

## Comments on RLA rulemaking

Harvie Branscomb <harvie@electionquality.com>

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To: Kayatta, Taylor <TKayatta@sos.ca.gov>

Cc: Muhlhauser, Ted <tmuhlhaus@sos.ca.gov>; harvie@electionquality.com <harvie@electionquality.com>

To Secretary of State Shirley Weber and team:

Thank you for the opportunity to comment on proposed regulations to further implement the RLA in conjunction with or as an alternative to the existing audit in California. I am an election quality advocate from Colorado, the other state where the RLA has been extensively developed for practical use.

I have been long involved in the process that brought the RLA to Colorado- as an appointed member of the CO SOS panel that advised the creation of the RLA and as a very frequent credentialed watcher of election process in Colorado. I also advised and as a canvass board member helped to conduct pilot portions of the RLA process prior to its appearance in Colorado Revised Statutes.

i would like to express support for most of the advice and suggestion provided in the Citizen's Oversight Projects extensive comments on the proposed regulations.

What I will express here are some specific reservations and additional comments regarding the COP presentation as well as a few comments that do not appear there.

The goals expressed in the COP presentation are correct as are most of the proposed solutions and recommendations for adjusted text.

The extensive and excellent COP presentation is found here:

<https://copswiki.org/Common/M1977>

I agree with their suggestion that the RLA not depend upon a software tool and that all of its elements be able to be accomplished by hand and on paper. I also agree that the initial capture of voter intent should be on paper as a default. Digital images of the paper tally records should be hashed for future authentication at the time they are written while under observation by the public.

Colorado's rule to capture all the voter intent on each sampled ballot is strongly and responsibly advised. Public availability of this data allows opportunistic auditing of contests that are not selected to drive the sample algorithm. This means that other contests may benefit from risk measurement that supports confidence in election outcomes even if the target risk limit is not reached.

The Colorado audit process chosen by the CO SOS did include use of a one size fits all RLATool - but the expected use of this tool is too ironic in consideration of the purpose of the audit to supply public confidence in the use of other software for the purposes of original tabulation. The required use of a RLATool implies only that the tool itself now requires a similar audit to ensure it is effective. Therefore there must be at least occasional use of hand methods in parallel with any uses of computation for crucial elements of the audit process.

And some counties may find the hand operation to be more effective for their scale and operation.

The regulations suggest that sampling selection be provided at the time the samples are needed, but since the state is providing the sample list, some counties may find it useful to audit ahead of

what is required. Once the scope of the audit is finalized (as it is separated into two groups) and the CVRs are committed to, sample selections for future rounds of auditing may be released so that counties are not allowed to perform audit capture of voter intent ahead of what the sampling algorithm requires.

COP's letter states that "Ballot Image Audits provide coverage of all contests to a higher precision than other audit types."

This is true but does not mean that image audits will achieve the accuracy of an audit that addresses the paper ballot. Image reviews are an excellent way to involve the public in any needed correction of voter intent interpretation. The loss of contact between voters and the election process that mail ballot involves is partially corrected with access to ballot images making crowd sourced tabulation possible.

In regard to COP's summary of important issues, items 1-3 are agreed to.

Item 4 regards independence of the ballot manifest from the voting system. I disagree with the advice given by COP. This is an important issue to ensure that the audit effectively addresses all eligible ballot sheets, not just sheets that are actually scanned and turned into digital records (perhaps even more than once by mistake).

While tabulation systems do usually produce what looks like effective ballot manifests, they are also the system under test for purposes of audit. It is not acceptable to have the tabulation system direct the scope of the audit. The manifest must be created prior to scanning and tabulation - therefore at that point the manifest will not have tabulator IDs in it nor will the batch identities necessarily be the same as what it actually scanned. A separate accounting must exist to relate the pre-scan manifest to the manifest at the time of scanning.

Colorado has not yet resolved an effective policy statewide while county processes differ. If a ballot or batch of ballots is determined to be eligible and does not reach the scanner it must anyway be subject to audit. The separate manifest that identifies the location of each ballot may be created by the tabulation system but it must link on a ballot level into the pre-scan manifest that provides the scope for the audit. While the batch manifest used for sampling should come from the eligibility phase of the election, there may also need to be a table that links the ballots listed in the manifest to the tabulator and batch and box numbers used upon exit from the scan that identify the CVR.

