creates a list of precincts and batches of vote-by-mail ballots; sequentially numbers that list; and then identifies which item (precinct or batch of vote-by-mail ballots) to tally, by utilizing one of the following methods:

(A) Using a random number generator configured to return only numbers represented on that sequential list. Use the random number generator to identify all required tally items. Example: There are 123 possible precincts to select from. The elections official uses the “randbetween()” function in Microsoft Excel to identify a random number between 1 and 123. The elections official relates this number to the precinct in the list. The elections official refreshes this function to identify another random number, and so on.

(B) Rolling one or more fair 10-sided dice to identify each digit of the sequential number, starting with the highest value (left-most) digit. For any die roll that returns a number higher than one available for that digit, the elections official shall re-roll the die for that digit before proceeding to the next digit. Repeat this process for any additional tally item. Example: There are 123 possible precincts to select from. The elections official first rolls a die for the hundreds place digit, rolling until they get the number 0 or 1. They proceed to roll for the tens place digit and then the ones place digit. When that process is complete, they begin new die rolls to identify a second precinct to tally, and so on.

(C) Identifying each digit of a sequential number by randomly drawing one numbered object such as a slip of paper for each digit, starting with the highest value (left-most) digit. Repeat this process for any additional tally item. Example: There are 123 possible precincts to select from. The elections official first identifies the hundreds place digit by drawing from two slips of paper labeled 0 and 1. They proceed to pull slips of paper for the tens place digit and then the ones place digit. When that process is complete, they start the process over to identify a second precinct to tally, and so on.

(D) Placing this list into computerized spreadsheet software; assigning a random number next to each item using a function in that spreadsheet tool; sorting those randomly assigned numbers in either ascending or descending order; and then selecting items starting at the top until the requisite number of items is identified. Example: A list of 123 precincts is added to Microsoft Excel by placing each precinct on in its own cell in sequential rows. The elections official uses Excel’s randbetween() function to assign a random number greater than or equal to 0 and less than 1 next to each cell. The elections official converts these random numbers to static text so that they will not change when the list is sorted. The elections official sorts these now-static random numbers, along with the precincts in the neighboring cells, in descending order. The elections official selects the top two items in this sorted list.

(c) If the elections official, at their discretion, selects additional precincts, batches, or contest(s) beyond the one percent manual tally, they shall do so after randomly identifying ballots to tally. The elections official may not use this discretionary selection to identify one percent of precincts or batches of vote-by-mail ballots in lieu of any portion of the random selection.

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

**20314. Chain of Custody.**

(a) The elections official shall maintain and document at all times the chain of custody for each ballot included in the one percent manual tally. Ballots shall be kept securely, and the chain of custody maintained at all times during the one percent manual tally.

(b) 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.

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

(d) The elections official shall establish written procedures to ensure the security, confidentiality, and integrity of any ballot cards, cast vote records, or any other data collected, stored, or otherwise used pursuant to this section.

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

**20315. Reporting of Results.**

(a) The elections official conducting a one percent manual tally shall immediately upon conclusion and prior to certifying the results pursuant to Elections Code section 15372, publish a report of results for the one percent manual tally on their website.

(b) The elections official conducting a one percent manual tally shall report the results in the certification of the official canvass of the vote pursuant to Elections Code section 15372. For elections involving statewide contests, this would be the Secretary of State. For elections involving local contests, this would be the governing board such as the county board of supervisors.

(c) The report required by subsection 20315(a) and 20315(b) above shall contain the following:

(1) The manual tally method used: one-part manual tally or two-part manual tally.

(2) The date and time the public notice required by Section 20312 was provided, and a copy of the notice.

(3) A link to the internet website where additional information about the one percent manual tally is posted, if applicable.

(4) The date and time the one percent manual tally commenced, beginning with the random selection required by Section 20313.

(5) The date and time the one percent manual tally finished.

(6) The estimated number of members of the public who observed the process.

(7) The total number of ballots counted in the election, which shall be the official canvass numbers.

(A) While the one percent manual tally may commence in advance of the confirmation of the official canvass numbers, these numbers will be available at the time of certification which shall coincide with the certification of the official canvass.

