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ELECTIONS DIVISION
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November 3, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21180

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rachelle Delucchi
Elections Counsel

RE: Regulations: Statewide Voter Registration System and Conditional Voter Registration

The Secretary of State is providing notice of changes to the regulations originally published on June 18, 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: November 3, 2021 – November 18, 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 November 3, 2021, to November 18, 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 fulltext 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 Robbie Anderson at aanderso@sos.ca.gov or Rachelle Delucchi at rdelucch@sos.ca.gov or (916) 657-2166.

**California Secretary of State
Proposed Regulatory Action:
Statewide Voter Registration System and Conditional Voter Registration**

**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 as well as the edits to the text noticed on August 30, 2021 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 11th Street, 5th 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 November 3, 2021, through November 18, 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) 657-2166
aanderso@sos.ca.gov

The backup contact person is:

Rachelle Delucchi
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1500 11th St., 5th Floor
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rdelucch@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
Statewide Voter Registration System and Conditional Voter Registration
Proposed Regulation Text**

**Title 2. Administration
Division 7. Secretary of State**

Changes to the permanent regulations

The California Secretary of State is proposing to amend the following existing regulations: Sections 19092, 19094 and 19097 of Article 2.5 and Chapter 1., and Sections 20021, 20023, 20025, 20026 and 20027 of Article 3.5 of Chapter 1. The proposed Regulation Text was originally submitted for 45-day public comments on June 18, 2021. Proposed revisions to the originally-noticed text of the permanent regulations (including changes previously made by emergency regulatory action and current in effect) are shown below using ~~strikeout~~ for any text proposed for deletion and underlining for any text proposed to be added.

Chapter 1. Voter Registration
Article 2.5. Statewide Voter Registration System

19092. Vote-by-Mail Ballot Reason Codes.

- (a) For all VBM ballots where the ballot return status is “Not Accepted,” an appropriate reason code shall be assigned by the county elections official.
- (b) If a VBM ballot has not had a final adjudication, the county elections official shall assign the ballot return status of “Not Accepted” and either a temporary rejection reason code of “In review-” or one of the applicable rejection reason codes set forth in subdivision (c) below. Upon the final adjudication of the ballot, “In review” shall be replaced with either a ballot return status of “Accepted” or with a rejection reason code for “Not Accepted” as provided in subdivision (c) below.
- (c) If a county elections official does not accept a VBM ballot, then a ballot return status of “Not Accepted” shall be assigned along with one of the rejection reason codes listed below:
- (1) “Voter already voted.” This reason code shall be used when rejecting a VBM ballot that was submitted by a voter when the voter already has an accepted or counted ballot in California for that election, when the voter has previously:
- (A) Voted at a location as provided in Elections Code section 338.5;
 - (B) Returned a VBM ballot in California that was accepted by a county elections official;
 - (C) Returned a provisional ballot that has been processed and counted in the same or another county; or
 - (D) Returned a CVR provisional ballot that has been processed and counted in the same or another county.
- (2) “No voter signature.” This reason code shall be used when the voter did not provide a signature on the VBM ballot envelope.

- (3) “Non-matching signature.” This reason code shall be used when the voter provided a signature on the VBM ballot envelope that did not compare to the signature on file with the county.
- (4) “Ballot missing from envelope.” This reason code shall be used when the VBM ballot envelope did not contain a ballot for the current election.
- (5) “Voter deceased.” This reason code shall be used when it is determined that the voter was deceased prior to the signature on the envelope or when the ballot has been returned unvoted with a notation that the voter is deceased.
- (6) “Multiple ballots returned in one envelope.” This reason code shall be used when more than one VBM ballot is returned in an envelope and an equal amount of distinct signatures are not on the envelope that can be attributed to eligible voters; this scenario is described in paragraph (10) of subsection (c) of Section 20991, of Article 9 of chapter 8.3 of Division 7 of Title 2 of California Code of Regulations.
- (7) “Ballot was not received in time.” This reason code shall be used when a VBM ballot was postmarked after Election Day or was postmarked on or before Election Day and was received by the county elections office more than the prescribed days set forth in Section 3020 of the Elections Code after the election or was delivered to the polls or vote center after the close of the polls on Election Day.
- (8) “VBM ballot was undeliverable.” This reason code shall be used when the voter has not cast their VBM ballot and the VBM ballot is returned by the United States Postal Service and marked undeliverable.
- (9) “No ID provided.” This reason code shall be used in a federal election when a first-time registrant, who is also a first-time voter, did not provide a California driver license or state identification number or the last four (4) digits of their social security number when they registered to vote, pursuant to Section 19075 of this article, and they did not provide the information required by Section 20107 of article 7 of chapter 1 of Division 7 of Title 2 of California Code of Regulations, prior to the final adjudication of the ballot.
- (10) “VBM ballot voided ~~Cancelled~~.” This reason code is used when a voter has not cast their VBM ballot and the VBM ballot was voided, spoiled, or the VBM ballot was surrendered or suspended and re-issued.
- (11) “Please contact your county for further information.” This reason code shall be used when the county rejection reason is not “In review” or as provided in (c) (1-11) above.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 2168, Elections Code. Reference: Sections 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3007.5, 3007.7, 3007.8, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3016.5, 3017, 3018, 3019, 3019.5, 3019.7, 3020, 3021, 3021.5, 3022, 3023, 3024, 3025, and 3026, Elections Code; 52 U.S.C. Section 21083.

