

**California Secretary of State
Proposed Regulatory Action:
Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations
(Second Readoption of Emergency Regulations)**

Finding of Emergency

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. (1 California Code of Regulations, Section 48.)

INFORMATIVE DIGEST AND STATEMENT OF EMERGENCY

The Secretary of State published the 45-day notice for public comments on March 12, 2021, to adopt the changes proposed in these emergency regulations through the regular rulemaking process, as a Certificate of Compliance action. However, the regular rulemaking process will not be complete before the emergency regulations are expired. Therefore, additional time is needed to keep the emergency regulations in effect until the regular rulemaking process is completed.

These emergency regulations avoid serious harm to the public peace, health, safety, and general welfare by doing the following:

- Ensuring that vote-by-mail drop boxes are available for use by voters when the county elections officials begin delivering vote-by-mail ballots.
- Provide greater flexibility to county elections officials in retrieving ballots from unstaffed drop boxes every 48 hours instead of 24 hours.

On February 19, 2021, the Governor signed into law Senate Bill (SB) 29. Among other changes, SB 29 amended Elections Code section 3000.5 to require elections officials to “...no later than 29 days before the day of the election, begin mailing the materials specified in Section 3010 to every registered voter in the county”

Under the existing regulations, county elections officials were to ensure that vote-by-mail drop boxes were made unavailable until the 29th day before the election. When the regulations were drafted, the 29th day before the election was the first day that elections officials could begin mailing vote-by-mail ballots to their voters.

Now, under Section 3000.5, county elections officials may begin mailing vote-by-mail ballots when they are ready, and do not have to wait until the 29th day before the election. Rather, they must begin mailing no later than the 29th day before the election.

If elections officials were to follow the existing regulations and not make their vote-by-mail drop boxes available until the 29th day before the election, then some voters may not be able to deposit their voted ballot when they are ready to do so. This proposed change to Section 20136 will provide voters with the ability to vote their vote-by-mail ballot and deposit that ballot into a vote-by-mail drop box as soon as they wish.

In addition, SB 29 has extended the existing law requirements that required the county elections officials to mail a ballot to every registered voter for the November 3, 2020, statewide general election to all elections conducted prior to January 1, 2022. Since this law is still in effect, the need regarding the deployment of additional vote-by-mail ballot drop boxes remains unchanged from the time the initial emergency regulations were adopted.

This proposed change to Section 20136 is imperative as all registered active voters will soon receive a vote-by-mail ballot for the upcoming September 14, 2021, California Gubernatorial Recall Election.

Regulatory Compatibility

The Secretary of State has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Secretary of State has concluded that these are the only regulations that concern Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations in California.

Local Mandate Determination

Mandate on local agencies or school districts: None

Estimate of Cost Savings

Cost savings to any state agency: None

Reimbursable cost to any local government agencies: None

Nondiscretionary cost or savings to local government agencies: None

Cost or savings in federal funding to the state: None

NECESSITY STATEMENT

These proposed regulations are necessary to ensure that the September 14, 2021, California Gubernatorial Recall Election is conducted in an orderly fashion, and provides voters with the

ability to return their voted vote-by-mail ballot to a vote-by-mail drop box as soon as they wish to do so. Under existing regulations, the vote-by-mail drop boxes may not have been available to the voters when they have received and voted their ballot.

AUTHORITY AND REFERENCE

Section 12172.5, Government Code; and Section 10 and 3025, Elections Code. Reference: Sections 3005.5 and 3025, Elections Code.

INCORPORATED BY REFERENCE

- OAL file no. 2020-0616-01E

DOCUMENTS RELIED UPON

- Senate Bill 29 (Chapter 3 of the Statutes of 2021)