

California Secretary of State
Proposed Regulatory Action: Petition Processing, Signature
Verification, Ballot Processing, and Ballot Counting
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 15 days prior to the close of the written comment period.

Written Public Comment Period: December 10, 2021, through January 24, 2022

Subject Matter of Proposed Regulations: Petition processing, signature verification, and ballot processing and counting.

Section(s) Affected: Sections 20910 through 20983 of Title 2, Division 7, Chapter 8.3 of the California Code of Regulations.

PURPOSE AND NECESSITY

California's 58 county elections officials are members of an organization known as CACEO (California Association of Clerks and Elections Officials). The CACEO has several subcommittees that focus on particular issues, one of which focuses on election-related petitions. The CACEO petition subcommittee has developed a "Petition Signature Verification Guidelines" document, which elections officials refer to when reviewing initiative, referendum, nomination, signature in-lieu filing fee, and recall petitions. To ensure uniform application throughout the State of California, the Secretary of State has determined that these "Guidelines" should be placed in regulatory form.

Section 301(a)(6) of The Help America Vote Act of 2002 (52 U.S.C. Section 21081(a)(6)) (HAVA) provides that "Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State." As required by HAVA, the Secretary of State developed a document entitled "Uniform Vote Counting Standards", which is hereby put into regulatory form.

Elections Code section 3026 requires the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote-by-mail ballots.

Elections Code section 14314 requires the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of provisional ballots.

Part of the process carried out by elections officials in reviewing petitions and ballot identification envelopes includes reviewing the signature of the voter by comparing the signature on the petition or ballot identification envelope against the signature(s) included in the voter's registration record. To ensure uniform signature verification techniques, the draft regulations provides specific actions elections officials are to follow when reviewing a voter's signature.

FACTUAL BASIS / RATIONALE

The Secretary of State has developed a portion of these regulations with a subcommittee of California Association of Clerks and Elections Officials (CACEO). The CACEO has a petition subcommittee, which has developed a "Petition Signature Verification Guidelines" document, which elections officials refer to when reviewing initiative, referendum, nomination, signature in-lieu filing fee, and recall petitions. To ensure uniform application throughout the State of California, the Secretary of State has determined that these "Guidelines" should be placed in regulatory form.

As required by the Help America Vote Act of 2002, the Secretary of State developed a document entitled "Uniform Vote Counting Standards", which is hereby put into regulatory form.

Elections Code section 3026 requires the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote-by-mail ballots.

Elections Code section 14314 requires the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of provisional ballots.

The purposes of these regulations are to:

1. Provide uniform application of procedures for elections officials to follow when examining election-related petitions, and when processing voted ballots.
2. Establish guidance for use by elections officials examining election-related petitions for instances when the content of the petition deviates from the required elements for that petition found in the Elections Code. The guidance assists counties in determining when a signature on a petition shall be included in a raw count, and when the elections official will compare the signature on the petition to the signature(s) retained the voter's registration record.
3. Establish guidance for use by elections officials examining election-related petitions for instances when there is an issue with the placement or content of a voter's signature on a petition. The guidance assists counties in determining when a signature on a petition shall be included in a raw count, and when the elections official will compare the signature on the petition to the signature(s) retained the voter's registration record.

4. Establish guidance for use by elections officials examining election-related petitions for instances when there is an issue with the residence address provided by the voter on a petition. Under the provisions of the Elections Code the voter is to provide their residence address when signing a petition. The guidance assists counties in determining when a signature on a petition shall be included in a raw count, and when the elections official will compare the signature on the petition to the signature(s) retained the voter's registration record.
5. Establish guidance for use by elections officials examining election-related petitions for instances when a voter's residence address and/or registration status changes at or near the time the voter signs a petition. The residence address or registration status changes can be made by the voter, via an automatic update provided by the Elections Code, or via action by the county elections official. The guidance assists counties in determining when a signature on a petition shall be included in a raw count, and when the elections official will compare the signature on the petition to the signature(s) retained the voter's registration record.
6. Establish guidance for use by elections officials examining election-related petitions for instances when the content of a declaration of circulator deviates from the required elements for that petition found in the Elections Code. The guidance assists counties in determining when a signature on a petition shall be included in a raw count, and when the elections official will compare the signature on the petition to the signature(s) retained the voter's registration record.
7. Establish clear criteria for use by elections officials when the elections official is comparing a signature on a petition, vote-by-mail ballot identification envelope, or a provisional ballot envelope. There are no such criteria under California law.
8. Establish guidance for use by elections officials examining election-related petitions for instances when a voter has submitted a written request to withdraw their name from a signed petition. The guidance assists counties in determining when a signature withdrawal request is valid, and when a withdrawal request may be invalid.
9. Establish uniform vote counting standards for use by California's 58 county elections officials. These standards will ensure that all county elections officials follow the same procedures for the counting of ballots. Counting of ballots may differ by county, depending on the voting system used by the county.
10. Establish uniform standards for the processing of vote-by-mail ballots and provisional ballots. The processing includes comparing the signature on the vote-by-mail identification envelope or provisional ballot envelope to the signature(s) in the voter's registration record. In the event the voter does not sign the envelope, the elections official is required to contact the voter to provide the voter with an opportunity to cure the defect applicable to them. In addition, these uniform standards provide guidance for elections officials to follow when entering the status of a voted vote-by-mail ballot or provisional ballot into their local elections management system, which

sends the status to the statewide voter registration system. Finally, the standards include guidance for valid and invalid vote-by-mail ballots and provisional ballots.

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

ARTICLE 1. GENERAL

20910. Applicability of This Chapter – This section sets forth the applicability and purpose of these regulations.

Subdivision (a) provides that the purpose of these regulations is ensure uniform application and practices for the process of examining initiative, referendum, recall, nominating petition or paper, signature in-lieu of filing fee, and any other petition or paper, and for signature verification carried out by elections officials on those petitions and on vote-by-mail identification envelopes and provisional ballot envelopes. The text of this subdivision has changed from the text in the emergency regulations to reflect the additional purpose of the regulations relating to the processing of elections-related petitions. This subdivision applies to all local and statewide petitions. This subdivision is non-substantive.

Subdivision (b) provides an additional regulatory purpose, which is to provide uniform vote counting standards for consistent application of ballot processing and counting for all elections held pursuant to the California Elections Code throughout the state. This subdivision is non-substantive.

ARTICLE 2. PETITION FORMAT

20920. Petition Format – This section sets forth guidelines for county elections officials to follow when reviewing petitions submitted to their office by an initiative, referendum, or recall proponent. Specifically, this section provides scenarios for whether or not a signature should be included in a raw count and whether or not that signature shall be subject to signature verification by the elections official based upon possible deviations from typical petition formatting. Although petition format requirements are provided in the Elections Code, elections officials receive petitions that vary from those requirements.

When a petition is submitted for filing, the elections official must first perform a raw count of the total number of signatures on a submitted petition. The result of the raw count will determine the next step in the process, whether that be failure due to the number of raw signatures being less than the required number of signatures for the particular initiative, referendum, or recall, or moving to the next step, which is a random sampling of signatures. The random sampling process includes comparing the signature of the voter on the petition to the signature(s) in the voter's registration record. If a signature is determined valid, that signature will be included in the total number of signatures towards the required minimum number of valid signatures required for the initiative, referendum, or recall effort.

Subdivision (a) is included to state that if the petition meets all statutory requirements related to the petition being examined, the signature on the petition shall be included in a raw count, and the signature will be subject to signature verification. This subdivision is included to make the

process clear for a petition with no issues, as there are scenarios in subdivisions (b) and (c) where there are issues with the petition format that impact whether or not the signature is subject to signature verification.

Subdivision (b) introduces the subsequent subsections that provide scenarios for petitions that may not meet all statutory requirements, but that are not such a deviation from the required format that the signature would be included in a raw count and subject to signature verification. Subdivision (b) is non-substantive.

Subsection (1) provides guidance in the event the petition does not identify the jurisdiction in which the petition was circulated. Under Elections Code sections 9021 (for initiatives) or 11047 (for a recall), the petition is to include information on where the petition is circulated. While this is required, the lack of this information on a petition is not a defect that would automatically invalidate a voter's signature. This does not put the validity of a petition in question, and the voter should not be penalized due to this missing information. Upon review of the petition, a county elections official will be able to determine whether or not the petition was circulated in their county.

Subsection (2) provides guidance if a petition has signatures on the back of a petition. A typical petition is printed only on one side, and includes a declaration of circulator after the signatures. In addition, each page that contains signatures must contain the elements required by the Elections Code for the type of petition being circulated, which includes the declaration of circulator. Any signature that is after the declaration of circulator is invalid because in that instance it is not clear that the circulator witnessed the signature being written, which is a requirement under Elections Code section 104(b). This subsection specifically excludes recall petitions, which must be reviewed by the appropriate elections official prior to circulation.

Subsection (3) provides guidance for a filed petition that indicates that it was circulated in the county of filing county, but contains signatures from other counties. The proponent of a petition must file the signed petitions with the elections official in which the petition was circulated. In addition, the signer of a petition must be a registered voter in the county in which they sign a petition. The elections official verifies the signatures of voters within their county only. For example, County A only has the voter record of Voter A. If a petition is filed in County A with a signature of Voter B who resides in County B, County A does not have any information from Voter B's record to compare Voter B's signature on the petition with. In addition, this subsection provides for the inclusion of a signature from a voter in another county in a raw count, but that signature shall not be subject to signature verification.

Subsection (4) provides guidance for a filed petition that indicates that it was circulated in a county other than the county where the petition was filed, but contains signatures from the county in which it was filed. The proponent of a petition must file the signed petitions with the elections official in which the petition was circulated. In addition, the signer of a petition must be a registered voter in the county in which they sign a petition. The elections official verifies the signatures of voters within their county only. For example, County A only has the voter record of Voter A. If a petition is filed in County A with a signature of Voter B who resides in County B, the County A does not have any information from Voter B's record to compare Voter

B's signature on the petition with. In addition, this subsection provides for the inclusion of a signature from in a voter in another county in a raw count, but that signature shall not be subject to signature verification.

Subsection (5) provides guidance in the event the filed petition section is photocopied, but it includes all elements required by the Elections Code for the petition in question, and bears original signatures, original printed names and residence addresses in accordance with Elections Code sections 100 and 9020. The Elections Code does not specify that an original petition must be provided by a proponent, as that would be an unduly burdensome requirement for petition proponents and circulators.

Subsection (6) provides guidance in the event the entire petition section is reproduced in handwriting, but it includes all elements required by the Elections Code for the petition being examined. The Elections Code does not require that a petition be typed or produced by a computer. This subsection specifically excludes recall petitions, which must be reviewed by the appropriate elections official prior to circulation.

