

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

**Finding of Emergency**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. (1 California Code of Regulations, Section 48.)

**Notice Period:** The notice period for this emergency readopt action will run for five working days, from July 7, 2021 through July 14, 2021. At the end of the notice period, the Secretary of State will submit the required documents to the Office of Administrative Law for the readoption of these emergency regulations.

**INFORMATIVE DIGEST AND STATEMENT OF EMERGENCY**

The purpose of these regulations is to readopt the emergency regulations (OAL File No. 2020-0902-01E) the Secretary of State (SOS) adopted on September 10, 2020, related to Risk Limiting Audits (RLA). The emergency regulations were adopted to conform to urgency legislation Assembly Bill 2400 passed by the California Legislature that went into effect on August 27, 2020. Without the emergency regulation, California counties would not have been able to conduct risk-limiting audits compliant with regulation for the statewide general election held on November 3, 2020.

The emergency regulations made changes to procedures for conducting a two-phased audit. These changes were necessary to conform to audit software that the SOS procured for use in risk-limiting audits in California. In the process of procuring audit software, the SOS learned that the procedures in the current regulations were overly restrictive and would make them incompatible with available audit software. These changes were necessary to ensure audit software is available for county elections officials to use. The emergency regulations also eliminate the concept of a partial RLA that were eliminated from the pilot program by AB 2400 based on stakeholder feedback.

The SOS has made substantial progress and preceded with diligence to make its emergency regulations permanent. Since we adopted the emergency action, we have been working with county elections officials, stakeholders, and the organization we contracted with to provide audit software and services to: 1. conduct audits according to audit pilot program provided by statute, 2. get county elections officials comfortable with RLAs, and 3. learn what additional changes may be needed to the emergency regulations before we proceeded with a certificate of compliance action. We have begun the formal rulemaking process for a certificate of compliance

action. We published notice for that certificate of compliance action on June 18, 2021 and are actively receiving, analyzing, and responding to any comments we receive.

These emergency regulations avoid serious harm to the public peace, health, safety, and general welfare by keeping emergency regulations in effect that conform to urgency legislation passed by the California Legislature. If these emergency regulations are not kept in effect until the certificate of compliance action is completed, California counties will not be able to conduct RLAs compliant with regulation for all upcoming elections. Not making these changes contravenes the legislative intent of making immediate changes to how risk-limiting audits are conducted in California. For the reasons stated below, ensuring risk-limiting audits are possible in California benefits general welfare by ensuring public trust in election outcomes.

The emergency regulations also make changes to procedures for conducting a two-phased audit. These changes are necessary to conform to audit software that the SOS expects to designate for use in risk-limiting audits in California, as prescribed by current regulations. In the process of procuring audit software, the SOS learned that the procedures in the current regulations are overly restrictive and may make them incompatible with available audit software. These changes are necessary to ensure audit software is available for county elections officials to use. These changes benefit general welfare for the same reasons as the other changes in these regulations: that it is possible for county elections officials to conduct risk-limiting audits in California consistent with regulation.

#### Regulatory Compatibility

The Secretary of State has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Secretary of State has concluded that these are the only regulations that concern risk limiting audits in California.

#### Local Mandate Determination

Mandate on local agencies or school districts: None

#### Estimate of Cost Savings

Cost savings to any state agency: None

Reimbursable cost to any local government agencies: None

Nondiscretionary cost or savings to local government agencies: None

Cost or savings in federal funding to the state: None

#### **NECESSITY STATEMENT**

These proposed regulations are necessary to keep emergency regulations in effect until a certificate of compliance action can be completed which will make those emergency regulations permanent. Unless these emergency regulations are readopted, county elections officials will not be able to conduct RLAs consistent with current law, which was changed after the SOS adopted the permanent regulations.

#### **AUTHORITY AND REFERENCE**

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

Reference: Sections 320, 362, 15150, 15302, 15360, 15366, and 15367, Elections Code.

#### **INCORPORATED BY REFERENCE**

- OAL file no. 2020-0902-01E

#### **DOCUMENTS RELIED UPON**

- None