19094. Provisional Ballot Reason Codes

- (a) For all provisional ballots where the ballot return status is “Not Counted,” an appropriate reason code shall be assigned by the county elections official.
- (b) If a provisional ballot has not had a final adjudication, the county elections official shall assign the ballot return status of “Not Counted” and either a temporary rejection reason code of “In review-” or one of the applicable rejection reason codes set forth in subdivision (c) below.

Upon the final adjudication of the ballot, “In review” shall be replaced with either a ballot return status of “Counted” or with a rejection reason code for “Not Counted” as provided in subdivision (c) below.

(c) If a county elections official does not count a provisional ballot, then a ballot return status of “Not Counted” shall be assigned along with one of the rejection reason codes listed below:

- (1) “Voter already voted.” This reason code shall be used when rejecting a provisional ballot that was submitted by a voter when the voter already has an accepted or counted ballot in California for that election, when the voter has previously:
 - (A) Voted at a location as provided in Elections Code section 338.5;
 - (B) Returned a VBM ballot in California that was accepted by a county elections official;
 - (C) Returned a provisional ballot that has been processed and counted in the same or another county; or
 - (D) Returned a CVR provisional ballot that has been processed and counted in the same or another county.
- (2) “No voter signature.” This reason code shall be used when the voter did not provide a signature on the provisional ballot envelope.
- (3) “Non-matching signature.” This reason code shall be used when the voter provided a signature on the provisional ballot envelope that did not compare to the signature on file with the county.
- (4) “Ballot missing from envelope.” This reason code shall be used when the provisional ballot envelope did not contain a ballot.
- (5) “Voter not registered.” This reason code shall be used when the voter’s record is missing substantive information, which means the registration does not contain the facts necessary to determine eligibility to vote, including name, place of residence and date of birth.
- (6) “Voted in wrong county.” This reason code shall be used when a voter voted in a county where he/she was not registered.
- (7) “Voted wrong ballot.” This reason code shall be used when a voter voted a ballot that he/she is not eligible to vote.
- (8) “Envelope was incomplete and/or illegible.” This reason code shall be used when the substantive information provided on the provisional ballot envelope was missing or unclear.
- (9) “No ID provided.” This reason code shall be used in a federal election when a first-time registrant, who is also a first-time voter did not provide a California driver license or state identification number or the last four (4) digits of their social security number when they registered to vote, pursuant to Section 19075 of this article, and they did not provide the information required by Section 20107 of Article 7 of Chapter 1 of Division 7 of Title 2 of California Code of Regulations, prior to the final adjudication of the ballot.
- (10) “Please contact your county for further information.” This reason code shall be used when the county rejection reason is not “In review” or as provided in (c) (1-9) above.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 2168, Elections Code. Reference; 52 U.S.C. Section 21083.

19097. Voter Participation History.

- (a) The county elections official shall send voter participation history to the statewide voter registration system in near real time starting with the first day of voting for each voter that has participated in a specific election.
- (b) Voter participation history shall accurately indicate the method of participation vote-by-mail, polling place, vote center, ~~or~~ CVR, or Nonprovisional CVR.
- (c) Voter participation history shall be displayed on the Secretary of State’s “My Voter Status” page.

Note: Authority cited: Section 12172.5, Government Code; Sections 10 and 2168, Elections Code. Reference; 52 U.S.C. Section 21083.

Chapter 1. Voter Registration

Article 3.5 Conditional Voter Registration.

20021. Definitions.

- (a) “Conditional voter registration” has the same meaning as set forth in Elections Code section 2170(a).
- (b) A “CVR voter” is a person who, on Election Day or the fourteen (14) days immediately preceding Election Day, does both of the following:
 - (1) Delivers an executed affidavit of registration to the county elections official in order to register to vote in California for the first time, or re-register to vote in the same or a different county in California. The executed affidavit of registration can be submitted either in person at any permanent office of the county elections official, at a any vote center or polling place, or at any satellite office designated by the county elections official or online through the Internet Web site of the Secretary of State.
 - (2) Requests a CVR ballot at any permanent office of the county elections official, at a any vote center or polling place, or at a any satellite office designated by the county elections official. As set forth in subdivision (f) of Elections Code section 2170, a county elections official may issue a nonprovisional ballot in place of a provisional ballot.
- (c) If a provisional ballot is issued to a CVR voter, it is referred to as a “CVR provisional ballot.” If a nonprovisional ballot is issued to a CVR voter, it is referred to as a “CVR ballot.”
- (d) “Satellite office” has the same meaning as “satellite location,” as used in subdivision (b) of Elections Code section 3018.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, 2171, 2172, 2173, and 2196, Elections Code. Reference: Sections 2170, 2171, 3018, 4005, 4007, 14310, and 14311, Elections Code.

20023. Availability of Conditional Voter Registration; 14-Day Notice to Secretary of State.

County elections officials shall offer CVR and CVR voting at any permanent office of the county elections official, at any vote center or polling place, or at any satellite office designated by the county elections official, and as is described in subdivisions (d) through (f) of Elections Code section 2170. If a satellite office has been designated by the county elections office, the county shall notify the Secretary of State no later than 14 days prior to voting and provide the location, operating hours, and contact information. The Secretary of State shall post that information on the Secretary of State Web site.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, 2171, 2172, 2173, 4005(a), 4007, and 14279 Elections Code. Reference: Sections 2170, 2171, 4005(a), 4007, 14279, and 14310 Elections Code.

20025. Conditional Voter Registration Provisional Ballot Processing and Return Statuses.

If a voter's conditional voter registration is deemed effective pursuant to Elections Code section 2170, the county elections official shall process a voter's CVR ballot as they process other nonprovisional ballots, and shall process a voter's CVR provisional ballot as provided in this section.

(a) To the extent feasible and when applicable, a county elections official shall verify that all other counties have applied polling place voter participation history before adjudicating their CVR provisional ballots.

(b) The county elections official shall immediately upon adjudication of the voter's CVR provisional ballot, enter into the statewide voter registration system a ballot return status and reason code.

(c) The ballot return status of a ballot shall be indicated as either:

1. Counted," or
2. "Not Counted."

(d) If the voter is registering for the first time in California, the county elections official shall assign the CVR provisional ballot:

- (1) A ballot return status of "Counted" or "Not Counted," and
- (2) An appropriate reason code in accordance with section 20026 if the ballot status is "Not Counted."

(e) If the voter is re-registering in California, the county elections official shall:

- (1) Conduct research using the statewide voter registration system to determine if the CVR provisional ballot shall be "Counted" or "Not Counted."
- (2) Assign the CVR provisional ballot a ballot return status of "Counted" or "Not Counted."
- (3) Assign an appropriate reason code in accordance with section 20026 if the ballot return status is "Not Counted."

(f) CVR provisional ballot information referred to in (d) and (e) above, indicating whether a CVR provisional ballot is counted or if it is not counted and the reason why it was not counted, shall be displayed on the Secretary of State's "My Voter Status" page, along with the voter participation history.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, 2171, 2172, and 2173, Elections Code. Reference: Sections 2170, 2171, and 14310 Elections Code.

20026. Conditional Voter Registration Provisional Ballot Reason Codes.

- (a) For all CVR provisional ballots where the ballot return status is “Not Counted,” an appropriate reason codes shall be assigned by the county elections official.
- (b) If a CVR provisional ballot has not had a final adjudication, the county election official shall assign the ballot return status of “Not Counted” and either a temporary rejection reason code of “In review,” or one of the applicable rejection reason codes set forth in subdivision (c) below. Upon the final adjudication of the ballot, “In review” shall be replaced with either a ballot return status of “Counted” or with a rejection reason code for “Not Counted” as provided in subdivisions (c) and (d) below.
- (c) A county elections official shall not count a CVR provisional ballot and shall assign the ballot a status of “Not Counted” with one of the reason codes listed below:
1. “Voter already voted.” This reason code shall be used when the voter has an accepted or counted ballot in California for that election, when the voter has previously
 - (A) voted at a location as provided in Elections Code section 338.5,
 - (B) returned a vote-by-mail (VBM) ballot in California that was accepted by a county elections official,
 - (C) returned a provisional ballot that has been processed and counted in the same or another county, or
 - (D) returned a CVR provisional ballot that has been processed and counted in the same or another county.
 2. “No voter signature.” This reason code shall be used when the voter did not provide a signature on the CVR provisional ballot envelope.
 3. “Non-matching signature.” This reason code shall be used when the voter provided a signature on the CVR provisional ballot envelope that did not compare to the signature on file with the county.
 4. “Ballot missing from envelope.” This reason code shall be used when the CVR provisional ballot envelope did not contain a ballot.
 5. “Voter not registered.” This reason code shall be used when the voter’s record is in a deficient status pursuant to Elections Code section 2150 et seq., which means the registration does not contain the facts necessary to determine eligibility to vote, including name, place of residence and date of birth.
 6. “Envelope was incomplete and/or illegible.” This reason code shall be used when the substantive information provided on the CVR provisional ballot envelope was missing or unclear.
 7. “No ID provided.” This reason code shall be used in a federal election when a first-time registrant, who is also a first-time voter, did not provide a California driver license or state identification number or the last four (4) digits of their social security number when they registered to vote, pursuant to Section 19075 of Article 2.5 of chapter 1 of Division 7 of Title 2 of California Code of Regulations, and they did not provide the information required by Section 20107 of article 7 of chapter 1 of Division 7 of Title 2 of California Code of Regulations, prior to the final adjudication of the ballot.