Subsection (7) provides guidance in the event the petition section does not include a one-inch space at the top of each page and/or after the name of the signer. The Elections Code requires a one-inch space to be left blank at the top of a petition and after the signature box on the petition. These spaces are for use by elections officials, but a lack of this space does not automatically disqualify the signatures on the petition. While this is a requirement, this does not impede the ability of an elections official to verify a signature, and the signer of a petition should not be penalized for a formatting error made by a proponent. This subsection specifically excludes recall petitions, which must be reviewed by the appropriate elections official prior to circulation.

Subdivision (c) introduces the subsequent subsections that provide scenarios for petitions that may not meet all statutory requirements, but that are such a deviation from the required format that the signature would not be included in a raw count and would not be subject to signature verification. Subdivision (c) is non-substantive.

Subsection (1) provides guidance in the event a petition directs signers to provide their registration address rather than their residence address. A signer must provide their residence address on a petition pursuant to Elections Code sections 100 and 9020, and that address is verified as part of the petition examination. A voter's registration address may differ from their residence address. This subsection specifically excludes recall petitions, which must be reviewed by the appropriate elections official prior to circulation.

Subsection (2) provides guidance in the event one or more pages of a multi-page statewide initiative or referendum petition section fail to include the title and summary provided by the attorney general's office, but other pages within the same section do contain the title and summary. A statewide initiative or referendum petition must include the title and summary of the initiative or referendum that is prepared by the attorney general in accordance with Elections Code sections 9008, 9014, and 9108. If the petition does not include the title and summary, then it is not clear what the voter is actually signing, therefore any signatures would not be valid. However, if there are pages within the petition section that do contain the title and summary

prepared by the attorney general, those signatures can be subject to signature verification. A defect on one page does not automatically invalidate other pages that do have the title and summary.

Subsection (3) provides guidance in the event the required text of a measure, declaration of circulator, and/or the title and summary prepared by the attorney general have been cut off one page of a multi-page petition section. A petition section can be a single page or multiple pages that are bound together. These elements are required to be on a petition pursuant to Elections Code sections 104, 9008, 9014, 9022, 9108, and 9109. If the petition section does not contain one or more of these elements, then it may not be clear what the voter is actually signing, or in the case of the declaration of circulator, it is unknown how and when the signatures were obtained. However, the if one of the required elements is missing from one page of a petition section, that does not automatically invalidate other pages of the same section that do have all of the required elements.

Subsection (4) provides guidance for signatures that are on loose-leaf or other paper informally identified as part of a petition section, but the loose-leaf or other paper does not include all elements required by Elections Code sections 9008, 9010, 9014, and/or 9108. If the petition section does not include one or more of these elements, then it may not be clear what the voter is actually signing. This subdivision specifically excludes recall petitions, which must be approved by the appropriate elections official prior to circulation. This subsection also does not apply to a nomination petition or a signature in-lieu filing fee petition, neither of which are required to include a caption, text, or a title and summary.

Subsection (5) provides guidance for a statewide initiative or referendum petition that does not include the California Attorney General's identification number, which is required by Elections Code sections 9004 and 9008. If the petition section does not include these elements, then it may not be clear what the voter is actually signing.

ARTICLE 3. PETITION SIGNATURES AND RESIDENCE ADDRESSES

20930. Petition Signatures

An individual who signs a petition must be a registered voter in the jurisdiction in which the petition is being circulated. In accordance with Elections Code section 100, when signing a petition, the voter must also include their printed name and their residence address.

Subdivision (a) introduces subsequent subsections that provide guidance for elections officials to follow in the event a signature on a petition that has an issue with format and/or placement, but is not such a deviation that would prevent the signature from being included in a raw count, and the subjecting the signature to signature verification. Subdivision (a) is non-substantive.

Subsection (1) provides guidance in the event two voters sign in the same signature box, but only one residence address is listed. If the elections official can determine which signer wrote the residence address, then only that signature may be subject to signature verification. However, if the elections official is unable to determine which signer wrote the residence address, then

neither signature shall be subject to signature verification. In addition, if the signers' registration was electronic or typed, and there is no handwriting to compare, only the first signature shall be subject to verification. An electronic registration would occur via an online voter registration.

Subsection (2) provides guidance in the event the signer does not print out their full name, and instead prints and/or signs the petition using Mr. & Mrs. Smith, or uses a nickname, initials, prefixes, maiden name, married name, spouse's name or a misspelling. In the event this occurs the signature shall be subject to verification only if it appears that the printed or variation of the name appears to have been made by the same person with the similar signature and correct residence address.

Subdivision (b) introduces subsequent subsections that provide guidance for elections officials to follow in the event a signature on a petition that has an issue with format and/or placement, but is not such a deviation that would prevent the signature from being included in a raw count, but is such a deviation that would deem the signature not subject to signature verification. Subdivision (b) is non-substantive.

Subsection (1) provides guidance in the event the voter does not actually sign the petition. When registering to vote, the voter is required to sign the affidavit of registration. In the event the voter printed their name in the signature portion of the affidavit of registration, the printed name on the petition may be compared to the printed name in the voter's registration record. If the voter signed their voter registration affidavit, and only printed their name on the petition, there is no signature to verify.

Subsection (2) provides guidance in the event a line appears through a portion of the signature box. In this instance, if a line appears through a signature, name, or address, but not all three, the elections official shall have the discretion to determine whether or not there is sufficient information present to subject the signature to the verification process. A line through the entire signature box indicates that this signature is not intended to be a part of the petition, but this is not necessarily the case if only a portion is stricken.

Subsection (3) provides guidance in the event the signer does not provide a written or printed name. Absent a written or printed name, the elections official likely determine who the signer is, and therefore will not have a voter registration record to compare the signature on the petition to.

Subdivision (c) introduces subsequent subsections that provide guidance for elections officials to follow in the event a signature on a petition that has an issue with format and/or placement which is such a deviation that would prevent the signature from being included in a raw count and would deem the signature not subject to signature verification. Subdivision (c) is non-substantive.

Subsection (1) provides guidance in the event a line appears through the name, address, and signature of the signer. In this instance, it is presumed that the signature is not intended to be a part of the petition.

Subsection (2) provides guidance in the event correction tape or correction fluid is used to cross out the signer's information, and new information is written on top of the correction tape or correction fluid. In this instance, it is unclear as to when the correction tape or correction fluid was used, and therefore puts the validity of the signature in question. This action could have taken place after the petition was circulated, which would be contrary to Elections Code section 104.

Subsection (3) provides guidance in the event no signatures or identifying information appears in the signature boxes of the petition, but one or more signatures appear in the completed declaration of circulator. If there are no signatures in the signature boxes, then there is nothing for the elections official to review.

Subsection (4) provides guidance in the event signatures appear after the declaration of circulator. Pursuant to Elections Code section 104, the signatures must be above the declaration of circulator.

20931. Residence Address

When a voter signs a petition, they must include their residence address on the petition, as required by Elections Code section 100. The elections official uses the residence address of the voter when reviewing a petition to ensure that the voter is entitled to sign the petition.

Subdivision (a) introduces subsequent subsections that provide guidance for elections officials to follow in the event an issue with the provided residence is present, but that issue does not prevent a signature from being included in a raw count, and the signature shall be subject to signature verification. Subdivision (a) is non-substantive.

Subsection (1) provides guidance in the event the signer provides the correct house number and street name, but either fails to provide an apartment number or provides an incorrect apartment number from what is in the voter's registration record. This reflects the practice set forth in Elections Code sections 105(a)(2) and 9020(a)(3), but is reproduced in subsection (1) for ease of reference for an elections official reviewing a petition.

Subsection (2) provides guidance if the signer abbreviates the street name of their residence address or uses another commonly-used name for the street. Street names can change over time, or can be identified by a commonly used name in the community that is not the official name. This subsection applies if the house number is the same, the elections official can determine the actual residence address of the voter. This subsection provides examples of acceptable variations in the identification of a street name.

Subsection (3) provides guidance in the event the signer provides the correct street name and number of their residence address, but either omits or includes a different fraction than what is included in the voter's registration file. The failure to include a fraction, or including a different fraction is treated the same as a missing or different apartment number.

Subsection (4) provides guidance in the event the signer provides a P.O. Box and a street address in the same box. A P.O. Box cannot be used as a residence address, so that can be ignored by the elections official. If the provided address matches the residence address in the voter's registration record, the signature may be subject to signature verification by the elections official.

Subsection (5) provides guidance in the event the signer provides two residence addresses in the same box. If the signer moved during the time the petitions section bearing the signature was circulated, and the voter was properly registered at one of the addresses during that time, the signature may be subject to signature verification by the elections official. Due to a recent move, the signer may not remember what their official voting residence address is.

Subsection (6) provides guidance in the event the signer fails to provide the city of residence. With a possibility that the same street and street number exists within the same zip code, the elections official would not be able to clearly identify the voter and therefore there would be no voter registration record to compare the signature to.

Subsection (7) provides guidance in the event the signer abbreviates or uses another name for the city, if the city name is commonly used and the post office delivers to the provided residence address. This subsection provides examples of acceptable variations in the name of a city.

Subsection (8) provides guidance in the event the signer uses cursive writing in the space designated for their printed name. If the signer can be identified, the signature shall be subject to signature verification. However, if the signer cannot be identified, the elections official will not be able to properly identify the signer and will not have a registration record to compare the signature to, and therefore cannot subject the signature to signature verification.

Subsection (9) provides guidance in the event the signer either adds or omits a suffix such as Jr. or II from either the petition or what is contained in the voter registration record. The addition of a suffix or the omission of a suffix does not preclude the signature from being subject to signature verification if the residence address provided on the petition matches the residence address in the voter's registration record.

Subsection (10) addresses situations where a signer provides a non-traditional residence address, or provides a residence address that differs from the residence address in the voter's record, but the residence address is in the same precinct. With a nontraditional address, a voter is more likely to move within the precinct, but may not update their full residence address. In addition, a voter who moves to a new residence address next door or across the street may not realize that they need to update their voter registration information.

Subsections (A) through (E) provide examples of a nontraditional residence addresses, which include a Native American Indian Reservation, a marina or boat slip, a university building or residence hall, a military base, or a mobile home park. For each of these addresses, there is likely an identifiable address, but voters who reside in these areas and move within the area are not always aware that they should update their voter registration information. The purpose of this subsection (10) and subdivisions (A) through (E) are to ensure that a voter's signature is included in a raw count and is subject to verification for a move to or from a nontraditional

residence address within a precinct, such as a move from one boat slip to another, or to another room in a dormitory, but did not update their registration to reflect such a move.

Subsection (11) introduces scenarios for address changes made after the petition being examined is filed, when the address change due is to the receipt of an address update label affixed by the post office. Subsection (11) is non-substantive.