Summaries 5 through 9 are in fact important considerations to be taken seriously.

Item 10 I do not agree with. It suggests that only one escalation should be allowed followed by a full hand count. Colorado has seen multiple rounds work effectively to overcome the result of detected discrepancies and these rounds allow corrections in the audit process to be used in place of a much more difficult transition to the full manual count. Multiple rounds should be maintained, but the transition to the full sequential count should be detailed as Colorado has not yet done. Such a transition could take place at the discretion and according to the logistics of the county, but it must account for audits of districts that are in multiple counties. The full hand count ought to be conducted under rules effective for recount because the election outcome must depend upon the results obtained by the hand tabulation. The hand tabulation must therefore be conducted in a manner that produces an accurate tally. The COP document suggests that such a hand tally could be insufficiently accurate, but that simply isn't an acceptable position to take. The full hand tally must be conducted in a manner that produces results of sufficient accuracy to satisfy the public - and it may therefore be subject to its own audit process to verify that.

For item 11 I agree that the auditors should never "change the machine interpretation" and an investigation should result. It is undesirable for the investigation to interrupt the capture of the voter intent on the samples, or to sow unnecessary doubt among the auditors of their own accuracy. That investigation should take place after the completion of an audit round, unless some

early indicators are showing that all the audit samples are faulty for reasons of pulling the wrong ballot or set of ballots.

I agree with the remaining points 12 through 17.

For the detailed section regarding regulation text I will make the following comments.

20110-20116

I agree with COP suggestions, except for the following:

COP inclusion of a Supervisory Audit Board makes sense but probably only in large counties. partisan diversity within the audit boards is important as stated. Handling of ballots only by more than one person is very important.

20117

As stated above the manifest should be created at the end of the eligibility determination process (depending upon voting method) and not directly refer to tabulator or batch. A second reference table must be created at the time of tabulation to identify the link between tabulator, batch and box and the entries in the manifest. Therefore the suggested extra text provided by COP might be improved by substituting in

"The Manifest shall be additionally linked to records in the Cast Vote Record"

the word "separately" in place of "additionally".

20118

I agree with the COP suggested edits

20119

I agree with the COP suggested edits except I am not sure that the NIST CVR standard is the best option for public consumption of the CVR. It is ironically inefficient and hard to understand, requiring computation to understand it. The ~~strikeout~~ of item 3 has much to recommend it. The counties should be allowed to expose the CVR to the public.

20120

I agree with the suggested changes by COP

20121

I agree with COP suggestions but would allow the auditors to optionally use a tool to record the audit interpretation if that is deemed efficient and if a paper record can be made at the time and signed by the auditors and hashed for future authentication.

One COP suggested sentence requires a change- the "full manual count" should be referred to in terms that imply recount and operated under law that allows modification of official results and outcome. I would not call it a "Full Hand Count Audit." "Full manual tally" is correct but the regulation should allow the results of the tally to become official as is apparently supported in the draft.

Any contest with a margin of victory less than 0.5% should not attempt an RLA but a Full Hand Count audit should be performed instead.

Please strike the above suggested text. RLAs do not require an "attempt" and the full manual tally should be simply a step in the proper execution of the RLA.

20122

I agree with COP suggestions, except for the following:

I have a problem with this statement:

"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."

The outcome of the election is never "confirmed" by the RLA. This sentence implies that the RLA has way more power than it has. The RLA cannot overcome any eligibility or registration errors nor can it resolve chain of custody problems. Even if it could, it wouldn't ever "confirm" the outcome it at best supplies additional evidence towards a conclusion that the outcome is correct. The full tally is either a recount or it is an extension of the RLA that corrects elements that substantiate outcome. I do agree that the local officials can decide when to transition to a sequential count- but in coordination with any other jurisdiction that is involved in the contest. That should be included in the regulation.

20123

I agree with COP suggestions, except for the following:

I would allow and option for sort and stack for batch audit tabulation.

