

October 11, 2021

The Honorable Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, CA 95814
Via email to tkayatta@sos.ca.gov , rbathla@sos.ca.gov

Dear Secretary Weber:

Thank you for the latest chance to comment on California's proposed rules for Risk Limiting Audits, at <https://admin.cdn.sos.ca.gov/regulations/proposed/elections/audits/rla-proposed-regulations-text-changes-permanent.pdf>

These rules are important both for the contests audited by RLAs, and for the approaches they take which could be good models for California's 1% manual tally of all other contests.

The people signing below have these joint comments, and each author may send additional comments on other aspects of the rules.

Latest SOS wording	Our Suggested Wording , with additions underlined or deletions crossed-out, depending on the comment
20111(k) "Public notice" means the release of information to the public through two 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.	20111(k) "Public notice" means the release of information to the public through <u>a website update and one</u> two 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.
Reason: Letting counties limit notice to private social media and a remote sign undermines public notice.	
20124(a)(1) Provide at least five days public notice prior to the first phase of the RLA. This notice shall include the time and place of the random seed generation described in section 20120 and the date the ballot cards will be retrieved and manually examined.	20124(a)(1) Provide at least five days public notice prior to the first phase of the RLA. This notice shall include the time and place of the random seed generation described in section 20120 <u>and the date which is also the time and place where as many as feasible</u> of the ballot cards will be retrieved and manually examined. <u>Any pulling of the samples in rooms without observers should be webcast for public observation.</u>
Reason: Immediate retrieval shows the public that no intruder has time to alter sampled cards before they are retrieved.	
20120(b)(1) The elections official shall give at least five days public notice of the public meeting before generating the first random seed and public notice at least one hour before generating a second random seed, should a second random seed be needed when conducting a two-phase audit.	20120(b)(1) The elections official shall give at least five days public notice of the public meeting before generating the first random seed and public notice at least one hour before generating a second random seed, should a second random seed be needed when conducting a two-phase audit.
Reason: The second phase begins on a date known weeks in advance, when the last cure deadline passes and any last cures and provisionals are adjudicated, re-created and scanned. Observers need the same time to see the notice and to come from distant parts of the county for each phase.	
20123(d) The audit board shall record the voters' choices in every contest on every ballot card selected for audit. Those choices shall be entered into the RLA tool.	20123(d) The audit board shall record the voters' choices in every contest on every ballot card selected for audit. Those choices shall be entered <u>on paper and</u> into the RLA tool. <u>The public shall be able to see the voters' marks. Copies of the paper shall be given to observers present and posted on the web.</u>
Reason: Visibility lets the public verify the main step of the audit, and paper eliminates the need to trust the RLA software tool (ARLO). ARLO is a prime target for hacking, and presumably makes errors, like all other substantial	

software. Using error-susceptible audit software as the only check on error-susceptible election software would remove the hand-eye strength of RLAs and not convince skeptics.

20124(b) Observers may ask questions of the audit board, provided they do not interfere with the conduct of the audit. 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 to which this person does not know the answers.

~~**20124(b)** Observers may ask questions of the audit board, provided they do not interfere with the conduct of the audit. The elections official, at their discretion, may designate an alternate person to receive and respond to observer questions in lieu of the audit board.~~ Observers may ask questions of a designated person, and this person shall confer with the audit board to obtain answers to questions to which this person does not know the answers.

Reason: The audit board consists of 2 or more staff transcribing voter intent. They need to concentrate. Questions inherently interfere with the concentration needed, so the SOS wording lets all questions be forbidden.

California policy recognizes that poll workers sometimes have pauses when they can answer questions, but that central staff typically do not, so questions at central sites go to supervisors: "Observers have the right to..."

- "Ask questions of poll workers as long as they do not interfere with the conduct of any part of the voting process.
- "Ask questions of supervisors at the central counting site as long as they do not interfere with the conduct of the election procedures."
- <https://elections.cdn.sos.ca.gov/pdfs/observation-rights-responsibilities.pdf>

These changes will strengthen the public's ability to observe RLAs and will therefore strengthen public confidence that the large amount of work being done in an RLA has been done right.

Sincerely,

Note: All affiliations are for reference only and do not constitute an endorsement

Paul Burke, Camarillo CA, VoteWell.net

John L. McCarthy, Berkeley CA, retired computer scientist, Lawrence Berkeley National Laboratory

Lianda Ludwig, San Diego CA, Audit-USA, former Democratic candidate for Tucson City Council

Raymond Lutz, San Diego County CA, Executive Director, CitizensOversight.org

Dale Axelrod, Petaluma CA, Co-Chair, National Voting Rights Task Force, nvrff.org

Jed Pauker, Venice CA, member of L.A. County Voters Action Coalition, Co-Founder and Lead, Venice Resistance

Emily Levy, San Francisco CA, Founder and Director, Scrutineers.org

Barbara Ruth, San Jose CA, member of Scrutineers

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