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CALIFORNIA SECRETARY OF STATE

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August 30, 2022

County Clerk/Registrar of Voters (CC/ROV) Memorandum #22200

TO: All County Clerks/Registrars of Voters

FROM: /s/ Rachelle Delucchi
Election Counsel

RE: Regulations: Conditional Voter Registration

The Secretary of State has submitted proposed regulations to the Office of Administrative Law to make permanent the emergency regulations it adopted on April 25, 2022, pertaining to conditional voter registration.

Written Comment Period: August 26, 2022 – October 17, 2022

Any interested person, or their authorized representative, may submit written comments pertaining to the text of the proposed regulations. The Secretary of State will accept written comments on the proposed regulations from August 26, 2022, to October 17, 2022. The Secretary of State will consider only comments received at the Secretary of State's office by that date. No hearing date has been scheduled; however, any interested person, or their authorized representative, can submit a written request for a public hearing no later than Sunday, October 2, 2022.

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 made available by 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 proposed regulations, the text of the proposed regulations, and the initial statement of reasons and can be accessed through the Secretary of State's website at: <https://www.sos.ca.gov/administration/regulations/proposed-regulations/>

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If you have any questions, please feel free to contact Rachelle Delucchi at rdelucch@sos.ca.gov or Raj Bathla at rbathla@sos.ca.gov or (916) 657-2166

California Secretary of State
Proposed Regulatory Action: Conditional Voter Registration
Notice

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than **Monday, October 17, 2022**.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 5:00 PM, on Sunday, October 2, 2022. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below 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 for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: August 26, 2022, through October 17, 2022.

AUTHORITY AND REFERENCE

Authority cited: 12172.5, Government Code; and Sections 10, and 2170, Elections Code.

Reference cited: Sections 300, 303.3, 305.5, 2150, 2151, 2152, 2156, 2157, 2170, 2171, 2712, 2173, 2196, 2500, 3016.7, 3018, 3102, 4005, 4007, 14279, 14310, 14311, 15375, and 19281, Elections Code.

INFORMATIVE DIGEST

A. Informative Digest

These proposed regulations are intended to make permanent the emergency regulations that were approved by the Office of Administrative Law on April 25, 2022. The purpose of the permanent regulations are to ensure that future elections are held in a uniform manner by California's 58 county elections officials, and that elections are held in a safe and accessible manner.

On March 31, 2022, Senate Bill 504 (SB 504, Chapter 14 of the Statutes of 2022) became law. Amongst other things, SB 504 authorizes the Secretary of State to adopt emergency regulations to implement SB 504. The Legislature further found and declared that that the emergency regulations are necessary for the immediate preservation of the public peace, health,

safety, or general welfare because the regulations will ensure that elections officials have sufficient time to ensure that elections are held in a safe and accessible manner.

The proposed regulations provide a structure for county elections officials to allow qualified military and overseas voters and voters with disabilities to complete a conditional voter registration and cast a provisional ballot or nonprovisional ballot under the new provisions of California Elections Code section 2170 (Amended by SB 504).

The purpose of these regulations is as follows:

1. Provide updated definitions for the conditional voter registration and remote accessible vote-by-mail ballot processes.
2. Establish procedures for a conditional registrant to utilize the remote accessible vote-by-mail ballot process.
3. Update procedures for receipt and processing of ballots cast utilizing the conditional voter registration and/or remote accessible vote-by-mail system processes.

These proposed regulations are necessary to ensure that voters, interested persons, and members of the public are fully aware of the process of a CVR voter using a remote accessible vote by mail system to register and cast a ballot. Further the regulations will ensure that elections officials have sufficient time to ensure that elections are held in a safe and accessible manner.

B. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations related to conditional voter registration. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

C. Documents Incorporated by Reference: None

D. Documents Relied Upon in Preparing the Regulations:

Senate Bill 504 (Chapter 14 of the Statutes of 2022)

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB504

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The SOS has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Mandate on Local Agencies and School Districts: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The Secretary of State is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs: None

Effect on Small Business: These regulations will have no effect on small businesses. These regulations pertain to conditional voter registration only.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, and (3) unlikely to result in the expansion of businesses currently doing business within California. These regulations pertain to conditional voter registration only. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will provide greater confidence in the conduct of California's election activities by providing uniform guidance for voters who utilize the conditional voter registration process. These regulations will ultimately benefit California residents as rules conditional voter registration will be clear and uniformly applied throughout California's 58 counties.

The regulations do not provide any benefits for worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the SOS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SOS has determined that there are no reasonable alternatives to these regulations. There are existing regulations relating to conditional voter registration, and these proposed regulations make changes to those regulations based upon a statutory mandate.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

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

Rachelle Delucchi
Secretary of State
1500 11th St., 5th Floor
Sacramento, CA 95814
(916) 657-2166
rdelucch@sos.ca.gov

The backup contact person is:

Raj Bathla
Secretary of State
1500 11th St., Room 495
Sacramento, CA 95814
(916) 657-2166
rbathla@sos.ca.gov

Website Access: Materials regarding this proposal can be found at:

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

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

Proposed Regulations Text

California Code of Regulations
Title 2. Administration
Division 7. Secretary of State

The California Secretary of State (SOS) is proposing to make permanent the emergency regulations it adopted on February 22, 2022, through OAL file number 2022-0414-01E. The following proposed text shows changes to permanent regulations sections 20021, 20022, 20023, 20024, 20024.5, 20025, 20026, and 20027 of Title 2 of Division 7 of the California Code of Regulations. Changes to the regulations are shown in strikethrough and underline, with eliminated text struck and new text underlined.

Chapter 1. Voter Registration
Article 3.5 Conditional Voter Registration.

20021. Definitions.

(a) “Conditional voter registration” (“CVR”) has the same meaning as set forth in subdivision (a) of Elections Code section 2170~~(a)~~.

(b) A “CVR voter” is a person as described in subdivision (b) of Elections Code section 2170 and who, on Election Day or during 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, or as a military or overseas voter. The executed affidavit of registration can be submitted in either of the following ways:

(A) either in person 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, or

(B) online through the internet website Internet Web site of the Secretary of State. For purposes of this Article and subparagraph, if the voter is registering as a military or overseas voter or is a voter with disabilities, the voter may request to cast a ballot using a certified remote accessible vote by mail system but only if their affidavit of registration submitted through the internet website of the Secretary of State contains their signature.

(2) Requests a CVR ballot in either of the following ways:

(A) in person 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, or

(B) by contacting their county elections official to request access to a certified remote accessible vote by mail system if the voter is a military or overseas voter or a voter with disabilities.

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.” A CVR provisional ballot or CVR ballot can be cast using a certified remote accessible vote by mail system.

(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 300, 303.3, 2170, 2171, 2172, 2173, 2196, 3016.7, 3102, 3018, 4005, 4007, 14310, and 14311, and 19281, Elections Code.

§ 20022. Affidavit of Registration.

To conditionally register to vote, CVR voters shall use the same affidavit of registration as other voters - either a paper form or ~~online~~ through the internet website ~~Internet Web site~~ of the Secretary of State.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10, ~~and~~ 2170, ~~2171, 2172, 2173, and 2196~~, Elections Code. Reference: Sections 2150, 2151, 2152, 2156, 2157, 2170, 2171, ~~and~~ 2196, Elections Code.

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

(a) County elections officials shall offer:

(1) CVR ~~and CVR voting in person~~ 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, or through the internet website of the Secretary of State and as is described in subdivisions (d) through (f) of Elections Code section 2170, and

(2) CVR provisional ballots or CVR ballots to CVR voters, in accordance with subdivisions (e) and (f) of Elections Code section 2170.

(b) If a satellite office has been designated by the county elections office,

(1) 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, and

(2) ~~the~~ The Secretary of State shall post that information on the Secretary of State ~~Web site~~ website.