The following text suggested by COP is problematic

"In ballot comparison and ballot polling audits, when human interpretation differs from machine interpretation, an investigation will follow. If the ballot image agrees with the ballot, the CVR is wrong. If the ballot image agrees with the CVR, investigation needs to determine if they were both created wrong, or the paper ballot has been altered during storage, by someone whose entry was not detected by the chain of custody. Digital signatures from when the files were created will indicate if the files were altered."

An investigation should follow after the process of input by auditors is complete and not be a part of the audit capture process. The following sentences are unnecessary in regulations and should be part of the investigation. Digital signatures or hashes should be available to help authenticate the data being investigated.

"The audit shall continue until the risk limit is met for every contest being audited pursuant to section 20114. If the RLA software tool specifies that further auditing is required to meet the risk limit, it will randomly select additional ballot card(s) from the ballot manifest to be examined manually. The elections official shall retrieve those additional ballot card(s) as described in (a), examine those additional ballot card(s) as described in (b) and (c), and record the voters' choices as described in (d)."

Referring to the above text from the draft regulation the software tool should pre-specify the sequence of samples to be captured from in order to allow discretionary additional audit capture for logistical efficiency.

"If the elections official chooses to perform a full manual tally of one or more contests, the audits of those contests will be deemed to have met the risk limit and the results of the full manual tally shall be the official results for those contest(s)."

The above text from the regulation draft is crucial- the full manual tally must act as a recount (and should have the full context of a recount with eligibility reconsideration etc.)

20124

I agree with COP suggestions, except for the following:

(B) Documentation needed for informed and effective observation shall include but not be limited to any data the audit relies upon, including: ~~the ballot manifest and the cast vote records for ballot-level comparison audits.~~

(i) The ballot manifest;

(ii) For ballot-level comparison audits or hybrid audits with a ballot-level comparison audit component, the cast vote records;

(iii) For batch comparison audits or hybrid audits with a batch comparison audit component, vote totals from each contest being audited for each batch.

Item iii should include the CVRs if available even if they are not used for audit comparison. CVRs can be included in documentation for ballot polling and batch comparison audits. If there is a table that associates the batch manifest to the tabulated batches, that should also be included in the documentation.

20125

I agree with the COP suggestions. I would add to this sentence:

"The number of discrepancies between ballot card(s) and the cast vote record, and a description of each discrepancy "

the following text:

"including the identification of each cast vote record entry and contest and contest choice where the discrepancy occurred,"

20126

I agree that this entire section is problematic. It must be deleted and its purpose must be reconsidered. This is a copy of a mistake that Colorado made in allowing officials to hold access to PII while the public is not allowed to. The alternative is to build the system such that election evidence does not contain PII that is substantive. This is an extensive topic and addressed in my writings elsewhere including on the CO SOS rules commentaries. If any redaction is to take place, it must occur before scanning of paper to create images. This can be accomplished during the preparation of paper to insert in the scanner. Redaction can be done with pressure sensitive redaction tape that is removable under court order. Until the processes are updated to remove any PII from ballot images (and if necessary from CVR) a temporary redaction of entire contests that result in rare styles may be necessary. Any redaction that takes place must not remove all voter intent for one ballot sheet for all contests from the record because this eliminates any chance for verification that the audit is completed correctly. Part of the audit process is to retabulate from CVRs the election results and a comparison of aggregated values to published results. This cannot be done in public if some of the records are redacted out. Please reconsider this rather brutal injection of obscurity into the public access of the evidence supporting the audit.

Also, the timing of the proposed redaction and release, after a recount request deadline, is a direct insult to election integrity and citizen and campaign access to necessary data that would substantiate a need for a recount. This is obviously copied from a problematic Colorado rule that is

incompatible with the statutory intention. I know this because I was involved in the development of the open records statute 24-72-205.5 in Colorado Revised Statutes. To migrate that mistake into California regulations would be a real embarrassment.

20127

I agree with the COP suggestion for an additional regulation.

Thank you for the opportunity to comment from a Colorado perspective. I hope my experience will guide best practices in California.

Harvie Branscomb <http://electionquality.com>

harvie at electionquality.com (no need to redact this email address)