

**State of California
Office of Administrative Law**

In re:
Secretary of State

Regulatory Action:

Title 02, California Code of Regulations

Adopt sections:

Amend sections: 20110, 20111, 20114,
20122

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2021-0715-02

OAL Matter Type: Emergency Readopt (EE)

This action by the Secretary of State readopts emergency regulations related to risk limiting audits pursuant to Assembly Bill 2400 (Stats. 2020, Ch.33) as well as updates requirements related to procedures in conducting a two-phased audit.

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

This emergency regulatory action is effective on 7/26/2021 and will expire on 10/26/2021. The Certificate of Compliance for this action is due no later than 10/25/2021.

Date: July 26, 2021



**Amy R. Gowan
Attorney**

For: Kenneth J. Pogue
Director

Original: Dr. Shirley N. Weber,
Secretary of State

Copy: Taylor Kayatta

EMERGENCY

STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-0715-02EE	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY SECRETARY OF STATE			AGENCY FILE NUMBER (If any)

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

JUL 26 2021

1:49 PM

OFFICE OF ADMIN. LAW
2021 JUL 15 PM 12:17

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) RISK LIMITING AUDITS	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0902-01E
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
TITLE(S)	AMEND
2	20110, 20111, 20114, 20122
REPEAL	
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> File & Print <input type="checkbox"/> Print Only	
<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____	
7. CONTACT PERSON TAYLOR KAYATTA	TELEPHONE NUMBER 916-695-1530
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) TKAYATTA@SOS.CA.GOV

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Susan Lapsley</i>	DATE 7/13/2021
TYPED NAME AND TITLE OF SIGNATORY SUSAN LAPSLEY, DEPUTY SECRETARY OF STATE	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JUL 26 2021
Office of Administrative Law

**California Secretary of State
Proposed Regulatory Action
Emergency Action: Risk Limiting Audits (Emergency Readopt)**

Proposed Regulation Text (Changes to Emergency Regulations)

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

The California Secretary of State is proposing to readopt the emergency regulations relates to Risk Limiting Audits that are in effect through July 10, 2021. Sections 20110, 20111, 20114, and 20122 that were amended by emergency action are proposed to be readopted identically to the emergency regulations, with the exception of two non-substantive changes to statutory cross references shown in strikethrough for removal and underline for additions. Sections 20112, 20113, 20115, 20116, 20117, 20118, 20119, 20120, 20121, 20123, 20124, 20125, and 20126 are unchanged by that emergency action and so are unchanged here.

20110. General Provisions.

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

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

20111. Definitions.

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

- (a) "Ballot" shall have the meaning set forth in Elections Code section 15366(a). A validly cast ballot is any ballot that is eligible to be counted in the canvass of an election, as specified in Division 15, Chapters 2 through 4 of the Elections Code.
- (b) "Ballot card" means a card upon which is printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. A ballot may be comprised of multiple ballot cards.
- (c) "Ballot-level comparison audit" shall have the meaning set forth in Elections Code section 15366(b).
- (d) "Ballot manifest" means a detailed description of how the ballots are stored and organized, listing the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually.
- (e) "Ballot-polling audit" shall have the meaning set forth in Elections Code section 15366(c).

- (f) “Cast vote record” shall have the meaning set forth in Elections Code section 15366(d). The cast vote record shall be generated by the voting system.
- (g) “Elections official” shall have the meaning set forth in Elections Code section 320.
- (h) “Electoral outcome” shall have the meaning set forth in Elections Code section 15366(e).
- (i) “Public notice” means the release of information to the public through one or more of the following readily available communication channels: a website update, a social media post, an email list mailing, a press release, and a notice posted at an office open to the public.
- (j) “Random seed” means a number consisting of at least 20 digits that is used to generate a random number sequence to select ballot cards for audit.
- (k) “Risk-limiting audit” or “RLA” shall have the meaning set forth in Elections Code section 15366(f).
- (l) “Risk-limiting audit software tool” or “RLA software tool” means software that can perform any of the audit types described in Section 20112. Pursuant to Elections Code section 15367(b)(2)(E), the algorithms and source code of the RLA software tool shall be disclosed to the public. The SOS shall affect this disclosure by posting the source code, or a link to the source code hosted on another publicly available website, on its website.
- (m) “Voting system” shall have the meaning set forth in Elections Code section 362.

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

20114. Contests to be Audited.

Participating counties shall conduct a risk-limiting audit on one or more contests fully contained within the county’s borders.

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

20122. Audit Procedures for Two-Phase Audit.

- (a) An elections official conducting a two phase audit under subdivision (d) of section 20117 shall do so in accordance with this section.
- (b) In the first phase of the audit, the elections official shall enter the following information into the RLA software tool:
 - (1) the initial ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
 - (2) the results for all ballot card(s) tabulated that are included in the initial ballot manifest;
 - (3) if a ballot-level comparison audit is being conducted, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest; and
 - (4) the maximum number of ballots to be tabulated.
- (c) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (b), the elections official shall resolve the inconsistencies before the audit proceeds.
- (d) After the data have been submitted under subdivisions (b) and (c), the elections official shall generate the random seed pursuant to section 20120.
- (e) The elections official shall enter the random seed into the RLA software tool. The RLA software tool will randomly generate a list of particular ballot card(s) or batches of ballot card(s) from the ballot manifest to examine manually.

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

(1) the final ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;

(2) the results for all ballot card(s) tabulated that are included in the final ballot manifest; and

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

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

(h) The RLA software tool will identify whether the audit can stop or whether further auditing is required to meet the risk limit. If further auditing is required, the RLA software tool will randomly select additional particular ballot card(s) from the final ballot manifest to be examined manually.

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

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