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 303.3, 2170, 2171, 2196, 3016.7, 4005(a), 4007, 14279, and 14310, Elections Code.

§ 20024. Conditional Voter Registration Provisional Ballot Return Envelope.

CVR provisional ballot return envelopes provided by county elections officials shall look visibly different from ~~other~~ all other ballot return envelopes. The visual difference can include, but is not limited to, different envelope color or a stamp or other marking mechanism used on CVR provisional ballot return envelopes.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10~~7~~ and 2170, ~~2171~~, 2172 and 2173, Elections Code. Reference: Sections 303.3, 2170, 2171, 3016.7, and 14310, Elections Code.

§ 20024.5. Conditional Voter Registration Ballot Cast Using A Remote Accessible Vote-by-Mail System.

A county elections official shall, prior to providing a CVR voter a ballot to be cast using a certified remote accessible vote by mail system, indicate in their county Election Management System (EMS) and/or otherwise flag the CVR ballot to ensure the CVR ballot will be reviewed prior to being processed.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, Elections Code. Reference: Sections 303.3, 305.5, 2170, 2171, 2500, 3016.7, 14310, and 19281, 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 code 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.

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Proposed Regulatory Action:
Conditional Voter Registration**

Proposed Regulations Text

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Chapter 1. Voter Registration
Article 3.5 Conditional Voter Registration.

20021. Definitions.

- (a) “Conditional voter registration” (“CVR”) has the same meaning as set forth in subdivision (a) of Elections Code section 2170.
- (b) A “CVR voter” is a person as described in subdivision (b) of Elections Code section 2170 and who, on Election Day or during 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, or as a military or overseas voter. The executed affidavit of registration can be submitted in either of the following ways:
- (A) in person 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, or
- (B) through the internet website of the Secretary of State. For purposes of this Article and subparagraph, if the voter is registering as a military or overseas voter or is a voter with disabilities, the voter may request to cast a ballot using a certified remote accessible vote by mail system but only if their affidavit of registration submitted through the internet website of the Secretary of State contains their signature.
- (2) Requests a ballot in either of the following ways:
- (A) in person 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, or
- (B) by contacting their county elections official to request access to a certified remote accessible vote by mail system if the voter is a military or overseas voter or a voter with disabilities.
- (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.” A CVR

provisional ballot or CVR ballot can be cast using a certified remote accessible vote by mail system.

(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, Elections Code. Reference: Sections 300, 303.3, 2170, 2171, 2172, 2173, 2196, 3016.7, 3102, 3018, 4005, 4007, 14310, 14311, and 19281, Elections Code.

§ 20022. Affidavit of Registration.

To conditionally register to vote, CVR voters shall use the same affidavit of registration as other voters - either a paper form or through the internet website of the Secretary of State.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, Elections Code. Reference: Sections 2150, 2151, 2152, 2156, 2157, 2170, 2171, and 2196, Elections Code.

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

(a) County elections officials shall offer:

(1) CVR in person 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, or through the internet website of the Secretary of State and as is described in subdivisions (d) through (f) of Elections Code section 2170, and

(2) CVR provisional ballots or CVR ballots to CVR voters, in accordance with subdivisions (e) and (f) of Elections Code section 2170.

(b) If a satellite office has been designated by the county elections office,

(1) 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, and

(2) the Secretary of State shall post that information on the Secretary of State website.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, Elections Code. Reference: Sections 303.3, 2170, 2171, 2196, 3016.7, 4005(a), 4007, 14279, and 14310, Elections Code.

§ 20024. Conditional Voter Registration Provisional Ballot Return Envelope.

CVR provisional ballot return envelopes provided by county elections officials shall look visibly different from all other ballot return envelopes. The visual difference can include, but is not limited to, different envelope color or a stamp or other marking mechanism used on CVR provisional ballot return envelopes.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, Elections Code. Reference: Sections 303.3, 2170, 2171, 3016.7, and 14310, Elections Code.

