

California Secretary of State
Proposed Regulatory Action: Petition Processing, Signature Verification,
Ballot Processing, and Ballot Counting
Notice

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than **January 24, 2022**.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

AUTHORITY AND REFERENCE

Authority cited: Sections 3026, 14314, Elections Code, and Section 12172.5, Government Code.

Reference cited: Sections 100, 100.5, 101, 102, 103, 104, 105, 106, 107, 108, 303.3, 333, 354.5, 2035, 2102, 2116, 2150, 2201, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 3009, 3010, 3011, 3017, 3019, 3020, 3026, 3106, 8806, 8451, 9001, 9008, 9009, 9010, 9011, 9012, 9013, 9014, 9015, 9020, 9021, 9022, 9108, 9109, 9602, 11045, 11046, 11108, 11303, 13204, 14201, 14287, 14310, 14311, 14314, 14420, 15154, 15208, 15210, 15342, and 15342.5, Elections Code.

Section 12172.5, Government Code.

Sections 19062(o), 19076, 19091(c), 19093, and 19094, Title 2, Division 7 of the California Code of Regulations.

Help America Vote Act of 2002 - 52 U.S.C. 21081(a)(6)

Section 203 of the Federal Voting Rights Act of 1965 - 52 U.S.C. 10503.

INFORMATIVE DIGEST

A. Informative Digest

The signature verification, ballot processing, and ballot counting regulations were adopted as an emergency prior to the November 3, 2020, General Election. The emergency regulations provide clear and uniform guidance to California's 58 counties' elections officials for consistent practices relating to signature verification, ballot processing, and ballot counting.

These regulations are intended to make the emergency regulations permanent, as well as to add regulations related to the processing of elections-related petitions.

County elections officials continuously review election-related petitions, which includes comparing a voter's signature on a petition with the signature(s) included in the voter's registration record. These regulations address the processing of elections-related petitions by creating uniform practices by elections officials. These uniform practices were developed over time by a subcommittee of a group that all county elections officials are members and participants of: the California Association of Clerks and Elections Officials (CACEO). The CACEO has a petition subcommittee that created a document entitled "Petition Signature Verification Guidelines." While these guidelines were helpful, they had no force of law or regulation to ensure uniform application throughout the state. To ensure uniform application of petition review, which includes signature verification, those guidelines have been put into these draft regulations.

All California active registered voters now will receive a vote-by-mail ballot for each election. Casting a vote-by-mail ballot requires that the voter properly complete the ballot, insert the ballot into the provided vote-by-mail identification envelope, properly complete the outside of the vote-by-mail identification envelope (which includes the signature of the voter), and timely deliver the voted ballot to their county elections official. The signature provided by the voter on the vote-by-mail identification envelope is compared to the signature(s) in the voter's registration record by the county elections official to ensure that the voter returned their own ballot. These regulations are intended to eliminate the possibility of a ballot not being counted due to a mistake made by the voter, or if the voter's signature does not compare to the signature in the voter's registration record. The regulations create standards for all of California's 58 counties' elections officials (and their staff) to follow when reviewing signatures on a vote-by-mail identification envelope or a provisional ballot envelope, and also processing all voted ballots. Without uniform application of these standards, the risk of disenfranchisement grows significantly. This must be avoided at all costs.

In addition, as required by the Help America Vote Act of 2002 (52 U.S.C. 21081(a)(6)), each state is required to "...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." The Secretary of State has met this requirement by creating a document titled "Uniform Vote Counting Standards," however this document does not have the force of law or regulation. As with the importance of uniform standards for reviewing signatures on vote-by-mail identification envelopes and provisional ballot envelopes as mentioned above, uniform standards for counting votes is vital for each election. The uniform vote counting standards

provided by these regulations will reduce the chances that a voter's ballot will be deemed invalid, which would disenfranchise the voter.

Under Elections Code section 3026, the Secretary of State “shall promulgate regulations establishing guidelines for county elections officials relating to the processing of vote by mail ballots.” In addition, under Elections Code section 14314, the Secretary of State “shall promulgate regulations establishing guidelines for county elections officials relating to the processing of provisional ballots.” The processing of vote-by-mail ballots and provisional ballots involves comparing the signature on the vote-by-mail identification envelope or provisional ballot envelope with the signature(s) in the voter's registration record. The signature must compare in order for the ballot be opened for tabulation. There are currently no standards in California statutes or regulations that provide for signature verification techniques, which can lead to differing signature verification throughout the state. These regulations will address that glaring issue.

