State of California
Office of Administrative Law

In re: **Secretary of State** **Regulatory Action:** **Title 02, California Code of Regulations** **Adopt sections:** **Amend sections:** 19092, 19094, 20026 **Repeal sections:**	NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION Government Code Sections 11346.1 and 11349.6 OAL Matter Number: 2020-0925-03 OAL Matter Type: Emergency (E)

This emergency rulemaking action by the California Secretary of State makes changes to the reason codes for vote-by-mail ballots, provisional ballots, and conditional voter registration provisional ballots.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/5/2020 and pursuant to Executive Orders N-40-20 and N-66-20 will expire on 8/4/2021 and not on 4/6/2021. The Certificate of Compliance for this action is due no later than 8/3/2021.

Date: October 5, 2020

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Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
        Director

Original: Alex Padilla, Secretary of State
Copy: Raj Bathla

EMERGENCY

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-0925-03	EMERGENCY NUMBER E

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

OCT 05 2020
1:36 p.m.

For use by Office of Administrative Law (OAL) only

2020 SEP 25 P 4: 31

OFFICE OF
ADMINISTRATIVE LAW

NOTICE   REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY	AGENCY FILE NUMBER (If any)
SECRETARY OF STATE	

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE ☐ Notice re Proposed Regulatory Action ☐ Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)

OAL USE ONLY	ACTION ON PROPOSED NOTICE ☐ Approved as Submitted	☐ Approved as Modified	☐ Disapproved/ Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Statewide Voter Registration System; Conditional Voter Registration	

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	
	AMEND	19092, 19094 and 20026
TITLE(S) TITLE 2	REPEAL	

3. TYPE OF FILING

☐ Regular Rulemaking (Gov. Code §11346)

☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

☒ Emergency (Gov. Code, §11346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

☐ Emergency Readopt (Gov. Code, §11346.1(h))

☐ File & Print

☐ Other (Specify)

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100.)

☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))   ☒ Effective on filing with Secretary of State   ☐ §100 Changes Without Regulatory Effect   ☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660)   ☐ Fair Political Practices Commission   ☐ State Fire Marshal

☐ Other (Specify)

7. CONTACT PERSON RAJ BATHLA	TELEPHONE NUMBER 916-801-9451	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) rbathla@sos.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 05 2020

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE *Susan Lapsley*	DATE September 25, 2020
TYPED NAME AND TITLE OF SIGNATORY Susan Lapsley, Deputy Secretary of State	

California Secretary of State
Proposed Regulatory Action
Emergency Action: Statewide Voter Registration System and Conditional Voter Registration
Proposed Regulation Text

Title 2. Administration
Division 7. Secretary of State

The California Secretary of State is proposing to amend the following existing regulations: Sections 19092 and 19094 of Article 2.5 and Chapter 1., and Section 20026 of Article 3.5 of Chapter 1. Changes to existing regulation text are shown in strikethrough and underline, with eliminated text struck and new text underlined.

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 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 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.

(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) "Missing or incorrect address on the envelope." This reason code shall be used when the address is missing from the VBM envelope or when the address does not match the registration record on file in the elections office.

(7) "Multiple ballots returned in one envelope." This reason code shall be used when more than one VBM ballot is returned in an envelope.

(8) "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 three days after the election or was delivered to the polls or vote center after the close of the polls on Election Day.

(9) "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.

(10) "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)(11) "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.

(12) "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) (1-119) 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 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 <u>rejecting a provisional ballot that was submitted by a voter when</u> the voter <u>already</u> 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.

<u>(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.</u>

~~(9)~~<u>(10)</u> "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-<u>9</u>~~8~~) above.

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.

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 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.

7<u>8</u>."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-<u>7</u>6) 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.