Subsection (A) provides guidance in the event the residence address on the petition is the same residence address changed via the update label, and the effective date of the registration update (or transaction date if no change was made to the voter's record) is on or before the date the voter signed the petition. In this instance, the signature shall be included in a raw count and the signature shall be subject to signature verification because the voter was eligible to sign the petition with that new address. However, if the effective date of the registration update (or transaction date if no change was made to the voter's record) is after the date the voter signed the petition, the signature shall not be subject to verification because the voter was not registered at that address when the petition was signed.

Subsection (B) provides guidance in the event the residence address on the petition is different than the residence address changed via the update label, and the effective date of the registration update (or transaction date if no change was made to the voter's record) is after the date the voter signed the petition. In this instance, the signature shall be included in a raw count and the signature shall be subject to signature verification because the voter was registered at the correct address when the petition was signed. However, if the effective date of the registration update (or transaction date if no change was made to the voter's record) was made on or before the voter signed the petition, the signature shall not be subject to verification because the voter was not registered at that address when the petition was signed.

Subsection (C) clarifies how the elections official will determine the date the petition was signed based upon the information provided in the declaration of circulator. Determining this date will allow the elections official to determine which address the voter was registered at during the time the petition was circulated based upon the timing of the update to the address via the update label provided by the post office.

Subdivision (b) introduces subsequent subsections that provide guidance for elections officials to follow in the event an issue with the provided residence is present, but that issue does not prevent a signature from being included in a raw count, but does prevent the signature from being subject to signature verification. Subdivision (b) is non-substantive.

Subsection (1) provides guidance in the event the signer provides a house number on the petition that is different from the house number in their registration record. This is treated as a move, and changing a house number would require the voter to update their residence address prior to the day the petition was signed. The date of signing would be determined by the dates provided in the declaration of circulator. However, if the residence address was changed to include the updated house number by the time the petition was signed, then the signature shall be subject to signature verification.

Subsection (2) provides guidance in the event the signer transposes the house number of their residence address on a petition. In this event, the signature shall not be subject to signature verification because the provided residence address does not match the residence address in the voter's registration record. However, if the signer signed the same petition twice and only transposed the number of the residence address on one of the signatures, the signature that is accompanied by the correct residence address will be subject to signature verification, and the other signature will be deemed invalid (if the house number exists), or as a duplicate (if the house number does not exist).

Subsection (3) provides guidance in the event the signer does not use their own handwriting to write their name, residence address or signature, or that information is preprinted prior to circulation. Under Elections Code section 100, the signer is required to personally affix that information to the petition. Under Elections Code sections 100.5 and 354.5(e), an exception to this rule applies if the signer is disabled and cannot print or sign their name or write their residence address, or if the voter has a signature stamp that is the same as on the voter's registration record. In this instance, a witness must also sign the petition in order for the signature to be subject to signature verification.

Subsection (4) provides guidance in the event the signer provides only a P.O. Box, or fails to include a residence address. A P.O. Box is not a valid address for registration purposes. When registering to vote, the voter must provide a residence address in accordance with Elections Code section 2150. Without a residence address on a petition, the elections official would not be able to determine the residence address of the signer, and therefore would not have any information to compare the residence and signature of the voter on the petition against the information in a voter's registration record. However, if the signer has no residence address and the signer provides the cross streets of their place of dwelling on the petition and those cross streets match the cross streets in their voter registration information, the signature shall be subject to signature verification.

Subsection (5) provides guidance in the event the signer fails to include the name of the city and the zip code of their residence address. As there may be more than one occurrence of the same address within a jurisdiction, the elections official would not be able to determine the residence address of the signer, and therefore would not have any information to compare the residence and signature of the voter on the petition against the information in a voter's registration record.

Subsection (6) provides guidance in the event the petition is signed by a voter with no residence address. For example, a homeless person can register to vote, but they must provide the cross streets of where they reside in order to register. Any change in cross streets requires the voter to update their registration. If the cross streets provided on the petition do not match the cross streets in the voter's registration record, the signature on the petition shall not be subject to signature verification.

Subsection (7) provides guidance in the event the signer is a pre-registered voter. A pre-registered voter is not considered a registered voter, and therefore is not eligible to sign a petition until they reach the age of 18. Subsection (7)(A) provides guidance to the elections official for

the determination of the timing of the circulation and the timing of a pre-registered voter becoming a registered voter.

ARTICLE 4. VOTER REGISTRATION STATUS

20940. Timing of Registration

As required by Elections Code section 100, the signer of a petition must be a registered voter at the time of signing. The purpose of this section is to provide guidance for the determination of when the signer of a petition became a registered voter.

Subdivision (a) provides guidance to the elections official when a voter registers to vote at or near the time of signing the petition. The Elections Code does not prohibit a voter from registering to vote at the same time they sign the petition. For guidance, the elections official can utilize Section 19076 of Title 2 of the California Code of Regulations for a proper determination of the effective date of a voter's registration.

Subdivision (b) introduces subsequent subsections that provide guidance for elections officials when voter registration dates are at or near the time the petition was signed, and the registration determination results in a signature being included in a raw count, and the signature being subject to signature verification. Subdivision (b) is non-substantive.

Subsection (1) provides guidance in the event the residence address on the petition is different than the residence address in the voter's registration record. If the current residence address in the voter's registration record is different than the petition due to a recent change of the residence address, the signature shall be subject to signature verification if the residence address was correct at the time the voter signed the petition. The date of signing can be determined by the dates of circulation provided in the declaration of circulator.

Subsection (2) provides guidance in the event the signer's paper voter registration affidavit does not contain a date of execution, but was received by the elections official on or before the last date of circulation of that petition section provided in the declaration of circulator. This provision would not apply to an electronic registration, which would automatically contain a date of execution. However, if the undated affidavit of registration was received after the last date of circulation provided in the declaration of circulator, the signature shall not be subject to signature verification

Subdivision (c) introduces subsequent subsections that provide guidance for elections officials when voter registration dates are at or near the time the petition was signed, and the registration determination results in a signature being included in a raw count, but the signature not being subject to signature verification. Subdivision (c) is non-substantive.

Subsection (1) provides guidance if the signer has provided a different residence on the petition from the residence address in the voter's registration record, but the residence address is within the same precinct. This situation would apply in the event the signer has a nontraditional residence address, such as an address on a Native American Indian Reservation, in a marina or

boat slip, at a university, on a military base, in a mobile home park, or if the voter is homeless and has provided cross streets for their residential address.

Subsection (2) provides guidance in the event the voter's registration affidavit was signed after the petition section was signed, based upon the dates of circulation provided in the declaration of circulator. In this instance, the voter was not registered at the time of signing, therefore the signature is deemed invalid.

Subsection (3) provides guidance in the event the signer is a pre-registered voter, but was not 18 at the time the petition was signed. A pre-registered voter is not considered a registered voter, and therefore is not eligible to sign a petition until they reach the age of 18.

Subsection (4) provides guidance in the event the signer's paper voter registration affidavit does not contain a date of execution, but was received by the elections official after the last date of circulation of that petition section provided in the declaration of circulator. If it cannot be determined that the signer was registered to vote at the time the petition was signed, the signature is deemed invalid.

20941. Automatic Updates to a Voter's Registration

The purpose of this section is to provide guidance when a voter's registration is updated by another means than the voter submitting a new affidavit of registration or an update to their information. An automatic update can occur in several ways: through a National Change of Address (NCOA) process through the United States Postal Service pursuant to Elections Code section 2222, via a DMV transaction pursuant to Elections Code section 2263, from forwardable notices sent by elections officials pursuant to Elections Code section 2225(b), or from forwardable "8d2" notices sent by elections officials pursuant to 52 U.S.C. § 20507.

If a voter's registration is automatically updated after a petition was circulated, then the elections official must determine what the proper residence address of the voter at the time the voter signed the petition.

Subdivision (a) provides for the inclusion of a signature in a raw count, and for the elections official to determine whether or not the signature shall be subject to signature verification based upon the addresses being the same on the petition and in the voter's record, the effective date of the address change, and the date the petition was signed (based upon the circulation dates provided in the circulator's declaration).

Subdivision (b) provides for the inclusion of a signature in a raw count and for the elections official to determine whether or not the signature shall be subject to signature verification based upon the address being different on the petition and in the voter's record, the effective date of the address change, and the date the petition was signed (based upon the circulation dates provided in the circulator's declaration).

20942. Canceled and Inactive Registrations

As required by Elections Code section 100, the signer of a petition must be a registered voter at the time of signing.

Subdivision (a) provides guidance to the elections official in the event a signer is a confirmed canceled voter. If one of the scenarios provided in subsections (1) or (2) is applicable, the signature shall be included in a raw count, and the signature shall be subject to signature verification.

Subsection (1) provides guidance with respect to the effective date of the cancelation of a voter's registration. If the effective date of the cancelation of the voter's registration was after the last date of circulation of the petition section based upon the circulation dates contained in the declaration of circulator, the signature shall be subject to signature verification because the voter is deemed registered at the time of signing the petition. However, if the effective date of the cancelation of the voter's registration was before the first date of circulation of the petition (or if the address on the petition is different than the residence address in the voter's registration record), the signature shall be deemed invalid.

Subsection (2) provides guidance in the event the signer's voter registration was canceled by the elections official in error. In this instance, the signer shall be deemed properly registered, and eligible to sign the petition, and the signature shall be subject to signature verification.

Subdivision (b) provides guidance in the event the signer of the petition is an unconfirmed inactive voter. An unconfirmed inactive voter has been sent a residency verification notice based upon the notice of an address change that did not come from the voter, but the notice has not yet been received by the elections official. The unconfirmed active voter is still considered a registered voter, and therefore is eligible to sign a petition. If the residence address provided on the petition matches the residence address in the voter's registration record, the elections official will restore the voter's residence address in the voter's registration record, and the signature shall be subject to signature verification.

Subdivision (c) acknowledges that if a signer of a petition has a registration status of inactive, as defined by Section 19062(o) of the California Code of regulations, and provides a residence address on the petition that matches the residence address of the voter in the voter's registration record, the registration status of the voter shall be updated to active by the elections official.

20950. Declaration of Circulator

A petition that is circulated for a voter's signature is required to contain a declaration of circulator that is in compliance with Elections Code section 104.

Subdivision (a) acknowledges that a signature on a petition that has a declaration of circulator that fully complies with Elections Code section 104 shall be included in a raw count and the signature shall be subject to signature verification.

Subdivision (b) introduces subsequent subsections that provide guidance for elections officials when a declaration of circulator does not fully comply with the provisions of Elections Code section 104, but the deviation is minimal, so the signature shall be included in a raw count, and the signature shall be subject to signature verification. Subdivision (b) is non-substantive.

Subsection (1) provides guidance in the event the circulator does not sign their entire name, including their middle name. The failure of the circulator to include the middle name does not prevent the elections official from determining who the circulator is, as the circulator must include their residence address in the declaration of circulator. In addition, Elections Code section 104 does not specifically require that the circulator include their full name.

Subsection (2) provides guidance in the event the dates of circulation in the declaration of circulator are in handwriting different from the circulator's handwriting, and the difference is subtle or not readily apparent. A difference in the handwriting could be the result of filling out the dates at a separate time than when the circulator wrote their name and residence address in the declaration of circulator. However, in the event the difference in handwriting is obvious, then that would invalidate the signatures on the petition as it would not be clear if the person filling out the declaration of circulator actually circulated the petition.

Subsection (3) provides guidance in the event the year of circulation in the circulator's declaration is not handwritten by the circulator. In many cases, a petition is circulated within the same year. In this instance, as long as the month and day are handwritten by the circulator, it does not put the validity of the declaration into question.

Subsection (4) provides guidance in the event the circulator did not provide a date of execution or dates of circulation in the declaration of circulator, but rather signed the petition and provided a date of signing. While this is required information, if the circulator signed the petition and dated it, and also signed the declaration of circulator, the elections official can determine an approximate time of circulation to ensure that the signatures of voters are not automatically invalidated. In addition, the elections official will use this date for determining the registration status of the signers of the petition.

Subsection (5) provides guidance in the event the declaration of circulator includes only completed space. The declaration of circulator is to include separate spaces for the beginning and ending dates of circulation. While it is required that both spaces be filled out, the elections official has at least one date of circulation present to determine if the petition was circulated within the allotted time. In addition, the elections official will use this single date for determining the registration status of the signers of the petition.

Subsection (6) provides guidance in the event the declaration of circulator contains either a date of circulation or a date of execution, but not both. While both sections are required to be completed, the elections official will have at least one date present to determine if the petition was circulated within the allotted time. In addition, the elections official will use this single date for determining the registration status of the signers of the petition.

Subsection (7) provides guidance in the event the dates on the declaration of circulator are after the date the petition section was filed. This is deemed an obvious error because it is not possible to circulate a petition section after it has been filed, and does not put the validity of the petition section in question. Therefore, the signatures may be subject to verification.

Subsection (8) provides guidance in the event the petition section contains dates supplied voluntarily by the signer(s), and conflict with the dates contained in the declaration of circulator. While signers are not required to provide a date of signing, at times they provide that information anyway. In this instance, the dates provided by the circulator in the declaration of circulator are presumed correct, as the circulator must declare under penalty of perjury that the content of the declaration of circulator is true and correct.

Subsection (9) acknowledges that a petition section is not invalidated if the circulator is not registered to vote, or is not registered in the jurisdiction in which the petition is circulated. Previously, there were residency and registration requirements for circulators, and elections officials were to verify that the circulator was eligible to serve. Under current Elections Code section 102, the only requirement is that the circulator be at least 18 years of age.

Subsection (10) is to acknowledge that a petition section is not invalidated because the circulator is not a resident of the state or political jurisdiction in which the petition is circulated. Previously, there were residency and registration requirements for circulators, and elections officials were to verify that the circulator was eligible to serve. Under current Elections Code section 102, the only requirement is that the circulator be at least 18 years of age.

Subsection (11) provides guidance in the event the circulator fails to provide an address or provides a P.O. Box in the declaration of circulator. Although the circulator is required to provide their residence address, this does not automatically invalidate a petition section. Previously, there were residency and registration requirements for circulators, and elections officials were to verify that the circulator was eligible to serve. Under current Elections Code section 102, the only requirement is that the circulator be at least 18 years of age.

Subsection (12) provides guidance in the event the circulator failed to sign the declaration of circulator, but is also a signer on the same petition section and provides their residence address and signature. In this instance, there is a signature on the petition that the elections official to use to identify the circulator. However, if the circulator is not a signer, then the validity of the petition is in question, and the signatures are automatically invalidated.

Subdivision (c) introduces subsequent subsections that provide guidance for elections officials when a declaration of circulator does not fully comply with the provisions of Elections Code section 104, but the variations are such that the signature shall be included in a raw count, but the signature shall not be subject to signature verification. Subdivision (c) is non-substantive.

Subsection (1) provides guidance in the event signatures appear in the signer's spaces, but the declaration of circulator is left blank or is unsigned. If there is no information provided in the declaration of circulator, the validity of the petition is in question and the signatures are automatically invalidated. As an example, in this instance it is not clear when the petition was

circulated, and could have been circulated prior to the date the proponent was given notice that circulation may commence.

Subsection (2) provides guidance in the event it is readily apparent that the dates of circulation in the declaration of circulator are in handwriting different from the circulator's handwriting. In this instance, the validity of the petition is in question, and the signatures are automatically invalidated. As an example, in this instance it is not clear when the petition was circulated, and could have been circulated prior to the date the proponent was given notice that circulation may commence.

Subsection (3) provides guidance in the event the day of the month and/or the month provided in the circulator's declaration is preprinted or stamped. The circulator is required to complete the declaration in their own handwriting pursuant to Elections Code section 104. If a stamp is present, it is not readily apparent that the stamp was affixed at the time the declaration of circulator was completed, which puts the validity of the petition in question, and the signatures are automatically invalidated.

Subsection (4) provides guidance in the event the declaration of circulator has no date of execution and no date of circulation. The failure to include any dates puts the validity of the petition section in question as it is not known when the petition was circulated. For example, the petition it could have been circulated prior to the time the proponents were given notice that circulation may commence.

Subsection (5) provides guidance in the event the month, day, or year of circulation in the declaration of circulator precede the first date of circulation. In this instance it is possible that the petition was circulated prior to the time the proponent was provided notice that circulation may commence. Any signature obtained prior to the time circulation may commence is automatically invalidated.

Subsection (6) provides guidance in the event information that is required to be in the circulator's own handwriting in the declaration of circulator is photocopied. Elections Code section 104 requires that the circulator fill out the declaration in their own handwriting. A declaration of circulator with photocopied information puts the validity of the petition in question, and automatically invalidates the signatures on the petition.

Subsection (7) provides guidance in the event the circulator did not sign the declaration of circulator, and is not a signer of that petition section. In this instance it is not clear whether or not the circulator actually circulated the petition and witnessed the signatures being written. Elections Code section 104 requires the circulator to certify the content of the declaration under penalty of perjury. The failure of the circulator to sign under penalty of perjury puts the validity of the petition in question, and automatically invalidates the signatures on the petition.

Subdivision (d) introduces subsequent subsections that provide guidance for elections officials when a declaration of circulator does not contain specific dates of circulation, but rather contains generalized dates of circulation, and the voter's registration date is between those generalized

dates. The signer must be a registered voter at the time the petition is signed. Subdivision (d) is non-substantive.

Subsection (1) provides for the inclusion of a signature in a raw count and subjecting the signature to signature verification if the circulator's declaration contains only a month and a year, and the voter's registration date falls within those generalized dates. This subdivision provides examples of when a voter's registration date is within those generalized dates.

Subsection (2) provides for the inclusion of a signature in a raw count, but the exclusion of a signature from signature verification if the circulator's declaration contains only a month and a year, and the voter's registration date falls outside of those generalized dates. This subdivision provides examples of when a voter's registration date falls outside of generalized dates of circulation.

Subdivision (e) acknowledges that, pursuant to Elections Code sections 104(b)(4) and 107, the elections official is to verify that the petition either has a disclosure statement provided by Elections Code section 107(b), or the declaration of circulator contains a statement that the circulator provided each signer a separate unfalsified "Official Top Funders" sheet required by Elections Code section 107.

ARTICLE 6. SIGNATURE COMPARISON

20960. Signature Verification Process

This section provides direction for elections officials to follow when a signature on an election-related petition, a vote-by-mail identification envelope, or a provisional ballot envelope are compared to the signature(s) in the voter's registration record.

Subdivision (a) introduces the premise that the elections official is required to compare signatures on election-related petitions, a vote-by-mail identification envelope, or a provisional ballot envelope. Subdivision (a) is non-substantive.

Subdivision (b) provides that, prior to reviewing a signature, the elections official is to remove any identifying information provided by the voter (aside from their residence address). The purpose of this action is to ensure that the elections official does not review or consider a voter's party preference, race, or ethnicity. The intent is that the elections official reviews the signature on its own without the consideration of any outside information. A variation of this subdivision (b) was included in the emergency text as subdivision (e). Subdivision (e) from the emergency text has been removed as it is duplicative.

Subdivision (c) directs the elections official to begin the signature verification process with the premise that the signature is the actual signature of the voter. Elections officials are to liberally construe in favor of the voter. Additional text has been added to the emergency text to clarify all of the items in which a may sign.

Subdivision (d) provides that an exact match of the signature is not required. The elections code utilizes the term “compare,” so this section is included to make the standard clear for elections officials. In addition, the added text provides clarity by stating that if signatures share similar characteristics, then that can be sufficient to determine that a signature is valid. This additional text was included in Senate Bill 503 (Chapter 319 of the Statutes of 2021), which will be effective January 1, 2022. Although this is a recitation of the Elections Code, the additional text is included for ease of reference for elections officials.

Subdivision (e) provides that similar characteristics between the signature being examined and the signature(s) in the voter’s registration record are sufficient to determine that a signature is valid. The Elections Code does not require an exact match.

Subdivision (f) provides general signature characteristics for use by elections officials when examining a signature. These characteristics are available tools for an elections official to utilize if it is not clear that the signature on a petition or a voted ballot envelope is the same as the signature(s) in the voter’s registration record. Using these characteristics can help an elections official determine if the signatures are from the same signer. Elections officials are to review each signature carefully to ensure the signature is from the same signer, and also to ensure a signature is not rejected because it is not an exact match to the signature(s) in the voter’s registration record.

Subdivision (g) provides for additional considerations that elections officials may utilize when examining a signature. These considerations take into account personal characteristics of a voter that may lead to the voter’s signature differing from the signature(s) in the voter’s registration record. Elections officials are to review each signature carefully to ensure the voter is not disenfranchised. Text has been added and removed from the emergency regulations text to clarify that this provision applies to all items a voter may sign, not just a ballot envelope.

Subdivision (h) provides additional factors for elections officials to consider when examining a signature. Not all signatures from the voter are current, the signature in the voter’s registration file may be digitized, or the voter may have a disability that prevents them from signing their name the same way. Elections officials are to review each signature carefully to ensure the voter is not disenfranchised.

Subdivision (i) clarifies that a signature being examined must contain several differing characteristics from the signature(s) in the voter’s registration record prior to the signature being rejected. One or two differing characteristics can be attributed to the factors provided in subdivisions (f) and (g), so it must be clear that the signature does not compare. Elections officials are to review each signature carefully to ensure the voter is not disenfranchised.

To ensure a thorough review, subdivision (j) requires at least two other elections officials to review a questionable signature before it is rejected. This ensures that the signature is reviewed very carefully by multiple elections officials prior to a ballot being rejected.

Subdivision (k) provides that the elections official examining a signature may use different techniques when reviewing a signature. The elections official examining the signature is in the best position to determine how a particular signature should be reviewed.

Subdivision (l) acknowledges that a voter may use a mark or a signature stamp on their vote-by-mail ballot identification envelope or provisional ballot envelope. The signature made using a mark or a stamp is presumed valid if it meets the requirements set forth in Elections Code section 354.5. This additional text was included in Senate Bill 503 (Chapter 319 of the Statutes of 2021), which will be effective January 1, 2022. Although this is a recitation of the Elections Code, the additional text is included for ease of reference for elections officials.

20961. Signature Verification Technology

This section acknowledges that a county elections official may, under Elections Code section 3019, use signature verification technology to compare the signature on the vote-by-mail identification envelope to the signature(s) in the voter's registration record. This section also provides that if the signature verification technology rejects a signature, that signature must be manually examined by the elections official pursuant to Elections Code section 3019(a)(3), and also requires the elections official to utilize the criteria set forth in Section 20960.

20962. Signature Verification Training

This section provides that the Secretary of State, in coordination with county elections officials, will provide a yearly training program for elections officials and staff who are responsible for signature verification. This provision is necessary to ensure that elections officials have resources to train their staff, which will lead to consistent signature verification processes throughout the state.

This section provides for topics that must be addressed in the yearly training program.

In the original emergency rulemaking text, this section provided for voluntary training. As signature verification is an extremely important task, the Secretary of State has determined that training is necessary to ensure consistent signature verification procedures throughout the state.

ARTICLE 7. SIGNATURE WITHDRAWAL

20970. Signature Withdrawal

Subdivision (a) acknowledges that a voter has the right to request that the elections official remove their signature from a petition pursuant to the provisions of Elections Code sections 103, 9602, 11108(b), or 11303.

Subdivision (b) introduces guidelines for elections officials to follow when a withdrawal request is received from a voter. In order for a withdrawal request to be valid, it must contain certain elements and be timely received by the elections official. Subdivision (b) is non-substantive.

Subsection (1) provides a list of defects that would render a signature withdrawal request unacceptable. To properly identify the voter and the petition in which the voter is requesting their name to be removed from the request must include the identification name or number of the petition, the signature of the voter, the current residence address of the voter, and a statement that the voter seeks to withdraw a signature after signing a petition. Without these elements, the elections official would be unable to determine whether or not the withdrawal request is valid.

Subsection (2) acknowledges that a pre-printed request to withdraw a signature from a petition is valid if the required information from subsection (1) is included, and the withdrawal includes the signature of the voter. The voter must actually sign the withdrawal request – the signature of the voter cannot be pre-printed.

Subsection (3) clarifies that the signature on the withdrawal request must compare to the signature(s) in the voter's registration record. If the signature does not compare to the signature(s) in the voter's registration record, then it is not clear that the voter who signed the petition actually wishes to withdraw their signature from that petition.

Subsection (4) acknowledges that a signature withdrawal request must be received by the elections official prior to the date the petition is filed pursuant to Elections Code sections 103, 9602, or 11303. Any withdrawal request that is received after the petition is filed shall not be accepted. However, in the case of a recall election, Elections Code section 11108(b) provides for a supplemental signature withdrawal period for the recall of a state officer. This period differs from the routine withdrawal process as it takes place after the Secretary of State has determined that a sufficient number of signatures have been obtained for the recall of a state officer. These requests can be filed within 30 business days after the Secretary of State has provided the notice described in Elections Code section 11108(b).

Subsection (5) provides guidance in the event the written request is dated on or after the date the petition is filed. Such written request may be accepted by the elections official, if it is received prior to the day the petition is filed, because the Elections Code does not require that the written request be dated by the requestor.

Subsection (6) provide guidance in the event the written request is dated prior to the date the petition section with the voter's request is circulated. Such written request may be accepted by the elections official, if it is received prior to the day the petition is filed, because the Elections Code does not require that the written request be dated by the requestor.

Subsection (7) acknowledges that a written request may be received by fax or email. The Elections Code does not specify the method of delivery of a withdrawal request.

ARTICLE 8. UNIFORM VOTE COUNTING STANDARDS

20980. Purpose of This Article

The purpose of this section is to introduce the provisions and content of the Article. This section is non-substantive.

20981. Definitions

The purpose of this section to define certain terms used in this Article. These terms (aside from “personal information”) are not defined in the Elections Code.

The Secretary of State has included the definitions provided in Section 20981 to define terms used in Article 8. These commonly-used terms have been developed and used over the years by the Secretary of State and county elections officials, but these definitions are included for clarity and uniformity. Providing definitions to these terms ensure that interested members of the public are aware of these terms and how they are applied with respect to Article 8. In addition, although current elections officials are aware of what these terms mean and how they are applied with respect to Article 8, including these definitions will ensure that future elections officials will continue to uniformly utilize these terms appropriately.

Subdivision (a) defines the term “blank ballot.” This definition is necessary to clarify what a blank ballot is for the purpose of this article.

Subdivision (b) defines the term “candidate.” This definition is necessary to clarify who a candidate is for the purpose of this article.

Subdivision (c) defines the term “damaged ballot.” This definition is necessary to clarify what a damaged ballot is for the purpose of this article.

Subdivision (d) defines the term “duplicated ballot.” This definition is necessary to clarify what a duplicate ballot is for the purpose of this article.

Subdivision (e) defines the term “listed candidate.” This definition is necessary to clarify who a listed candidate is for the purpose of this article.

Subdivision (f) defines the term “measure.” This definition is necessary to clarify what a measure is for the purpose of this article.

Subdivision (g) defines the term “overvote.” This definition is necessary to clarify what an overvote is for the purpose of this article.

Subdivision (h) defines the term “personal information.” This definition is necessary to clarify what personal information includes for the purpose of this article.

Subdivision (i) defines the term “undervote.” This definition is necessary to clarify what an undervote is for the purpose of this article.

Subdivision (j) defines the term “voting position targets” This definition is necessary to clarify what a voting position target is for the purpose of this article.

20982. General Vote Counting Standards

This section is necessary to provide a uniform set of standards for all counties to follow when voted ballots cast in an election held under the provisions of the Elections Code are being processed. It should be noted that there are additional standards for counting based upon the voting system used by the county, which will be addressed in subsequent sections. This section is designed to ensure uniformity of vote counting throughout the state.

The Elections Code provides for instructions that are to be included on the ballot for voters to follow. However, at times voters do not follow the instructions and mark their ballot in a different way. These differing marks may not be counted by the vote tabulating technology, so elections officials would need to manually review the ballot to determine the voter's intent, and likely remake the ballot according to the provisions of the Elections Code so the ballot of that voter may be tabulated. In addition, the ballot may be damaged in some fashion, which would require the elections official to remake that ballot for tabulation as well.

This section provides guidance for elections officials to follow in the event the ballot has been damaged, and/or the voter has not followed the instructions when filling out their ballot. This section is intended to provide uniform guidance for all elections officials to follow for the purpose of counting a ballot that cannot be tabulated by the voting technology. However, this section also provides guidance to elections officials for when the ballot ultimately cannot be counted.

Subdivision (a) provides guidance for a ballot that is not marked as provided by law. If a ballot is not marked properly, it will not be counted, and therefore must be segregated and counted in the manner directed by the elections official. If a ballot is torn, bent, mutilated, contains personal information of the voter, and/or has markings that interfere with counting by the ballot tabulator, the elections official must duplicate that ballot in accordance with Elections Code section 15210 in order for the ballot to be properly counted. Any other marks or markings present on ballot that do not require duplication shall be counted in the same manner as a ballot that does not have any other markings or issues. In addition, a ballot cast using a remote accessible vote-by-mail system must be duplicated prior to tabulation.

This subdivision recites and summarizes Elections Code sections 13204, 14287, 15154, and 15208. It is necessary to include the recitation and summary of these sections to ensure uniform practices for general vote counting standards. While these sections are clearly provided in the Elections Code, the recitation and summary has been provided in subdivision (a) for ease of reference and application by elections officials.

Subdivision (b) provides guidance in the event the voter does not follow the provided instructions for the manner of marking their ballot. Although the instructions provided will help ensure that the ballot can be counted by the ballot tabulator, if the ballot is not marked properly, the voter's choice for a candidate and/or ballot measure is not rejected unless the elections official is unable to determine the intent of the voter. If the voter's intent cannot be determined by the elections official, the vote for the candidate and/or ballot measure cannot be counted, and therefore shall be considered void.

Subdivision (c) provides guidance on marks made on a ballot by a particular voter. If the voter does not mark their ballot according to the provided instructions, such as “fill in the entire circle of your choice,” the elections official must review the ballot to ensure that the mark represents the voter’s choice, and is made consistently throughout the ballot.

Subsection (1) provides examples of marks that clearly indicate the voter’s intent. If the voter’s marks are consistent throughout the ballot, the voter’s choices will be counted. If the voter’s marks are inconsistent, then the elections official must examine each mark to determine if the voter’s intent can be determined. Examples for this subsection include checkmarks, circles, and completed arrows.

Subsection (2) provides for marks that are deemed an indication that the voter did not intend to choose to vote for a particular candidate or measure. Examples for this subsection include a mark crossed out by the voter or the word “no” next to a candidate’s name or a voting position target. If these marks are present, the vote for that particular candidate or measure shall not be counted.

Subdivision (d) provides guidance in the event the voter provides a partially-filled in voting position target. In this instance, the elections official must review the remaining marks by the voter to determine if the partially-filled in voting target is consistent throughout the ballot. If the voter provides a “hesitation mark” such as a dot in the voting position target, that shall not be considered a valid mark unless it is demonstrated that the voter consistently marked their ballot in such a manner.

Subdivision (e) provides guidance in the event the voter marks a particular contest or ballot measure with more choices than are allowed for. For example, there is a contest with instruction to “vote for one,” on the ballot, but the voter marks two candidates in that contest. This situation is referred to as an overvote. In this instance, the votes for that contest cannot be counted, but the remaining votes on the ballot shall be counted as long as there are no other overvotes and the voter’s choices can be clearly determined.

Subdivision (f) provides guidance in the event the voter does not vote for all of the available offices to be filled or ballot measures that may prevail. This situation is referred to as an undervote. For example, there is a contest with instruction to “vote for three,” so if the voter only marks choices for two, those votes shall be counted. Using the “vote for three” example, the voter is not penalized for only voting for two.

Subdivision (g) acknowledges the procedures in the Elections Code applicable to counting write-in votes. While this section simply refers to existing Elections Code provisions, those provisions are referenced in these regulations to ensure uniform counting of write-in votes throughout the state.

20983. Optical Scan Voting Systems

This section is necessary to provide guidance to elections officials who use optical scan voting systems for casting and tabulating ballots.

The optical scan voting system will provide instructions to voters on how to properly mark their choices on a ballot. However, voters may not follow those instructions, so this section is necessary to provide guidance to elections officials on how to determine whether there is a clear indication on the ballot that the voter has made a definite choice. The scenarios provided in this section refer to the “voting position target” as defined in Section 20981.

The purpose of subdivision (a) is to introduce the application of the section for votes tabulated by an optical scan system. This subdivision is non-substantive.

Subdivision (b) introduces the general standards that follow in the subsequent subdivisions. The standards are used by elections officials in the event the voter does not follow the provided instructions to mark their choice(s) for a candidate and/or ballot measure. If the instructions are not followed, the elections official must determine whether there is a clear indication on the ballot that the voter has made a definite choice. The examples used in this section refer to the “voting position target” as defined in Section 20981. The same principles demonstrated in subdivisions (c) and (d) below shall apply to all types of voting position targets on optical scan ballots, regardless of what form they may take (e.g., rectangle, oval, circle, square, open arrow).

Subdivision (c) provides examples of a voter’s choice on a ballot that shall be considered a valid vote. If the voter does not mark their choice for a candidate (or follow appropriate instructions for a write-in candidate) and/or ballot measure according to the provided instructions, the elections official must review the mark(s) provided by the voter in an attempt to determine the voter’s intent. This subdivision provides specific examples of acceptable marks (and actions relating to write-in-candidates) that a voter may make, which would result in the voter’s choices being counted because the intent of the voter can be readily identified.

Subdivisions (c)(1) through (5) provide examples of differing methods a voter may use when filling in the voting position target that allow the elections official to determine the voter’s intent, and therefore count the voter’s choices as valid.

Subdivision (c)(6) provides guidance in the event the voter indicates that they made an error with the use of correction tape, strikeover, white-out, or generic written note of instruction and marks another vote choice for the same contest on the ballot. In this instance, the voter has made a clear choice after removing their first choice. Voters may not be aware that they can request another ballot if they make a mistake, so this provision allows for a vote to be counted if the voter makes a mistake and then makes a new and clear choice.

Subdivisions (c)(7) through (10) provide guidance with respect to write-in votes. Ballots will have write-in spaces for most offices, and the voter uses that space to write in the name of a candidate who did not qualify to have their name printed on the ballot. In order to become a write-in candidate the candidate must file a declaration of write-in candidacy with the appropriate elections official. Only a write-in candidate who has filed the required documentation may receive votes. In addition, if the voter provides a reasonable facsimile of the write-in candidate’s name, that shall be deemed a valid write-in vote.

Subsection (7) acknowledges that if a voter writes a qualified write-in candidate's name in the designated write-in spaces directly below the list of candidates for that office and marks the associated write-in voting target position, the write-in vote shall be counted. This is the proper procedure that a voter should follow.

Subsection (8) provides guidance in the event the voter writes in the name of a candidate listed on the ballot in the designated write-in space and marks the associated write-in voting target position. Although the proper procedure is to mark the voting target position for the listed candidate, in this case the vote shall be counted as a single vote for the listed candidate, and not disregarded because the listed candidate was not a qualified write-in candidate.

Subsection (9) provides guidance in the event the voter marks a voting target position for a listed candidate and also enters the listed candidate's name in the designated candidate write-in space. Although the proper procedure is to mark the voting target position for the listed candidate, in this case the vote shall be counted as a single vote for the listed candidate, and not disregarded because the listed candidate was not a qualified write-in candidate.

Subsection (10) provides guidance in the event the voter writes in a qualified write-in candidate's name, on the secrecy sleeve envelope or stub and indicates the contest for which the vote is being cast. It should be noted that this scenario only applies in the case of voting systems where write-in spaces appear separately from the list of candidates for an office and do not provide voting position targets.

Subdivision (d) provides examples for a voter's mark on a ballot that shall be considered an invalid vote. If the voter does not mark their choice for a candidate and/or ballot measure according to the provided instructions, the elections official must review the mark(s) provided by the voter in an attempt to determine the voter's intent.

Subsections (1) through (3) provide specific examples of unacceptable marks a voter may make when filling in voting position targets, which would result in the voter's choices not being counted.

Subsections (4) through (7) provide guidance with respect to write-in votes. Ballots will have write-in spaces for most offices, and the voter uses that space to write in the name of a candidate who did not qualify to have their name printed on the ballot. In order to become a write-in candidate the candidate must file a declaration of write-in candidacy with the appropriate elections official. Only a write-in candidate who has filed the required documentation may receive votes.

Subsection (4) provides guidance in the event the voter writes in the name of person who has not qualified as a write-in candidate. Only a write-in candidate who has filed the required documentation and has qualified to be a write-in candidate may receive votes.

Subsection (5) provides guidance in the event the voter writes in a listed candidate's name in the designated write-in space and fills in the associated voting position target for a different listed candidate in the same contest. In this instance, the voter has voted for two candidates in the

same contest, and the elections official would be unable to determine which candidate the voter intended to vote for, therefore both choices by the voter are deemed invalid votes.

Subsection (6) provides guidance in the event the voter writes in a write-in candidate's name that is unrecognizable and/or undecipherable and it cannot be determined for whom the vote is intended to be cast. A voter is not required to write the exact name of the write-in candidate in the space provided, but it has to be a reasonable facsimile of the candidate's name so the elections official can determine the voter's intent. If the elections official is unable to determine the voter's intent with respect to a write-in candidate, that vote is deemed invalid.

Subsection (7) provides guidance in the event the voter writes in a qualified write-in candidate's name in the designated write-in space and does not fill in the associated voting position target for the write-in candidate. In this instance, it is not clear that the voter actually intended to cast a vote for that write-in candidate. However, if there is a manual recount after the election, if the intent of the voter can be determined at that time, the vote shall be counted regardless of whether the voter has filled in the associated voting position target for the write-in candidate.

Subsection (8) provides guidance in the event the voter uses pressure-sensitive stickers, rubber stamps, glued stamps, or any other device not provided for in the voting procedures for the approved voting system used by the county to indicate the name of the voter's choice for a write-in candidate. If the voter uses such a mechanism or device to mark their choice, the vote for the contest in which the mechanism or device is used shall be deemed invalid.

Subdivision (e) provides guidance in the event a voter leaves the voting booth without returning the voted ballot to the precinct official or placing the ballot in the ballot box, the precinct official shall place the ballot in the ballot box. Elections officials must reconcile issued and returned ballots, so the intent of this subdivision is to provide for the accounting of the abandoned, unmarked ballot in the reconciliation process.

20984. Other Paper Voting Systems

This section is necessary to provide guidance to county elections officials who use other paper voting systems that are not covered by other sections this Article 8.

Subdivision (a) acknowledges that counties utilize different voting systems, and provides that counties using other paper voting systems are to review and count ballots according to the standards applicable to the voting system used by the county.

Subdivision (b) refers the elections official to the procedures set forth in Section 20983 if a voter's choices are to be counted by the hand and eye.

20985. Direct Recording Electronic (DRE) Voting Systems

The purpose of this section is to provide guidance to counties who use direct recording electronic (DRE) technology for casting and counting the votes on a ballot.

Subdivision (a) introduces the content of this section, which is applicable when direct recording electronic (DRE) technology is used to cast and count the votes on a ballot, and the elections official must determine the intent of the voter. This subdivision is nonsubstantive.

Subdivision (b) provides specific examples for when the voter has not followed the instructions for marking their ballot, but the voter's intent can be determined, therefore the voter's choice shall be considered a valid choice. It should be noted that there are no scenarios for the casting of an invalid vote in this section. DRE systems prevent the casting of an invalid vote.

Subdivision (c) (initially identified as (a) in the emergency text in error) provides guidance in the event a voter leaves the voting booth without causing the vote to be cast on the DRE. In this instance, the precinct official shall cause the ballot to be cast on the DRI without examining any votes that have been recorded. Elections officials must reconcile the number of voters who have used the DRE with the number of votes cast on the DRE, so the intent of this subdivision is to provide for the accounting of the ballot that was not cast by the voter on the DRE.

ARTICLE 9. PROCESSING OF VOTE-BY-MAIL AND PROVISIONAL BALLOTS

20990. Vote-by-mail Ballot Processing and Return Status

This section is necessary to provide direction to elections officials on procedures to follow when a vote-by-mail ballot is received by the elections official. Upon receipt of a vote-by-mail ballot, the elections official must enter the return status into their local elections management system, which will send that return status to the statewide voter registration system.

Once the vote-by-mail ballot has been received, the elections official must compare the signature on the vote-by-mail ballot identification envelope to the signature(s) in the voter's registration record. If the signature compares, the vote-by-mail identification envelope may be opened so the ballot can be processed. If the signature does not compare (or the vote-by-mail identification envelope is not signed), the elections official is required to send a notice to the voter to provide the voter with the opportunity to provide a new signature for comparison. The notice is required to contain certain information under Elections Code section 3019(d) or (e), and this section provides for additional actions to ensure the voter has every opportunity to cure their signature issue and have their ballot counted.

Upon the final adjudication of the ballot, the elections official must enter the final status and applicable reason code into their local elections management system, which will send that information to the statewide voter registration system.

Subdivision (a) ensures that when a voted vote-by-mail ballot is received by the elections official, that fact is noted in their local elections management system, which will send that information to the statewide voter registration system in accordance with Section 19091(c) of Title 2 of the California Code of Regulations. In California, voters may register to vote and vote after the close of the registration period by utilizing a process known as conditional voter registration. The purpose of inputting the return status into the statewide voter registration

system is to ensure that it is known to all county elections officials that the voter in question has already cast their ballot, and is therefore ineligible to request another ballot within the state. Additional text has been added to properly identify the applicable section of the California Code of Regulations.

Subdivision (b) acknowledges that the elections official must process the received vote-by-mail ballot in the manner prescribed by Elections Code section 3019. Processing of the vote-by-mail ballot includes comparing the signature on the vote-by-mail ballot envelope with the signature(s) of the voter in the voter's registration record.

Subdivision (c) acknowledges that elections officials are required to compare the signature on a vote-by-mail envelope to the signature(s) in the voter's registration record in accordance with Elections Code section 3019. This subdivision creates a new requirement for elections officials - the elections officials must utilize the provisions of Section 20960 when comparing a voter's signature. The signature verification techniques set forth in Section 20960 help ensure uniform application of signature review throughout the state. In addition, it is important that elections officials review the voter's signature with the presumption that the signature is in fact the voter's signature, with any unclear discrepancies resolved in favor of the voter.

Subdivision (d) acknowledges that if an elections official determines that the voter did not sign the vote-by-mail identification envelope, or if the elections official determines that the signature on the vote-by-mail identification envelope does not compare to the signature(s) in the voter's registration record, they must send the applicable notice to the voter to provide an opportunity to cure the defect on their vote-by-mail identification envelope. Under Elections Code section 3019(d) and (e), the elections official must provide notice to a voter if their signature is missing or does not compare. The time period for providing notice to the voter has been altered due to the passage of Senate Bill 503 (Chapter 319 of the Statutes of 2021), which will be effective January 1, 2022. Although this is a recitation of the Elections Code, the additional text is included for ease of reference for elections officials.

Subdivision (e) provides direction to elections officials to include certain elements in the notice described in Section 20990(d). The purpose of including these elements in the notice help ensure that voters understand what the notice means, gives them guidance as to what they need to do in order to have their ballot counted, and to make it as simple as possible to submit the cure to their missing signature or mismatched signature on their vote-by-mail identification envelope.

Subdivisions (c), (d), and (e) contain recitations of Elections Code section 3019. It is necessary to include these recitations of this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subdivision (f) acknowledges that, upon the final adjudication of the voted vote-by-mail ballot, the elections official shall enter the appropriate reason code for the disposition of the ballot into the statewide voter registration system in accordance with Section 19092 of Title 2 of the California Code of Regulations. This information captures the voter's participation history, and also assists in other mechanisms that allow a voter to learn the final status of their vote-by-mail

ballot for that election. Additional text has been added to properly identify the applicable section of the California Code of Regulations.

20991. Standards for Valid and Invalid Vote-by-Mail Ballots

This section is necessary to ensure uniform vote-by-mail vote counting throughout the state. This section provides standards county elections officials to follow when a voted vote-by-mail is received and is reviewed. County elections officials must follow the procedures set forth in this section, and any applicable use procedures that are applicable to their voting system.

This section provides scenarios for when a voter's choice on a vote-by-mail ballot is considered a valid vote, and other scenarios for when a voter's choice on a vote-by-mail ballot is considered invalid. Not all voters will fill out their vote-by-mail identification envelope and/or their ballot according to the instructions provided by the elections official and the Elections Code, so these scenarios are needed to provide guidance to elections officials to ensure that the elections officials have the tools available to make every effort to determine that the voter's ballot is valid. However, there are some actions done by voters which will result in the voter's ballot being deemed invalid, and those scenarios are set forth in this section as well.

A voter is directed to provide their signature as registered on the vote-by-mail identification envelope. However, a voter may print their name, use a mark as a signature, or use a variation of their name (such as substituting initials for their first and/or middle name). In these instances, if the elections official can determine that the signer of the vote-by-mail identification envelope is the actual voter based upon the information contained in the voter's record, the ballot identification envelope may be opened and the ballot may be removed for counting.

Finally, if two or more ballots are returned in one vote-by-mail identification envelope (for example, a husband and wife return their ballots in one envelope), the elections official can count the ballots if there are an equal number of signatures (that compare to the voters' registration record) on the identification envelope.

In summation, the elections official can deem a voter's ballot valid if they are able to determine that the person who returned the vote-by-mail ballot is actually the voter, and if the vote-by-mail ballot was properly returned.

On the other hand, the elections official would be unable to deem a voter's ballot valid if the elections official cannot determine that the person who returned the vote-by-mail ballot is actually the voter, or if the vote-by-mail ballot was not properly returned. Under Elections Code section 3011, the voter must sign the vote-by-mail identification envelope. The Elections Code does not allow for another person to sign the identification envelope of another, including a person holding a power of attorney.

If the signature on the vote-by-mail envelope does not compare to the signature(s) in the voter's registration record (and no cure is provided), or if the vote-by-mail ballot is not timely and properly returned to the elections official in accordance with Elections Code section 3020, the ballot may not be counted.

In addition, if the elections official receives more than one ballot in a vote-by-mail ballot identification envelope, and there are less than an equal number of distinct signatures on the vote-by-mail envelope, neither ballot may be counted as the elections official cannot determine which ballot belongs to the voter who signed the identification envelope.

Subdivision (a) acknowledges that a vote-by-mail ballot shall be subject to approved use procedures that govern the voting system used by a particular county. The intent of this section is to acknowledge that fact, and to provide general standards for all counties to follow. The standards are intended to supplement the use procedures.

Subdivision (b) introduces the subsections that provide standards for when a voter's choices on a vote-by-mail ballot are considered a valid vote. Subdivision (b) is non-substantive.

Subsection (1) recites Elections Code section 3019, which provides that if a voter's signature on the vote-by-mail identification envelope compares with the signature(s) in the voter's record, the elections official shall count the votes on that ballot. It is necessary to include this recitation of this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (2) recites and summarizes Elections Code section 15210, which provides that a damaged, torn or otherwise non-processable ballot can be duplicated for tabulation purposes. The duplication must exactly reflect the voter's choices. It is necessary to include this recitation of this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (3) provides guidance in the event the voter prints their name on the vote-by-mail ballot identification envelope. In this instance, the ballot shall be processed if the printed name compares with a printed signature in the voter's registration record. While the direction is to provide a signature on a voter registration affidavit, some registrants simply print their name.

Subsection (4) provides guidance in the event the voter uses a variation of their name on the vote-by-mail identification envelope, such as the substitution of initials for the first or middle name, or both. In this instance the ballot shall be processed if the signature on the vote-by-mail envelope compares to the signature(s) in the voter's registration record. The text has been modified to correct the reference to Section 20960(g)(2).

Subsection (5) provides guidance if the voter does not sign the vote-by-mail ballot identification envelope in the appropriate space, but the signature does appear elsewhere on the identification envelope. While the identification envelope contains a space for the signature, the voter may not utilize that space. In this instance the ballot shall be processed if the signature on the vote-by-mail envelope compares to the signature(s) in the voter's registration record.

Subsection (6) provides guidance in the event the voter uses a mark for signature purposes on the vote-by-mail identification envelope. In this instance, if the same mark is contained in the voter's registration record, the ballot shall be processed.

Subsection (7) acknowledges that, in order to be counted, a vote-by-mail ballot envelope must be postmarked or date stamped on or before Election Day, delivered by a bona fide private mail delivery service, and received by the elections official in accordance with Elections Code section 3020. Elections Code section 3020 allows for a ballot to be deemed timely received after Election Day under certain circumstances.

Subsection (8) provides guidance in the event the vote-by-mail ballot identification envelope has no dated postmark, the postmark is illegible, there is no date stamp for receipt from a bona fide private mail delivery service, but the vote-by-mail identification envelope somehow indicates that the ballot was executed on or before Election Day. Although this instance is not governed by Elections Code section 3020, if the elections official can determine that the ballot was timely cast and received, it shall be processed.

Subsection (9) contained in the emergency regulations has been removed. This was an outdated process that was used when elections officials did not have alternative methods for voters to cast a ballot, and therefore a letter or note provided by the voter should not be accepted as it is not considered an official ballot or material from the county elections official. Now a voter can easily request a second (or third) ballot from their elections official, so this provision has been removed.

Subsection (9) provides guidance in the event the voter marks a sample ballot instead of the official vote-by-mail ballot provided by the elections official, and returns that marked sample ballot in the vote-by-mail identification envelope. In this instance, if the signature on the vote-by-mail return envelope compares to the signature(s) in the voter's registration record, the voter's choices may be duplicated for processing pursuant to Elections Code section 15210.

Subsection (10) provides guidance in the event two or more ballots are returned in one vote-by-mail ballot identification envelope. In this instance, if there are an equal number of distinct signatures on the vote-by-mail ballot identification envelope that can be attributed to registered vote-by-mail voters, the elections official shall compare the signatures on the vote-by-mail identification envelope to the signatures in the voters' registration records. If the signatures compare, the ballots may be counted.

Subsection (11) provides guidance in the event a voter returns their vote-by-mail ballot in an envelope that was not provided to them by the elections official. The elections official typically prints the name and address of the voter on the identification envelope. If the voter returns their ballot in an envelope of another, and the elections official can determine the identity of the voter, the ballot may be processed and counted.

Subsection (12) recites Elections Code section 3106, which provides that a military or overseas voter who is temporarily outside the territorial limits of the United States or Washington D.C. may return their voted ballot via facsimile. Under Elections Code section 3106, only a military

or overseas voter who not in the United States may return their ballot via facsimile. If any other voter returns their ballot via facsimile, that vote will not be counted . It is necessary to include this recitation of this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (13) provides guidance to elections officials in the event it is learned that a voter died prior to an election. If the elections official can clearly and convincingly determine from records received from the California Department of Public Health (or another source) that the voter died after they casted their vote-by-mail ballot, the vote may be counted. This subsection contains a presumption in favor of the voter. This subsection was not a part of the emergency rulemaking text, and was added for clarification because the emergency text only included an entry for the death of a voter in Section 20993(c)(iii).

The purpose of subdivision (c) is to introduce the subsections that provide standards for when a voter's choices on a vote-by-mail ballot are considered an invalid vote. Subdivision (c) is non-substantive.

Subsection (1) acknowledges the requirement set forth in Elections Code section 3019(d), which requires the elections official to send a notice to a vote-by-mail voter whose signature on the vote-by-mail return envelope does not compare to the signature(s) in the voter's registration record. If the voter does not return a cure to their signature by the second day before certification of the election by the elections official, the vote-by-mail ballot identification envelope shall not be processed for counting. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (2) acknowledges the requirement set forth in Elections Code section 3019(e), which requires the elections official to send a notice to a vote-by-mail voter who failed to sign their vote-by-mail identification envelope. If the voter does not return a cure to their signature by the second day before certification of the election by the elections official, the vote-by-mail ballot identification envelope shall not be processed for counting. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (3) provides guidance in the event the vote-by-mail ballot identification envelope is signed using power of attorney. Elections Code section 3011(a)(2) requires the vote-by-mail identification envelope to contain a space for the voter's signature, and Elections Code section 3019 requires the elections official to compare the voter's signature on the vote-by-mail identification envelope to the signature(s) in the voter's registration record. No provision of the Elections Code provides for a power of attorney to sign the vote-by-mail identification envelope, therefore, in this instance the vote-by-mail ballot identification envelope shall not be processed for counting.

Subsection (4) acknowledges that a vote-by-mail ballot that is not timely received in accordance with Election Code section 3020 shall not be processed for counting. Elections Code section 3020 has specific requirements for timeliness and delivery.