Another part of the processing of vote-by-mail and provisional ballots is to enter the return status of the ballot into their local elections management system (which will send the data to the statewide voter registration database) in accordance with Sections 19091(c) (for vote-by-mail ballots) and 19093 (for provisional ballots) of Title 2 of the California Code of Regulations. These sections became effective on August 27, 2020.

In addition, county elections officials must enter the final status information of the ballot, which includes inputting the appropriate reason code describing the disposition of the ballot into their local elections management system (which will send the data to the statewide voter registration database), as required by Sections 19092 (for vote-by-mail ballots) and 19094 (for provisional ballots) of Title 2 of the California Code of Regulations. These sections also became effective on August 27, 2020.

Requiring elections officials to follow Sections 19091(c), 19092, 19093, and 19094 when processing vote-by-mail and provisional ballots ensures that uniform information relating to those ballots throughout the state. The Elections Code mandates that a voter have the ability to find out the final disposition of their vote-by-mail ballot or provisional ballot, so these regulations will help ensure that the reason for the final disposition is uniform throughout the state, and voters will understand the reason for the final disposition of their ballot.

During the development of these regulations, the Secretary of State's office has worked, for several years, closely with county elections officials and several voting advocacy groups to ensure that there is agreement with the need and content of these regulations.

The purpose of these regulations is as follows:

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 signatures(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 signatures(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 signatures(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 signatures(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 signatures(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.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed regulations were drafted for the purpose creating uniform processes for California's 58 county elections officials to follow when processing elections-related petitions, comparing signatures on elections-related petitions, vote-by-mail identification envelopes, provisional ballot envelopes, ballot processing, and ballot counting. The regulations also help to ensure that a voter is not disenfranchised for specified mistakes made when casting a ballot. Finally, the regulations will help ensure transparency of these processes, which will enhance the public's trust of the elections process.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations related to petition processing, signature verification, ballot processing, and ballot counting. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

D. Documents Incorporated by Reference: None

E. Documents Relied Upon in Preparing the Regulations:

- CACEO Petition Signature Verification Guidelines – this document may be found on the California Association of Clerks and Elections Officials website at:
[https://www.caceo58.org/assets/documents/Petitions%20Signature%20Verification%20Guidelines%20\(R%20Rev%202018%20Dec%202012\)%20FINAL.pdf](https://www.caceo58.org/assets/documents/Petitions%20Signature%20Verification%20Guidelines%20(R%20Rev%202018%20Dec%202012)%20FINAL.pdf)

- Secretary of State Uniform Vote Counting Standards – this document may be found on the Secretary of State’s website at: <https://elections.cdn.sos.ca.gov//pdfs/uniform-vote-count.pdf>
- Senate Bill 503 (Chapter 319 of the Statutes of 2021).
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB503

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The SOS has made the following initial determinations:

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

Nondiscretionary Costs/Savings to Local Agencies: None

Mandate on Local Agencies and School Districts: None

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

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

Cost Impact on Representative Private Person or Business: These regulations do not create any costs on private persons or businesses. These regulations reflect existing processes carried out by California’s 58 county elections officials.

Significant Effect on Housing Costs: None

Effect on Small Business: These regulations will have no effect on small businesses. These regulations reflect existing processes carried out by California’s 58 county elections officials.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, and (3) unlikely to result in the expansion of businesses currently doing business within California. The proposed regulations reflect existing processes carried out by California’s 58 county elections officials. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will provide greater confidence in the conduct of California’s election activities by providing uniform guidance for petition processing,

signature verification, ballot processing, and ballot counting. These regulations will ultimately benefit California residents as they will have access to information on how California's 58 elections officials process election-related petitions, verify signatures on elections-related petitions, vote-by-mail identification envelopes, provisional ballot envelopes, and the processing of voted ballots.

CONSIDERATION OF ALTERNATIVES

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

The SOS has determined that there are no reasonable alternatives to these regulations. There are currently no regulations for petition processing, signature verification, ballot processing, or ballot counting.

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

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

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

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

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

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

CONTACT PERSONS

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

California Secretary of State – Proposed Regulatory Action
Petition Processing, Signature Verification,
Ballot Processing, and Ballot Counting

Robbie Anderson
Secretary of State
1500 11th St., 5th Floor
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The backup contact person is:

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

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

NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2021-1130-02	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED DATE PUBLICATION DATE

NOV 30 '21

DEC 10 '21

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
SECRETARY OF STATE

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE Pet. Proc., Signature Ver., Ballot Proc., etc		TITLE(S) 2	FIRST SECTION AFFECTED 20910	2. REQUESTED PUBLICATION DATE December 10, 2021
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Robbie Anderson	TELEPHONE NUMBER (916) 216-6488	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
TITLE(S)	AMEND
	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

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

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY