

**California Secretary of State
Proposed Regulatory Action:
Ballot Counting
Proposed Regulation Text
Addendum to the Initial Statement of Reasons**

This Addendum to the Initial Statement of Reasons addresses updates to the proposed regulation text, which was originally submitted for a 45-day public comment period May 19, 2023, through July 5, 2023, and for which a public hearing was held on July 3, 2023. Changes to the originally proposed regulation text have been made based upon comments received during the 45-day public comment period and the public hearing.

The factual basis and rationale of the following sections of the proposed regulations are modified as follows:

20281. Definitions

Subsection 20281(a) was modified to remove the phrase “, or one which has been marked with an unreadable marker, or one which has been consistently marked outside of the “read” area of the ballot scanner.” The removal of this language more clearly identifies what constitutes a “blank ballot” and is intended to eliminate voter or observer confusion during the tabulation of ballots.

20298. General Provisions

Subsection 20298(c) and 20298(d) was modified to renumber referenced Chapters 4.7 and 4.8. In the originally-noticed proposed regulation text, these chapters were mistakenly swapped. Subsection 20298(c) should have been citing Chapter 4.8 of the regulations and subsection 20298(d) should have been citing Chapter 4.7 of the regulations. This is a non-substantive change and corrects a clerical error.

20299. Manual Tally Plan

Subdivisions 20299(a) and 20299(b) outlines the timeline for approval or rejection of the manual tally plan. These subsections were modified to update the 120-day submission deadline to 80-days prior to the election and the 90-day review period deadline to 70-days prior to the election. This modification was necessary because elections officials are still completing candidate filing 88-days prior to an election and would not have sufficient information about the election to properly and fully develop the manual tally plan prior to 120 days. The 70-day review period deadline was determined to provide the Secretary of State sufficient time to thoroughly review the submitted manual tally plan to ensure it covers all required information, has sufficient details, and complies with state and federal election laws. The 70-day deadline also provides the elections official with an approval or rejection notice with sufficient time ahead of the election.

Subdivision 20299(d) was modified to include the condition that the Secretary of State shall provide in writing a list of any deficiencies in the manual tally plan when issuing a rejection of the initial submission. This is a necessary modification because it requires the Secretary of State to clearly identify issues with the submitted manual tally plan, which in turn provides the elections official with clear guidance on what needs to be modified or addressed in the resubmission of the manual tally plan.

Subdivision 20299(e)(1) was modified to include clarification that the elections official shall post the approved manual tally plan on their website within 5 calendar days of the Secretary of State's approval. This is necessary to provide transparency and public access to information on the process as to how and when the manual tally will occur.

Subdivision 20299(f)(7)(B) was modified to remove the phrase "A scale diagram depicting." The removal of this language is necessary to help clarify that the elections official is only required to include a description of the planned set up of the manual tally location and to eliminate any confusion on needing to provide a scaled replica of the location.

20301. Manual Tally Forms

Subsection 20301(a)(3) was modified to include the requirement of tracking the specific ballot stack number on the manual tally form. This is necessary to maintain the chain of custody and make sure that the exact manual tally forms can be correctly matched to the assigned stack of ballots.

20303. Conducting a Manual Tally

Subsection 20303(f) was modified to remove the condition of a single table and a 10 feet distance between counting boards. This is a necessary modification to provide elections officials with more flexibility for implementation of counting areas. Depending on the secured location, some elections officials may use multiple tables together to accommodate the spacing of the counting boards and may need to increase the space between counting boards to help with reducing the noise between tables.

Subsection 20303(j) was modified to state that unless otherwise directed by the elections official, the counting board supervisor shall distribute the writing devices and manual tally forms used during the conduct of the manual tally. This modification allows for more flexibility in planning and implementation for the elections official but still provides guidance on how to maintain the security of the ballots, writing devices, and tally forms and prevent ballots, writing devices, and tally forms from being lost, changed or modified through mis- or malfeasance of those who will be handling the ballots and the forms.