8. “Please contact your county for further information.” This reason code shall be used when the county rejection reason is not “In review” or as provided in (c)(1-7) above.
- (d) The following additional reason codes apply to provisional ballots cast pursuant to Elections Code section 14310, but are not applicable to CVR provisional ballots:
1. “Voted in wrong county.”
 2. “Voted wrong ballot.”

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, 2171, 2172, and 2173, Elections Code. Reference: Sections 2170, 2171, and 14310, Elections Code.

20027. Voter Participation History.

- (a) The county elections official shall send voter participation history to the statewide voter registration system in near real time starting with the first day of voting for each voter that has participated in a specific election.
- (b) Voter participation history shall accurately indicate the method of participation, vote-by-mail, polling place, vote center, CVR, or Nonprovisional CVR.
- (c) Voter participation history shall be displayed on the Secretary of State’s “My Voter Status” page.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, 2171, 2172, and 2173, Elections Code. Reference: Sections 2170, 2171, 14310, and 15375, Elections Code.

**California Secretary of State
Proposed Regulatory Action:
Statewide Voter Registration System and Conditional Voter Registration
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 Regulations Text, which was submitted for a 45-day public comment period on June 18, 2021.

Section 19092. Vote-by-Mail Ballot Reason Codes.

Subdivision (c)(4) – In this subdivision, we have added the phrase “for the current election” at the end of the sentence. We have received public comments from Los Angeles County registrar’s office. In their comments, they stated, “due to the large volume of small jurisdiction and special elections in Los Angeles County, scenarios occur where a voter’s correct VBM return envelope is received, but it contains a ballot from a past election. In these circumstances, the “Ballot missing from envelope” reason code has been used. However, to accurately account for this item, it is suggested that the reason code “Incorrect ballot in envelope” be added.”

In order to address the concerns raised by the Los Angeles County registrar’s office, the Secretary of State (SOS) convened a meeting of the Business Process Committee (BPC) – a subcommittee of the California Association of Clerks and Elections Officials that provide recommendations to the SOS among other things on the Vote-by-Mail Ballot Reason Codes. During the meeting, the BPC recommended adding the phrase “for the current election” at the end of the reason code to remedy the situation brought forth by the Los Angeles County registrar’s office. Thus, we have added the phrase “for the current election” at the end of the sentence.

As explained above, this change is necessary to ensure that the vote-by-mail reason code is correctly applied to those scenarios when the vote-by-mail ballot envelope did not contain a ballot for the current election.

Subdivision (c)(10). In this subdivision, we have removed the word “cancelled” and added the word “voided.” The Los Angeles County registrar’s office and a few other counties had expressed concern over the language of the reason code “Cancelled.” According to them, the phrase “cancelled” connotes a different meaning than this reason code is intended for.

These reason codes appear on the “My Voter Status” webpage of the SOS’s website. Some

counties have stated that they have received phone calls from voters during the elections asking for clarification about this reject reason code. Voters think that it means that their registration has been cancelled. The staff at some county's elections office also have the same confusion. The term "Cancelled" does not mean that a voter's registration got cancelled rather, it means that the ballot that was issued to the voter was voided and/or the voter was issued a new ballot. The BPC then recommended to the SOS that the more suitable phrase is "VBM ballot voided," as it is used more commonly in situations where the VBM ballot was voided, spoiled, or the VBM ballot was surrendered or suspended and re-issued.

Thus, this change is necessary to ensure that the public is not confused about the meaning of the term "Cancelled."