

Comments on [8/10/21 draft](#) of CA rules for risk-limiting audits

from: Paul Burke
to: "Kayatta, Taylor"
date: Aug 15, 2021, 9:02 PM
subject: Re: Burke Comments on RLA regulations

Thank you for the chance to give feedback on the proposed text.

I appreciate the many changes which fully or partly respond to the earlier comments. Please consider these items:

The SOS declined to add an investigation option in 20123. This option is important, to make Ballot-level comparison RLAs popular. It can still go in 20121 and 20122. Counties are avoiding RLAs as long as their only solution for discrepancies is a 100% hand count. RLAs efficiently find addressable problems (such as scratched scanners, over-sensitive settings which count fold lines as votes, errors in programming oval locations, etc). Counties need and deserve the option to re-scan or re-program as needed and check the results with a new RLA sample. Since the SOS doesn't want to amend 20123, the option can be:

- 20121(f) and 20122(k) The elections official may at any point decide to examine ballot images and other records to investigate discrepancies. After reporting, if the discrepancies can be corrected, they should correct the causes, and re-start the audit from (a) with a new random seed.

This approach recognizes the power of a modest RLA sample to find discrepancies, enables systematic improvements in the election, and tells counties to use an equally modest new RLA sample to check that improvements have worked, before embarking on the hard, costly and slow steps of a 100% hand count. Counties need to know that the right procedure is to use a new random seed, to prevent the "fix-up" of just the initial sample, which Citizens' Oversight Projects warned about in its 8/5/2021 comments, p.3.

Other highlights include:

- On p.1 20111(c) has been improved by requiring "shall export a cast vote record". Please add "shall export a cast vote record and ballot image". Ballot images are needed for finding what went wrong with CVRs, and proving or disproving that paper ballots were altered surreptitiously. Dr. Weber reminded counties on 5/19/2021 that ballot images must be saved, and audits are where they are most needed.
<https://elections.cdn.sos.ca.gov/ccrov/2021/may/21059sl.pdf>
- On p.3 20111(k) Public notice, two channels for public notice are an improvement on one channel. However, that definition could be minimally satisfied by one post on an obscure social media company, and one hard-to-find paper sign. If SOS doesn't want all methods, at least require "a website update linked on the election home page and one or more" of the other channels.
- On p.3 20111(n) the RLA tool can support, not ~~perform~~, an audit. All steps must be shown to the audit board and observers, not hidden in software. Using error-susceptible audit software to check error-susceptible election software would remove the hand-eye strength of RLAs and not convince anyone.
- On p.6 20120(b), one hour notice of selecting the second seed is brusque. The office will know weeks ahead when cures will end, and the second phase can begin, so it can give the same notice as the first seed. Thank you for allowing cameras.
- On p.9 20124(b), a discretionary alternate person is a great improvement. However a county could still suppress all answers by omitting this alternate person and ruling that all questions interfere with the auditors' concentration and swift completion of duties. Perhaps: "Observers can ask questions of the audit board. as long as they do not interfere with the conduct of the audit procedures, The elections official, at their discretion, may designate an alternate person to receive and respond to observer questions in lieu of the audit board, and this person shall confer with the audit board to obtain answers to questions when they cannot provide an answer.
- The document often refers to ballots when it means ballot cards. After scanning, ballots are separated into their component cards, so only cards can be counted and tracked, not ballots.

Thank you for considering all the comments, and improving our elections.

Paul Burke