

**California Secretary of State
Proposed Regulatory Action:
Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations
Proposed Regulation Text (Changes to Emergency Regulations)
Addendum to the Initial Statement of Reasons**

The factual basis and rationale of the following sections of the proposed regulations are modified as follows:

These comments address updates to the Proposed Regulation Text, which was submitted for a 45-day public comment on March 12, 2021, and for which a public hearing was held on April 26, 2021.

20136. Drop-off Location and Drop Box Hours. Public Notification. Collection Times.

Subdivision (f) – This subdivision is modified to remove the original text and replace it with new text, including several new paragraphs and sub-paragraphs.

The original text required elections officials to retrieve ballots, as specified, before 11:59 on Election Day. At the public hearing we held on April 26, 2021, elections officials stated that this deadline was impracticable. