

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.