



SHIRLEY N. WEBER, Ph.D. | SECRETARY OF STATE | STATE OF CALIFORNIA
ELECTIONS DIVISION

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October 26, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21169

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 and the two subsequent 15-day public comment periods.

Written Comment Period: October 26, 2021 – November 10, 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 October 26, 2021, to November 10, 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 Robbie Anderson at aanderso@sos.ca.gov or Raj Bathla at rbathla@sos.ca.gov or (916) 657-2166.

**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 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 October 26, 2021, through November 10, 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:

Raj Bathla
California Secretary of State
1500 11th St., 5th Floor
Sacramento, CA 95814
(916) 695-1597
Or to: 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)**

**MODIFICATION TO PROPOSED TEXT NOTICED ON AUGUST 13,
2021, 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. The proposed revisions to the originally-noticed text of the regulations as well as the edits to the text noticed on May 12, 2021, August 13, 2021 are shown using ~~strikeout~~ for any text proposed for deletion and underlining for any text proposed to be added.

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 ~~day the elections official begins mailing vote-by-mail ballots~~, 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 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 60th day prior to an election for use by military and overseas voters, the provisions of this Article must be followed.

(3) The elections official may make drop boxes available prior to the date the

elections official begins mailing vote-by-mail ballots. If the elections official does so, the elections official shall notify the Secretary of State of that action at the time the drop boxes are made available.

(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 29th 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 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 3005.5, 3025, Elections Code; Section 6255, Government Code.

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

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, and subsequent 15-day public notices on May 12, 2021, and August 13, 2021.

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

Subdivision (c) – In this subdivision, we have removed the language that says, “~~day the elections official begins mailing vote-by-mail ballots~~”. On February 19, 2021, the Governor signed into law Senate Bill (SB) 29. Among other changes, SB 29 amended Elections Code section 3000.5 to require elections officials to “...no later than 29 days before the day of the election, begin mailing the materials specified in Section 3010 to every registered voter in the county” Under the existing regulations, county elections officials were to ensure that vote-by-mail drop boxes were made unavailable until the 29th day before the election. When the regulations were drafted, the 29th day before the election was the first day that elections officials could begin mailing vote-by-mail ballots to their voters. Now, under Section 3000.5, county elections officials may begin mailing vote-by-mail ballots when they are ready and do not have to wait until the 29th day before the election. Rather, they must begin mailing no later than the 29th day before the election. If elections officials were to follow the existing regulations and not make their vote-by-mail drop boxes available until the 29th day before the election, then some voters may not be able to deposit their voted ballot when they are ready to do so.

The Secretary of State received public comment during the public comment period that ended on August 30, 2021. Based upon that public comment, Subsection (3) was added to Subdivision (c), and reads as follows: “(3) The elections official may make drop boxes available prior to the date the elections official begins mailing vote-by-mail ballots. If the elections official does so, the elections official shall notify the Secretary of State of that action at the time the drop boxes are made available.”

This proposed change to this subdivision will provide elections officials with the flexibility to make drop boxes available prior to the date that the elections official begins mailing vote-by-mail ballots. This change is necessary to ensure that elections officials have sufficient time to prepare, clean, service, then open vote-by-mail drop boxes so the boxes are available as soon as vote-by-mail ballots are mailed. Counties may not be able to prepare, clean, service, then open the drop-boxes if they can only make them available the day that they

begin mailing ballots.

In addition, this proposed change requires elections officials to notify the Secretary of State when the elections official makes the vote-by-mail drop boxes available prior to an election. The purpose of this is so the Secretary of State is aware of the status of a county's drop boxes in the event the Secretary of State is contacted by a person who inquires as to why a vote-by-mail drop box is open prior to the time the elections official begins mailing vote-by-mail ballots.