Subsection 20303(m)(6)(B) was modified to clarify the procedures and duties of the counting board supervisor and counting board members if the manual tally does not match. If the manual tally count does not match for the contest, the counting board supervisor is notified. The counting board supervisor is then responsible for clearly documenting the discrepancies on the old manual tally forms, then shall provide new manual tally forms to the counting board, at which point they shall start the manual tally for the contest over. If the manual tally counts still

do not match after the second attempt, the supervisor is notified, documents the discrepancies, provides new forms and joins the counting board for the third tally. If the third attempt does not match, the elections official must have a process in place to resolve the discrepancy. All of the forms are clearly marked and kept with the stack of ballots. This is necessary to ensure complete ballot accounting, full documentation of the process, maintenance of the chain of custody and accuracy of the tally.

Subsection 20303(n)(3) was modified to provide the elections official with more flexibility in establishing the procedures for collecting all of the ballots, manual tally forms, and writing devices for the manual tally upon conclusion. This is necessary to ensure complete ballot accounting, documentation of the process, maintenance of the chain of custody and accuracy of the tally.

20306. Reporting Elections Results by Manual Tally

Subsection 20306(c)(4) was modified to clarify that the report of results submitted to the Secretary of State shall include the vote results for all qualified political party presidential candidates during a presidential primary election. The previous version of the proposed regulation text only identified Democratic and Republican candidates, however there are currently six qualified political parties in California. This modification is necessary to ensure that all results for all qualified political party presidential candidates are accurately reported to the Secretary of State during the semifinal official canvass and complying with all statutorily required information, including specific information dependent upon the type of election.

Subsection 20306(d) was modified to fix a grammatical error. A comma was in a place in which a period should have been used. This is a non-substantive change.

20307. Observing the Manual Tally

Subsection 20307(b) was modified to clarify that the elections official has the authority to require election observers to wear identification badges. Subsection 20307(b) is necessary because it provides the elections officials with the ability to keep track of all persons who have access to the facility in which the manual tally is conducted for security reasons. By making observers wear an identification badge, an elections official will be better able to clearly identify individuals who are authorized to enter certain area, handle ballots, and participate in the conduct of the manual tally, versus individuals who are only present to observe.

20313. Selection of Ballots to Tally

The title of Section 20313 was modified to clarify that the section pertained to the selection of ballots for the manual tally. This was a non-substantive change to the section title.

20315. Reporting of Results

Subsection 20315(a) was added to provide further clarification that the elections official shall publish a report of the results of the manual tally on their website for the public immediately

upon conclusion of the one percent manual tally but before certification of the results. This is a necessary addition to provide further transparency for the public with the one percent manual tally process and allows for public review of the one percent manual tally results prior to the close of the official canvass period and certification of election results.

Subsection 20315(a) was modified to be renumbered as subsection 20315(b) to accommodate the addition of subsection 20315(a). This is a non-substantive change.

Subsection 20315(b) was modified to be renumbered as subsection 20315(c) to accommodate the addition of subsection 20315(a). This is a non-substantive change.

Subsection 20315(c) was modified to be renumbered as subsection 20315(d) to accommodate the addition of subsection 20315(a). This is a non-substantive change. Additionally, this subsection was modified to add in the clarification that the report posted in subsection 20315(a) and the report submitted by the elections official in subsection 20315(b) for the one percent manual tally shall contain that same information. This is necessary to establish clear reporting requirements for the one percent manual tally to ensure uniform compliance across the 58 California counties and to comply with state law.

20353. Material To Be Examined; Relevant Material.

Subsection 20353(c) was modified to provide further clarification that the elections official shall make public by posting on their website, any established reasonable guidelines for the examination of relevant material pertaining to a recount. This is a necessary addition to provide further transparency for the recount process in addition to providing easier access to information for public participation in the recount process.

20361. Media, Photography and Recording Devices

Subsection 20361(a) was modified to provide further clarification that the elections official shall make public by posting on their website, their written policy regarding media, photography, and recording devices during a recount process, prior to each statewide election. This is a necessary addition to provide further transparency for the recount process in addition to providing easier access to information for public participation in the recount process.

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

Subsection 20370(d) was modified to fix a clerical error. In the previous proposed regulation text, section 20816 was referenced in the subsection. However, the correct section number should have been 20356 to properly account for the proposed renumbering of sections in the proposed regulation text. This is a non-substantive change.