(B) The total number of ballots shall be segregated by type: polling place or vote center, including provisional ballots; and vote-by-mail.

(8) The total number of ballots manually tallied.

(A) The total number of ballots shall be segregated by type: polling place or vote center, including provisional ballots; and vote-by-mail.

(9) The total number of precincts and batches of vote-by-mail ballots in the election, and a list describing each and the number of ballots in each, indicating whether ballots are polling place, vote center, vote-by-mail, or provisional.

(10) The total number of precincts and batches of vote-by-mail ballots selected for the manual tally.

(11) The method used to choose precincts and batches of vote-by-mail ballots to include in the tally.

(A) For the random selection method, indicate which of the methods from Section 20313 was used.

(B) For any discretionary, additional precincts and batches of vote-by-mail ballots, describe the reason those were selected.

(12) A description of any discrepancies noted, including details about each discrepancy and how it was resolved.

(13) 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.

(14) A certification from the elections official that the one percent manual tally was conducted in accordance with Elections Code section 15360(e), and this Chapter.

(15) The name and signature of the elections official submitting the report and the date submitted.

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

*Note: Authority cited: Section 12172.5, Government Code; and Section 15360, Elections Code. Reference: Sections 15360 and 15372, Elections Code.*

## **Chapter 4.8. Recounts**

### **Article 1. General Provisions**

#### **20350. Purpose.**

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

(b) This chapter applies to the Secretary of State and all elections officials within the State of California in conducting recounts of votes cast for all elections in this state.

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

#### **20351. Definitions.**

(a) “Election data media device” means a card, cartridge, USB flash memory stick or other digital storage device that stores ballot information and/or voting results information in a non-volatile form.

(b) “Batches” means any grouping of the ballots for the purpose of tabulation. A batch may be comprised of ballots wholly from one precinct or from multiple precincts.

(c) “Chain of Custody” means a process used to track the movement and control of all election materials related to the conduct of a recount through its lifecycle by documenting each person and organization who handles the recount election materials, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of the recount election materials is uncertain and during which actions taken with the recount elections materials are unaccounted for or unconfirmed.

(d) “Governing board” includes, but is not limited to, a city council or a county board of supervisors.

(e) “Interested party” means the requestor and those persons identified in Elections Code section 15628.

(f) “Observer” means any representative of a qualified political party, representative of a bona fide association of citizens, or other person who wishes to observe the recount proceedings subject to space limitations.

(g) “Outcome of the election” means the candidate(s) identified as the elected official(s) or the final results of the measure (“yes” or “no”) based on certified results of the election pursuant to Elections Code section 15632.

(h) “Qualified political party” means only a political party qualified to participate in the last primary election.

(i) “Relevant material” includes but is not limited to unvoted ballots, vote-by-mail and provisional ballot envelopes, language translation files pre- and post-election logic and accuracy testing plans and results, polling place event logs, precinct tally results, central count tally results and consolidated results in a structured, non-proprietary format, chain of custody logs, duplication logs.

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

(k) “Vote tabulating device” means any piece or combination of pieces of equipment, other than a voting machine operated by levers or other mechanical means, that compiles a total of votes cast by means of electronic data processing and ballot card sorting, ballot card scanning, or paper ballot scanning.

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

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

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

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

*Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 15601, Elections Code. Reference: Sections 358, 359, 361, 15620, 15621, 15623 and 15625, Elections Code.*

**20352. Who May Request Recount.**

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

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

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

*Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 15601, Elections Code. Reference: Sections 15620, 15621 and 15623, Elections Code.*

**20353. Material to Be Examined; Relevant Material.**

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

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

(c) The elections official may establish reasonable guidelines for the examination of relevant material. If the elections official establishes reasonable guidelines, the elections official shall make them publicly available on their website. The guidelines shall permit photocopying, photography and videotaping of all relevant material except in a manner that would record confidential voter information including but not limited to un-redacted voter signatures, official ballots, proprietary voting system material that may otherwise present a security risk to the voting system, or other material that would be prohibited under the Public Records Act, Title 1, Division 10 of the Government Code (sections 7920.000-7931.000).

(d) The elections official shall communicate any request to examine ballots or other relevant material to each interested party or to his or her representative. The interested parties and their representatives appointed pursuant to section 20356(a)(1) may be present during the examination of ballots or other relevant material.