Subsection (5) acknowledges that a vote-by-mail ballot that is properly delivered to the elections official, but contains a postmark or service date stamp after Election Day shall not be processed for counting. A vote-by-mail ballot must be cast prior to the closing of the polls on Election Day in accordance with Elections Code sections 3017 and 3020.

Subsection (6) provides guidance in the event a vote-by-mail ballot is delivered by USPS or bona fide private mail service to the elections official in accordance with Elections Code section 3020, but does not have a legible postmark date or date stamp from the private mail service, and the vote-by-mail ballot identification envelope indicates in some fashion that the ballot was executed after Election Day. If the elections official can determine that the vote-by-mail ballot was cast after Election Day, it shall not be eligible for processing.

Subsection (7) provides guidance in the event a vote-by-mail ballot is received by elections official after Election Day by some method other than USPS or bona fide private mail service. Elections Code section 3020 specifically requires that a vote-by-mail ballot received after Election Day must be timely received and delivered by the USPS or another bona fide private delivery service to be considered eligible to be processed.

Subsection (8) provides guidance in the event a vote-by-mail voter who is not a military or overseas voter returns their voted ballot via facsimile. Under Elections Code section 3106, only a military or overseas voter who is not in the United States may return their ballot via facsimile.

Subsection (9) acknowledges that if the signature on a form returned pursuant to either Elections Code section 3019(d) or (e), does not compare to the signature(s) in the voter's registration record, the ballot shall not be eligible for processing. While the contents of section are clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (10) provides guidance in the event the vote-by-mail ballot identification envelope contains two or more voted vote-by-mail ballots but there are less than an equal number of distinct signatures on the vote-by-mail identification envelope. If there are less signatures on the vote-by-mail identification envelope than there are ballots in said envelope, the elections official will not know which ballot belongs to the voter who signed the identification envelope, therefore none of the ballots may be processed.

Subsection (11) provides guidance to elections officials in the event it is learned that a voter died prior to an election. If the elections official can clearly and convincingly determine from records received from the California Department of Public Health (or another source) that the voter died before casting their vote-by-mail ballot, the vote may be not counted. This subsection was not a part of the emergency rulemaking text, and was added for clarification because the emergency text only included an entry for the death of a voter in Section 20993(c)(iii).

20992. Provisional Ballot Processing and Return Status

This section is necessary to provide direction to elections officials on procedures to follow when processing a provisional ballot. When the provisional ballot is cast, the elections official must enter the status of that ballot into their local elections management system, which will send that status to the statewide voter registration system. A voter may be registered in one county, but may cast a provisional ballot in another county. The purpose of inputting the status into the statewide voter registration system is to ensure that it is known to all county elections officials that the voter in question has already cast a provisional ballot.

Once the provisional ballot has been received, the elections official must compare the signature on the provisional ballot identification envelope to the signature(s) in the voter's registration record. If the signature compares, the voter's registration status will be reviewed, and if the voter is eligible, the provisional ballot envelope may be opened so the ballot can be processed. If the signature does not compare (or the provisional envelope is not signed), the elections official is required to send a notice to the voter to provide the voter with the opportunity to provide a new signature for comparison. The notice is required to contain certain information under Elections Code section 3019(d) or (e), and this section provides for additional actions to ensure the voter has every opportunity to cure their signature issue and have their ballot counted.

Upon the final adjudication of the ballot, the elections official must enter the final status and applicable reason code into their local elections management system, which will send that information to the statewide voter registration system.

Subdivision (a) ensures that when a voted provisional ballot is received by the elections official, that fact is noted in their local elections management system, which will send that information to the statewide voter registration system in accordance with Section 19093 of Title 2 of the California Code of Regulations. A voter may be registered in one county, but may cast a provisional ballot in another county. The purpose of inputting the return status into the statewide voter registration system is to ensure that it is known to all county elections officials that the voter in question has already cast a provisional ballot. Additional text has been added to properly identify the applicable section of the California Code of Regulations.

Subdivision (b) acknowledges that the Elections Code provides requirements regarding the processing of provisional ballots by elections officials, and includes a recitation of Elections Code section 14310. It is necessary to include this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subdivision (c) acknowledges that elections officials are required to compare the signature on a provisional ballot envelope to the signature(s) in the voter's registration record in accordance with Elections Code section 14310. This subdivision creates a new requirement for elections officials - the elections officials must utilize the provisions of Section 20960 when comparing a voter's signature. The signature verification techniques set forth in Section 20960 help ensure uniform application of signature review throughout the state. In addition, it is important that

elections officials review the voter's signature with the presumption that the signature is in fact the voter's signature, with any unclear discrepancies resolved in favor of the voter.

Subdivision (d) acknowledges that if an elections official determines that the voter did not sign the provisional ballot envelope, or if the elections official determines that the signature on the provisional ballot envelope does not compare to the signature(s) in the voter's registration record, they must send the applicable notice to the voter to provide an opportunity to cure the defect on their vote-by-mail identification envelope. Under Elections Code section 3019(d) and (e), the elections official must provide notice to a voter if their signature is missing or does not compare. The time period for providing notice to the voter has been altered due to the passage of Senate Bill 503 (Chapter 319 of the Statutes of 2021), which will be effective January 1, 2022. Although this is a recitation of the Elections Code, the additional text is included for ease of reference for elections officials.

Subdivisions (c), (d), and (e) contain some recitations of Elections Code sections 3019 and 14310. It is necessary to include recitations of those sections of the Elections Code to ensure uniform practices for general vote counting standards. While those sections are clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subdivision (f) acknowledges that, upon the final adjudication of the voted vote-by-mail ballot, the elections official shall enter the appropriate reason code for the disposition of the ballot into the statewide voter registration system in accordance with Section 19094 of Title 2 of the California Code of Regulations. This information captures the voter's participation history, and also assists in other mechanisms that allow a voter to learn the final status of their vote-by-mail ballot for that election. Additional text has been added to properly identify the applicable section of the California Code of Regulations.

20993. Standards for Valid and Invalid Provisional Ballots

This section is necessary to ensure uniform provisional ballot vote counting throughout the state. This section provides standards county elections officials to follow when a provisional ballot is cast by a voter. County elections officials must follow the procedures set forth in this section, and any applicable use procedures that are applicable to their voting system when processing the provisional ballot.

This section provides scenarios for when a voter's choice on a provisional ballot is considered a valid vote, and other scenarios for when a voter's choice on a provisional ballot is considered invalid. A provisional voter may or may not be registered when casting their ballot, and also may cast a provisional ballot in a polling location that is not where they are assigned to vote. If they vote at another polling location outside of their home precinct, the provisional ballot may contain contests and/or measures that the voter is not entitled to vote on. This section provides guidance for these instances.

As part of the processing of a voted provisional ballot, the elections official must determine the voter's eligibility to vote. At times, data available to elections officials may not be current or

accurate, so this section provides direction to county elections officials to carefully review a voter's eligibility before making a decision that the voter is not eligible.

Subdivision (a) acknowledges that a provisional ballot shall be subject to approved use procedures that govern the voting system used by a particular county. The intent of this section is to acknowledge that fact, and to provide additional general standards for all counties to follow. The standards set forth in this section are intended to supplement the use procedures.

Subdivision (b) introduces the subsections that provide standards for when a voter's choices on a provisional ballot are considered a valid vote. Subdivision (b) is non-substantive.

Subsection (1) acknowledges that if the eligibility of a provisional voter can be confirmed and the voter's choices on the provisional ballot are clearly marked, the votes shall be counted. It is important that elections officials review the eligibility with the presumption that the voter is eligible to vote, with any unclear discrepancies resolved in favor of the voter.

Subsection (2) acknowledges that if a voter casts a provisional ballot for a precinct other than the precinct in which the voter was legally entitled to vote, all votes properly cast in contests for which the voter was legally entitled to vote will be counted. The fact that a registered provisional voter casts a ballot outside of their home precinct should not result in complete disenfranchisement of the voter. This subsection contains a recitation of Elections Code section 14310, which is necessary to ensure uniform practices for provisional vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

Subsection (3) provides guidance in the event a voter dies near an election. This subsection ensures that the elections official will carefully review the provisional voter's eligibility to vote, and makes that determination based upon clear and convincing evidence (from the California Department of Public Health or other source) that the voter died after the date the provisional ballot was cast. This subsection was not a part of the emergency rulemaking text, and was added for clarification because the emergency text only included an entry for the death of a voter in Section 20993(c)(iii).

Subdivision (c) introduces the subsections that provide standards for when a voter's choices on a provisional ballot are considered an invalid vote. Subdivision (c) is non-substantive.

Subsection (1) ensures that the elections official carefully reviews the provisional voter's eligibility to vote, and only determines that the voter is ineligible based upon clear and convincing evidence. Because the elections official may not have current or valid data, they must be sure to carefully review certain voter records to ensure that the voter is in fact ineligible. If this is not done, the voter may be disenfranchised.

Subsection (A) provides the elections official with examples of voter records that may not be current and/or accurate. The types of records provided in this subsection must be carefully reviewed by the elections official prior to making a determination of eligibility. The text in this

subsection relating to a voter who has been convicted of a felony has been modified from the emergency text to reflect a change in the law upon the passage of Proposition 17 in 2020.

Subsection (2) provides guidance to the elections official in the event the provisional voter casts a provisional ballot for a precinct other than the precinct in which the voter was legally entitled to vote, in which case all votes cast in contests for which the voter was not legally entitled to vote will not be counted. A voter may vote provisionally in a location outside of their assigned precinct, and there is a chance that none of the contests on the provisional ballots are contests that are within the voter's assigned precinct. This subsection contains a recitation of Elections Code section 14310. It is necessary to include this recitation of this section of the Elections Code to ensure uniform practices for general vote counting standards. While this section is clearly provided in the Elections Code, the recitation has been provided for ease of reference and application by elections officials.

ECONOMIC IMPACT STATEMENT

Elections Code sections 3026 and 14314 require the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote-by-mail ballots and provisional ballots. A purpose of these regulations is to comply with this mandate.

Elections officials refer to the county document and SOS uniform vote counting standards when reviewing petitions and envelopes, and these regulations put those actions into regulatory format. These regulations relate to procedures currently carried out by California's 58 county 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 codify existing processes of county elections officials. Therefore, no additional staff should be required.

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

These regulations are anticipated only to affect the Secretary of State and local elections offices. They put existing practices into regulatory format. 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 the Secretary of State and local elections offices. They put existing practices into regulatory format. 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 provide uniform application throughout the state for the review of elections-related petitions, voted vote-by-mail ballots, voted provisional ballots, and ballot counting in general. Along with bringing more transparency in the petition and ballot counting and processing activities carried out by California's 58 county elections officials, these proposed regulations will strengthen the public trust in the State of California's election process.