



**SHIRLEY N. WEBER, Ph.D.** | SECRETARY OF STATE | STATE OF CALIFORNIA  
ELECTIONS DIVISION  
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May 12, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21057

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson  
Elections Counsel

RE: Regulations: Vote-by-Mail Drop Boxes and Vote-by-Mail Drop Off Locations

The Secretary of State is providing notice of changes to the regulations originally published on March 12, 2021. The Secretary of State is proposing amendments to the originally-noticed proposed regulation text to address concerns raised during the 45-day public comment period.

**Written Comment Period: May 12 – 27, 2021**

Any interested person, or their authorized representative, may submit written comments pertaining to the changes in the text of the proposed regulations. The Secretary of State will accept written comments on the changes from May 12, 2021, to May 27, 2021. The Secretary of State will consider only comments received at the Secretary of State's office by that date.

Following the close of the written comment period, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals provided by the public or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available from our office for 15 days prior to its adoption and will be mailed to those persons who submit written comments related to this proposal or who have requested notification of any changes to the proposal.

Copies of the Notice of Modification to Proposed Regulations Rulemaking, the text of the proposed regulation, and addendum to the initial statement of reasons with changes identified in underline and strikeout are attached herewith, and can be accessed through the Secretary of State's website at:

<https://www.sos.ca.gov/administration/regulations/proposed-regulations/>

If you have any questions, please feel free to contact me at [aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov) or (916) 657-2166. Thank you.

**California Secretary of State  
Proposed Regulatory Action:  
Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations**

**NOTICE OF MODIFICATIONS TO TEXT OF  
PROPOSED REGULATIONS**

Please take notice that the Secretary of State is proposing changes to the regulations that are the subject of this rulemaking action. The proposed revised text is enclosed with this notice. The proposed revisions to the originally-noticed text of the regulations are shown using ~~strikeout~~ for any text proposed for deletion and underlining for any text proposed to be added. (See Govt. Code, § 11346.8(c); Cal. Code Regs., tit. 1, § 44.)

**NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO  
RULEMAKING FILE**

Please take notice that the Secretary of State is adding the following documents and other information to the rulemaking file in this rulemaking action:

Addendum to Initial Statement of Reasons

(See Govt. Code §§ 11346.8(d), 11346.9(a)(1), and 11347.1.)

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m., at this address:

California Secretary of State  
Elections Division  
1500 11<sup>th</sup> Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814

Website Access: Materials regarding this proposal can be found at:  
<https://www.sos.ca.gov/administration/regulations/proposed-regulations>.

Due to restrictions related to COVID-19, the SOS' public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review

## **PUBLIC COMMENT PERIOD**

If you have any comments regarding the proposed changes to the regulations and/or the documents and other information added to the rulemaking file pursuant to this notice, the Secretary of State will accept written comments from May 12, 2021, through May 27, 2021.

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Robbie Anderson  
California Secretary of State  
1500 11th Street, 5th Floor  
Sacramento, CA 95841  
(916) 216-6488  
[aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov)

The backup contact person is:

Raj Bathla  
California Secretary of State  
1500 11th St., 5th Floor  
Sacramento, CA 95814  
(916) 695-1597  
Or to: [rbathla@sos.ca.gov](mailto:rbathla@sos.ca.gov)

The Secretary of State will review and respond to all written comments that it has received by the close of the public comment period and that pertain only to the indicated changes and/or documents and other information added pursuant to this notice. The Secretary of State will include the comments in the public rulemaking file.

**California Secretary of State  
Proposed Regulatory Action:  
Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations  
Proposed Regulation Text (Changes to Emergency Regulations)  
Addendum to the Initial Statement of Reasons**

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

These comments address updates to the Proposed Regulation Text, which was submitted for a 45-day public comment on March 12, 2021, and for which a public hearing was held on April 26, 2021.

**20136. Drop-off Location and Drop Box Hours. Public Notification. Collection Times.**

Subdivision (f) – This subdivision is modified to remove the original text and replace it with new text, including several new paragraphs and sub-paragraphs.

The original text required elections officials to retrieve ballots, as specified, before 11:59 on Election Day. At the public hearing we held on April 26, 2021, elections officials stated that this deadline was impracticable. Therefore, we have amended the deadline to reflect their comments and proposed solutions.

The revised text states that the county election officials are encouraged to retrieve as many ballots as is practicable before 11:59 p.m. on Election Day, and must retrieve all ballots from all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election. This addresses elections officials' concerns with retrieving ballots from a large number of ballot drop boxes in a compressed time frame and that the location of some of the ballot drop boxes is very far from the county central office, making it extremely burdensome if not impossible for them to retrieve all ballots from all the drop boxes before 11:59 p.m. on Election Day. This proposed language provides the county elections officials the necessary flexibility to retrieve ballots from all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election.

We added paragraph (1) to subdivision (f), which includes two sub-paragraphs (a) and (b). The purpose of this paragraph is to address any situation where an elections official is unable to retrieve all ballots for all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election. In this situation, the elections official is required to notify the Secretary of State in a timely manner and with sufficient detail such as the location of the drop box(es) from which all ballots may not be retrieved prior to 8:00 p.m. on the day after the election, the last time ballots were retrieved from that/those drop box(es), and specific details on why all ballots may not be timely retrieved from that/those drop box(es). This paragraph is necessary to ensure the effective administration of the canvassing activities after the election. It is also necessary to ensure that the Secretary of State and the elections official have the same information regarding the outstanding ballots that have not yet been retrieved from the drop boxes in order to provide consistent and accurate information to the public and the media. This notification requirement

will also increase the efficiency and reduce the unnecessary workload on both the county and Secretary of State staff who repeatedly contact the county election office staff to know the status of the unretrieved ballots from the drop boxes.

We added paragraph (2) to subdivision (f). The purpose of this paragraph is to require the elections official to immediately notify the Secretary of State that they have retrieved all ballots from all staffed and unstaffed drop boxes. This paragraph is necessary to ensure that the Secretary of State has the up to date information about the status of the unretrieved ballots from the drop boxes. It is also necessary to ensure that the Secretary of State disseminates current and accurate information to the public and media regarding the status of the unretrieved ballots from the drop boxes.

We added paragraph (3) to subdivision (f). The purpose of this paragraph is to make sure that the safety and security of the unretrieved ballots remain intact. Therefore, we have proposed that the location of the drop box(es) from which all ballots cannot be retrieved prior to 8:00 p.m. on the day after the election shall be exempt from disclosure under the California Public Records Act. We are proposing a very narrow limit on the disclosure of this information to the public. It is limited to the location of the drop boxes. There can be a situation where a county may not be able to retrieve all ballots from all staffed and unstaffed drop boxes in a timely manner as provided above. In that situation, if the location of those drop boxes are disclosed before all ballots have been retrieved from them, then there is a risk that some bad actors can take benefit of this information and damage or destroy those drop boxes and or ballots. Additionally, a bad actor may use this information on future elections to anticipate what drop boxes may not be serviced by 8:00 p.m. on the day after the election. Therefore, it is vital not only for the safety and security of ballots but also for the public trust in the democratic process that location of ballot drop boxes from which all ballots cannot be retrieved prior to 8:00 p.m. on the day after the election must not be disclosed.

The regulation references Government Code section 6255, which acts as a “catch-all” exemption for certain records to be exempt from public disclosure under the California Public Records Act (CPRA). This exemption allows an agency subject to the CPRA to exclude certain records from disclosure under the CPRA if the public interest of preventing disclosure clearly outweighs the public interest served by disclosure of the record. In this case, we believe that burden is met. As stated above, bad actors could use the location of drop box(es) that elections officials have not retrieved ballots from by 8:00 p.m. on the day after the election to target those box(es) before the ballots are retrieved, both in a current or future election. This regulation creates a presumptive exemption rather than a explicit exemption, and as such does not supersede but rather clarifies the Secretary of State’s interpretation of this provision as it relates to these particular records. Stating this requirement in regulation informs both the Secretary of State and elections officials of the expectation that these records not be disclosed under the CPRA. However, this portion of the regulation does not prevent disclosure should the agency or a court deem that the referenced provision of the CPRA does not apply.

**California Secretary of State  
Proposed Regulatory Action:  
Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations  
Proposed Regulation Text (Changes to Emergency Regulations)**

**MODIFICATION TO PROPOSED TEXT NOTICED ON MARCH 12, 2020,  
SHOWN BELOW IN UNDERLINE/STRIKEOUT.**

Title 2. Administration  
Division 7. Secretary of State  
Chapter 3. Voting Locations  
Article 1. Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations

The California Secretary of State is proposing to make permanent the temporary, emergency regulations related to Section 20136. Those emergency regulations are effective as of June 24, 2020. Changes to the emergency regulations are shown in strikethrough and underline, with eliminated text struck and new text underlined.

**20136. Drop-off Location and Drop Box Hours. Public Notification. Collection Times.**

(a) The county elections official shall publicly announce the locations of drop-off locations and drop boxes at least 30 days prior to the election. The announcement must include the days and estimated times a particular staffed drop box will be available. The announcement must also include information on accessibility, including wheelchair access, for each drop-off location and drop box. Information shall be included in the county's Voter Information Guide and Sample Ballot publications, included in vote-by-mail materials sent to voters, and conspicuously posted on the county elections official's website. In the event any changes are made to locations and/or schedules, the information posted on the elections official's website shall be updated within 24 hours.

(b) For the purpose of posting the locations on the Secretary of State's website and to include information in any relevant election materials, the county elections official shall notify the Secretary of State of the drop-off and drop box locations, and the dates and estimated hours of availability, at least 30 days prior to the election. In the event any changes are made to locations and/or schedules, the Secretary of State must be notified within 24 hours.

(c) Drop boxes shall be locked and covered, or otherwise made unavailable to the public until the 29<sup>th</sup> day prior to the election, to ensure that no ballots or any other materials may be deposited before the vote-by-mail period begins. The elections official shall determine the appropriate method or design to make the drop boxes unavailable for use. Prior to use on the 29<sup>th</sup> day before the election, all drop boxes shall be inspected for damage and to ensure they are empty.

(1) A county elections official who provides a drop box outside of their office throughout the year for the purpose of voters delivering completed voter registration affidavits shall not be required to lock and cover those drop boxes.

(2) In the event drop boxes are deployed on the 60<sup>th</sup> day prior to an election for use by military and overseas voters, the provisions of this Article must be followed.

(d) Ballots shall be retrieved from drop boxes at times determined by the elections official, but shall be subject to the following:

(1) Ballots shall be retrieved from both staffed and unstaffed drop boxes at least every 96 hours, excluding Saturdays and Sundays, between the 29<sup>th</sup> day before the election and the 10th day before an election.

(2) Ballots shall be retrieved from staffed drop boxes at least every 72 hours, excluding Saturdays and Sundays, after the 10th day before the election through the closing of the polls on Election Day. The elections official shall develop procedures for contacting locations of staffed drop boxes between ballot retrieval periods to determine if an additional retrieval is needed.

(3) Ballots shall be retrieved from unstaffed drop boxes every 48 hours, excluding Saturdays and Sundays, hours after the 10th day prior to an election through the closing of the polls on Election Day.

(e) Upon the closing of the polls on Election Day, all drop boxes shall be locked and covered or otherwise made unavailable at 8:00 p.m. to ensure that no ballots are dropped off after the polls have closed. In the event there are voters in line at 8:00 p.m., or a court order has been issued extending the time for the closing of the polls, the drop boxes may remain open until those voters have cast their ballot or the court order extending time has lapsed.

(f) The elections official shall ensure that all ballots are retrieved from all staffed and unstaffed drop boxes before 11:59 p.m. on Election Day. The elections official is encouraged to retrieve as many ballots as is practicable before 11:59 p.m. on Election Day, and shall retrieve all ballots from all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election.

(1) In the event a county elections official is aware that they are or will be unable to retrieve all ballots from all staffed and unstaffed drop boxes prior to 8:00 p.m. on the day after the election, the elections official shall provide a written notification to the Secretary of State.

(a) The written notification shall detail the following: the location of the drop box(es) from which all ballots may not be retrieved prior to 8:00 p.m. on the day after the election, the last time ballots were retrieved from that/those drop box(es), and specific details on why all ballots may not be timely retrieved from that/those drop box(es).

(b) The written notification shall be transmitted to the Secretary of State immediately upon the determination that all ballots may or will not be retrieved prior to 8:00 p.m. on the day after the election.

(2) Immediately upon retrieving ballots from all staffed and unstaffed drop boxes, the county elections officials shall certify to the Secretary of State that all ballots have been retrieved from all staffed and unstaffed drop boxes.

(3) To ensure the safety and security of the unretrieved ballots, the location of the drop box(es) from which all ballots may not be retrieved prior to 8:00 p.m. on the day after the election shall of be presumptively exempt from disclosure under the California Public Records Act (Title 1, Government Code, Division 7, Chapter 3.5) for the county elections official or the Secretary of State pursuant to Government Code section 6255 because the public interest served by not disclosing this information clearly outweighs the public interest served by disclosure of the record.

*Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 3025, Elections Code. Reference: Section 3025, Elections Code; Section 6255, Government Code.*