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

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

#### **20354. Order of Recount.**

(a) If no order in which precincts are to be counted is specified in the request for recount, the elections official shall determine the counting order of precincts or batches.

(b) The requestor may request, in writing, a change to the order of precinct or batch counting determined by the elections official or specified in the requestor's initial request for a recount. Any change in the counting order of precincts or batches is subject to the approval of the elections official.

(c) Any additional estimated costs associated with requests to change the order of precinct or batch counting shall be paid by the requestor prior to re-ordering the precincts or batches.

(d) Any additional relevant material or precincts shall not be inspected upon conclusion of the recount.

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

*Reference: Section 15622, Elections Code.*

#### **20355. Cost of Recount.**

(a) The elections official shall estimate the costs necessary to produce relevant material and the requestor shall pay an advance deposit of the estimated amount at least one day prior to the materials being produced.

(b) The requestor or designee shall pay the advance deposit using cash, cashier's check or money order at the time established by the elections official in accordance with Elections Code section 15624 and the minimum number of hours specified by Elections Code section 15626. At the elections official's discretion, electronic payment by credit or debit card may be accepted.

(1) If a designee is appointed by the requestor to submit a payment or deposit, the requestor shall make the designation in writing, and a copy of the written designation shall be submitted to the elections officials.

(c) At least one day prior to the commencement of the recount, the elections official shall determine the estimated cost for the first day of the recount and shall advise the requestor in writing of the advance deposit required. The requestor shall, before the recount is commenced, deposit this amount with the elections official. The same procedure shall be followed for each subsequent day of the recount. Daily estimates may vary based upon experience or additional requests made during the course of the recount.

(d) All actual costs of the recount that would not have been incurred but for the requestor's particular recount request shall be directly recoverable from the requestor and may include, but are not limited to, additional supervision hours, security guard hours, the elections official's staff hours, space rental, transportation of ballots and materials and administrative costs.

(e) The elections official shall issue a receipt for payment of the deposits and shall maintain a daily log of estimated costs, deposits, actual expenses and amount of refund due, if any.

(f) If the advance deposit is not paid by a particular requestor, the elections official will terminate the recount of precincts specified by that requestor.

(g) When the recount is completed or discontinued, any amount collected from a voter requesting the recount, which exceeds the actual costs, shall be refunded to that requestor.

(h) If upon completion or discontinuation of the recount actual costs exceed the prepaid estimated costs, the elections official shall charge and the requestor shall pay the additional amount.

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

**20356. Location of Recount.**

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

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

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

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

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

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

#### **20357. Security.**

(a) The elections official shall develop, and prior to each statewide election, maintain written security measures for recounts to ensure the integrity of the recount proceedings. The security measures shall include, but not be limited to, physical security of the recount proceedings, recount equipment and storage of recount materials; chain of custody controls for all voted, spoiled and unused ballots, and all “relevant material” as described in section 20351(h).

(b) Upon request, all persons authorized to observe the recount pursuant to section 20356 must be permitted to observe and inspect, without physical contact, the integrity of all externally visible security seals used to secure all ballot materials, printed ballot images, relevant material as described in section 20351(h), and recount documentation in a reasonable time and manner as established by the elections official that does not interfere with the conduct of the recount.

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

#### **20358. Staffing.**

(a) Prior to the commencement of the recount, the elections official shall determine the number of special recount boards necessary to complete the recount in a timely manner. Special recount boards shall consist of four members each, as appointed by the elections official.

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

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

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

**20359. Scheduling.**

The elections official shall set the daily schedule for the recount, including hours of operation, approximate break and lunch times, in accordance with the requirements of Elections Code section 15626. The schedule shall be posted in a conspicuous place at the office of the elections official and at the location where the recount takes place, if different. Recount activities will continue daily so long as the deposit has been submitted timely. If the deposit is not timely submitted, the recount shall be terminated and the elections official shall post notice in a conspicuous place at the office of the elections official that the recount has been terminated.

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

**20360. Spokespersons and Observers.**

(a) Any person may observe the recount proceedings, subject to space limitations of the recount location selected by the elections official pursuant to section 20356.

