State of California
Office of Administrative Law

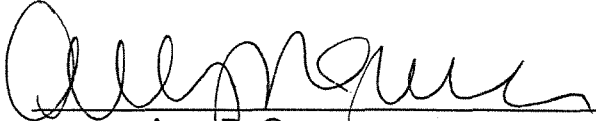|	
In re: Secretary of State **Regulatory Action:** Title 02, California Code of Regulations **Adopt sections:** **Amend sections:** 20110, 20111, 20114, 20122 **Repeal sections:**	NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION Government Code Sections 11346.1 and 11349.6 OAL Matter Number: 2020-0902-01 OAL Matter Type: Emergency (E)

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

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

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

Date: September 10, 2020

Amy R. Gowan
Attorney

For: Kenneth J. Pogue
Director

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

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2020-0902-01E

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

SEP 10 2020

1:24 p.m.

For use by Office of Administrative Law (OAL) only

2020 SEP -2 P 4:32

OFFICE OF
ADMINISTRATIVE LAW

NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY SECRETARY OF STATE	AGENCY FILE NUMBER (If any)

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 ☐ Notice re Proposed Regulatory Action ☐ Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)

OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE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)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 20110, 20111, 20114, 20122,
TITLE(S) TITLE 2	REPEAL

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)

☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

☒ Emergency (Gov. Code, §11346.1(b))

☐ 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.

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

☐ Emergency Readopt (Gov. Code, §11346.1(h))

☐ File & Print

☐ Other (Specify)

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

☐ Print Only

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

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

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

☒ Effective on filing with Secretary of State

☐ §100 Changes Without Regulatory Effect

☐ Effective other (Specify)

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

☐ Department of Finance (Form STD. 399) (SAM §6660)   ☐ Fair Political Practices Commission   ☐ State Fire Marshal
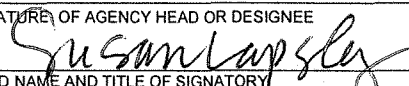
☐ Other (Specify)

7. CONTACT PERSON RAJ BATHLA	TELEPHONE NUMBER (916) 695-1597	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rbathla@sos.ca.gov

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

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

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 10 2020

Office of Administrative Law

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

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

The California Secretary of State is proposing to amend the following existing regulations: Sections 20110, 20111, 20114, and 20122. Changes to existing regulation text are shown in strikethrough and underline, with eliminated text struck and new text underlined.

20110. General Provisions.
(a) The purpose of this chapter is to establish guidelines and procedures for an elections official to conduct a risk-limiting audit in accordance with the requirements of Division 15, Chapter 4, Article 5.5 of the Elections Code.
(b) Pursuant to Elections Code section 15367(a)(1), commencing with the statewide ~~primary~~ general election held on ~~March 3~~ November 3, 2020, the elections official conducting an election may conduct a risk-limiting audit ~~in place of the one percent manual tally required by Elections Code section 15360~~ during the official canvass of any election.
(c) A participating county may exclude any contest that has been subject to a risk-limiting audit from the one-percent manual tally required by Section 15360.

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

20111. Definitions.
As used in this Chapter, the following terms have the following meanings:
(a) "Ballot" shall have the meaning set forth in Elections Code section 15366(a). A validly cast ballot is any ballot that is eligible to be counted in the canvass of an election, as specified in Division 15, Chapters 2 through 4 of the Elections Code.
(b) "Ballot card" means a card upon which is printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. A ballot may be comprised of multiple ballot cards.
(c) "Ballot-level comparison audit" shall have the meaning set forth in Elections Code section 15366(b).
(d) "Ballot manifest" means a detailed description of how the ballots are stored and organized, listing the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually.
(e) "Ballot-polling audit" shall have the meaning set forth in Elections Code section 15366(c).
(f) "Cast vote record" shall have the meaning set forth in Elections Code section 15366(d). The cast vote record shall be generated by the voting system.
~~(g) "Cross-jurisdictional contest" shall have the meaning set forth in Elections Code section 15366(e).~~

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

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

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

20114. Contests to be Audited.

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

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

20122. Audit Procedures for Two-Phase Audit.
(a) An elections official conducting a two phase audit under subdivision (d) of section 20117 shall do so in accordance with this section.
(b) In the first phase of the audit, the elections official shall enter the following information into the RLA software tool:
    (1) the initial ballot manifest for all ballot card(s) tabulated as described in subdivision (d) of section 20117;
    (2) the results for all ballot card(s) tabulated that are included in the initial ballot manifest;
    (3) if a ballot-level comparison audit is being conducted, the cast vote records for all ballot card(s) tabulated that are included in the initial ballot manifest; and
    (4) the maximum number of ballots to be tabulated.
(c) If the RLA software tool identifies any inconsistencies in the information entered under subdivision (b), the elections official shall resolve the inconsistencies before the audit proceeds.

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

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

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

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

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

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

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

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

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

~~(j)~~(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.