§ 20024.5. Conditional Voter Registration Ballot Cast Using A Remote Accessible Vote-by-Mail System.

A county elections official shall, prior to providing a CVR voter a ballot to be cast using a certified remote accessible vote by mail system, indicate in their county Election Management System (EMS) and/or otherwise flag the CVR ballot to ensure the CVR ballot will be reviewed prior to being processed.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 2170, Elections Code. Reference: Sections 303.3, 305.5, 2170, 2171, 2500, 3016.7, 14310, and 19281, 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, 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 code 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, 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, Elections Code. Reference: Sections 2170, 2171, 14310, and 15375, Elections Code.

California Secretary of State

Proposed Regulatory Action: Conditional Voter Registration Initial Statement of Reasons

PUBLIC HEARING AND COMMENT

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 5:00 PM, on Sunday, October 2, 2022.

Written Public Comment Period: August 26, 2022, through October 17, 2022.

Subject Matter of Proposed Regulations: Conditional Voter Registration.

Section(s) Affected: Sections 20021 through 20027 of Title 2, Division 7, Chapter 1, Article 3.5 of the California Code of Regulations.

PURPOSE AND NECESSITY

These proposed regulations are intended to make permanent the emergency regulations that were approved by the Office of Administrative Law on April 25, 2022. The purpose of the permanent regulations are to ensure that future elections are held in a uniform manner by California's 58 county elections officials, and that elections are held in a safe and accessible manner.

On March 31, 2022, Senate Bill 504 (SB 504, Chapter 14 of the Statutes of 2022) became law. Amongst other things, SB 504 authorizes the Secretary of State to adopt emergency regulations to implement SB 504. The Legislature further found and declared that the emergency regulations were necessary for the immediate preservation of the public peace, health, safety, or general welfare because the regulations will ensure that elections officials have sufficient time to ensure that elections are held in a safe and accessible manner.

The proposed regulations make the emergency regulations permanent, and provide a structure for county elections officials to allow qualified military and overseas voters and voters with disabilities to complete a conditional voter registration and cast a provisional ballot or nonprovisional ballot under the new provisions of California Elections Code section 2170 (Amended by SB 504).

The purpose of these regulations is as follows:

1. Provide updated definitions for the conditional voter registration and remote accessible vote-by-mail ballot processes.

2. Establish procedures for a conditional registrant to utilize the remote accessible vote-by-mail ballot process.
3. Update procedures for receipt and processing of ballots cast utilizing the conditional voter registration and/or remote accessible vote-by-mail system process.

These proposed regulations are necessary to ensure that voters, interested persons, and members of the public are fully aware of the process of a CVR voter using a remote accessible vote by mail system to register and cast a ballot. Further the regulations will ensure that elections officials have sufficient time to ensure that elections are held in a safe and accessible manner.

FACTUAL BASIS / RATIONALE

The factual basis and rationale for each section of the proposed regulations are as follows:

Section 20021. Definitions. In subdivision (a), we are adding an acronym of “CVR” and adding a reference to the specific subdivision of the Elections Code section 2170. In subdivision (b), we are adding a reference to the specific subdivision of Elections Code section 2170. Further in subdivision (b), we are also adding the language to include military and overseas voters and how their voter registration would be processed.

In subdivision (b)(1)(B), we struck the requirement for an email address to be included on an affidavit of registration of a military or overseas voter or a voter with disabilities and otherwise modified the language for clarity.

In subdivision (b)(2)(B), we struck the requirement for an email request for access to a certified remote accessible vote by mail system to be from the same email address included on the voter’s affidavit of registration and modified the language for clarity.

The purpose and necessity of this subdivision remains the same. The changes to the underlying permanent regulations clarify the procedures by which a military or overseas voter or a voter with disabilities can utilize the conditional voter registration (CVR) process and request a ballot through a remote accessible vote by mail system. The changes describe that these categories of voters are allowed to vote utilizing counties’ remote accessible vote by mail systems, and further defines “CVR ballots” as those cast using a certified remote accessible vote by mail system. These changes are necessary to conform with Senate Bill 504 (SB 504, Chapter 14 of the Statutes of 2022).

In addition, we are also removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

Section 20022. Affidavit of Registration.

The proposed amendments to this section remove the existing reference to online voter registration, and instead refers to the Secretary of State's website. This change was necessary to provide clarity for where CVR voters may register. The term "online" is not necessarily specific, and this is a non-substantive change to existing regulations. In addition, we are also removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

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

In this section, we are adding clarifying language in subdivisions (a) and (b) of this section and further adding specific reference section 2170 of the Elections Code.

The proposed changes are necessary to align the current regulations with Section 2170 of the Elections Code as amended by SB 504. Specifically, the regulations now indicate that CVR is to be offered in person and through the internet website of the Secretary of State and that CVR ballots can be offered provisionally and non-provisionally. In addition, we are also removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

Section 20024. Conditional Voter Registration Provisional Ballot Return Envelope.

In this section, we are adding language to clarify that this section is referring to ballot return envelopes provided by county elections officials. The proposed changes to this section are necessary because a ballot cast using a remote accessible vote by mail system (RAVBM) must be returned to the appropriate elections official in an envelope. A CVR voter at a polling location must put their ballot in a CVR envelope as well, but this section clarifies that the CVR envelope for an RAVBM voter must also look different from all other ballot return envelopes (such as a vote-by-mail return envelope). In addition, we are also removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

Section 20024.5. Conditional Voter Registration Ballot Cast Using a Remote Accessible Vote-by-Mail System.

This is a new section added to provide instruction to elections officials to indicate in their local elections management system (EMS) that a CVR ballot must be reviewed prior to being processed. This section is necessary to ensure that proper procedures are followed when an elections official provides a CVR ballot to a voter using a certified remote accessible vote by mail system. These ballots require additional steps prior to being processed.

Section 20025. Conditional Voter Registration Provisional Ballot Processing and Return Statuses. – We are removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

Section 20026. Conditional Voter Registration Provisional Ballot Reason Codes. – We are adding a comma in subdivision (b). In addition, we are also removing repetitive sections from the Authority and Reference section. These are non-substantive changes.

Section 20027. Voter Participation History. We are removing repetitive sections from the Authority and Reference section. This is a non-substantive change.

ECONOMIC IMPACT STATEMENT

These regulations have been established to provide clear guidance for the conditional voter registration process. There are current regulations relating to conditional voter registration, and the proposed changes are being made due to a change in the Elections Code.

These regulations relate to activities that currently occur during every election, and do not create any costs to elections officials, so no fiscal impact exists.

Creation or Elimination of Jobs within the State of California

It is not anticipated that these regulations will create or eliminate jobs within the State of California. These regulations relate to existing activities carried out by elections officials. Therefore, no additional staff should be required for groups who observe or county elections officials.

Creation of New or Elimination of Existing Businesses within the State of California

These regulations are anticipated only to affect individuals and groups who utilize the conditional voter registration process and local elections offices. These regulations relate to existing activities carried out by observers and elections officials. They should not create or eliminate a new industry or related businesses within the State of California.

Expansion of Businesses or Elimination of Existing Businesses within the State of California

These regulations are anticipated only to affect individuals and groups utilize the conditional voter registration process and local elections offices. These regulations relate to existing activities carried out by observers and elections officials. They should not expand or eliminate a new industry or related businesses within the State of California.

Benefits of the Regulations

The benefit of these proposed regulations is that they will ensure uniform processes for conditional voter registration throughout California. With these regulations, individuals who wish to utilize the conditional voter registration process will be aware of the procedures, and the elections officials will have uniform procedures for processing ballots of conditional registrants.

In addition, these proposed regulations will increase transparency in the elections process, which will strengthen the public trust in the State of California's election process.