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

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

(d) The elections official may require any requestor, interested party, representative, or observer of the recount proceedings to log in and receive an identification badge before entering the recount location. If required, identification badges shall be worn at all times and returned to the elections official at the end of the day.

(e) Requestors, interested parties, representatives, and observers shall not interfere in any way with the conduct of the recount, touch any voting system components, ballots, tally sheets or other special recount board materials, sit at the official recount worktables, place any material on

the official recount worktables, talk to members of the special recount boards or supervisors while they are processing ballots or other recount materials or assist in recount procedures.

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

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

### **20361. Media, Photography and Recording Devices.**

(a) The elections official shall develop, and prior to each statewide election, maintain a written policy providing reasonable access to the recount location by the media, and the use of cameras or audio or video recording devices in the recount location in a manner that will not interfere with the recount, compromise the anonymity of any ballot or record the signature of any voter. The elections official shall make the written policy publicly available on their website. Interested parties and observers shall be permitted the same access for use of cameras or audio or video recording devices as members of the media.

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

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

### **20362. Results of Recount.**

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

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

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

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

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

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

(c) In a recount of an election for a statewide office or measure, Assembly, State Senate, Presidential convention delegate or slate of electors, Congress, State Board of Equalization, Supreme Court or Courts of Appeal, transmit one complete copy of all results of the recount to

the Secretary of State. The Secretary of State shall compile the results of the recount and notify the affected counties within five (5) business days of receipt of all of the results of the recount as to whether the recount has changed the outcome of the election, as provided in Elections Code section 15632.

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

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

(2) In a recount of an election for any office or measure not included in subdivision (d)(1), recertify the official returns for the election with the new official count for each precinct involved in the recount and send a copy of the recertification to the public official or governing board that declares the results of the election subject to the recount, in order that they may adopt the recertification and re-declare the results of the election.

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

(e) Any additional relevant material or precincts shall not be inspected upon conclusion of the recount.

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

### **20363. Challenges.**

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

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

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

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

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

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

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

### **20370. Recounts Using the Type of Vote Tabulating Devices Used In the Election.**

(a) Prior to conducting a recount of ballot cards or paper ballots using the type of vote tabulating devices used in the election, a logic and accuracy test limited to the contest subject to recount shall be conducted on each of the vote tabulating devices to be used in the recount, using a test deck created to test logic and accuracy for the contest to be recounted. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20356. The results of the test, as well as the test deck used, shall be made available for inspection by any requestor, spokesperson, member of the media or observer present at the recount location between the time the test is completed and the posted time for recounting of ballots to begin.

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

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

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

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

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

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

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

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

(d) At the conclusion of tabulation of all precincts designated for the recount, a logic and accuracy test limited to the contest subject to recount shall be conducted on each tabulating device used in the recount, using the same test deck created prior to the recount to test logic and accuracy for the contest. The test shall be conducted publicly, subject to any limit made necessary by space limitations on the number of additional public observers beyond those that must be accommodated under section 20356. The elections official shall make the results of the logic and accuracy test, as well as the test deck used for the test, available for inspection by the requestor, spokespersons, members of the media and observers at the recount location before the conclusion of the recount.

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

### **20371. Manual Recounts Generally.**

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

(b) Prior to beginning the actual manual recount, the elections official shall instruct all members of the special recount boards, requestor, interested parties, representatives and observers on the procedures to be followed for the recount and shall provide them with copies of these recount regulations, any local documentation concerning recount procedure, and documentation on how to interpret and read the votes cast on the ballot, consistent with federal and state law and

Chapter 4.5 of these regulations. The instructions and documentation shall include a statement that in the event of a challenge, the determination of the elections official shall be final.

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

*Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 15601, Elections Code. Reference: Sections 15101, 15102, 15103, 15104, 15105, 15106, 15107, 15108, 15109, 15110, 15276, 15290 and 15625, Elections Code.*

### **20372. Manual Recounts, “Vote for One” Contests.**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **20373. Manual Recounts, “Vote for Multiple” Contests.**

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

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

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

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

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

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

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

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

(1) Ballots that were voted for the second candidate in the contest; and

(2) Ballots that do not indicate a vote for the second candidate in the contest.

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

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

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