

August 5, 2021

The Honorable Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, CA 95814
Via email

Dear Secretary Weber:

Thank you for the opportunity to comment on proposed modifications to the regulations governing the conduct of pilot Risk-Limiting Audits (RLA) in California.

The proposed regulations appear to concur generally with earlier regulations which we [endorsed](#) along with changes we recommended and which were passed through AB2400 (Quirk). These changes resolve a key issue, now enabling counties to opt to audit some contests using approved RLA methods, and exclude those contests from audit under the required 1% Post Election Manual Tally (PEMT) (Section 20110, General Provisions). Below we provide specific comments on some remaining issues that should be resolved before these regulations are finalized.

Section 20111. “Definitions”

This section removes cross jurisdictional and partial risk limiting audits, and adds “batch comparison audits” along with “hybrid audits.” The definition for batch comparison audits, not elsewhere described in statute nor regulations to our knowledge, could be improved by a slight modification to say “examine voter markings on ballots, in randomly selected batches of ballots seeking....”

Hybrid Audit. The concept of hybrid audits is introduced in regulations for the first time here, and is not elsewhere described in statute, nor was it addressed in AB2400 (Quirk). The definition in 20112(d) requires hybrid audits under this regulation to be RLAs with a 5% risk limit. The regulation should be clear about how to demonstrate and document that a hybrid method used in a pilot does comply with statute.

At minimum, these Regulations should include a requirement to document the specifics of any hybrid method used, including methodology for the two-phase audit (if applicable), the use of the RLA software tool in any hybrid audit, and justification for RLA-related calculations. Section 20124, “Public Observation and Verification of Audit,” does ask for election officials to provide to observers oral and/or written explanation of the RLA process, and Section 20125, “Certification of Contest Results and Reporting of Audit Results,” does call for some documentation about the RLA process.

RLA Software Tool. This language in 20111(n) is unchanged in this draft other than re-ordering, but we note that the referenced section of code also calls for procedures and requirements for testing, not just for disclosure. Have procedures and requirements been developed for testing the RLA software tool? It does not appear that they are incorporated by reference here, unless we missed that.

It appears that Section 20111(n) has a typo in the last sentence. It should read “The SOS should effect this disclosure” (not “affect”).

Section 20122. Audit Procedures for Two-Phase Audit.

Second Random Seed. The draft Regulations eliminate the previous requirement for the generation of a second random seed for two-phase audits. We find this to be problematic. The two stage audit causes two ballot manifests to be created. Without a second seed, a ballot manifest could conceivably be finished *after* the audited ballots are selected. This would create an opportunity for pre-determining which ballots in the second set of ballots are audited. Creating a final manifest and selecting a sample using a fresh seed avoids this problem. Thus the second random seed is needed for security.

One possible issue involved here is the requirement in Section 20120, “Random Seed”, which mandates a five-day notice period in advance of generation of the random seed. For this second seed that is necessary to a two-phase audit, observers should be notified that it will be generated, but given that the audit is already underway, it does not seem necessary to provide the same five-day advance period in order for observers to prepare to witness this aspect of the audit. Regulations should address this issue not by eliminating the second seed, but by adjusting the notice period to be more feasible while maintaining transparency.

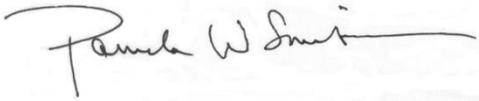
Section 20125. Certification of Contest Results and Reporting of Audit Results. This section adds conforming language changes to incorporate the newly described allowed types of RLAs, and in (a)(9) and (a)(10) provides more information as part of the list of what has to be reported. However, (a)(9) calls for description of discrepancies reported, while (a)(10) only calls for discrepancies, but not descriptions of those discrepancies. Both sections should require a description of the discrepancies.

We appreciate the complexity of the task of creating succinct regulations around statutory requirements and would be pleased to further assist the Office of the Secretary of State in resolving these remaining issues.

Very truly yours,



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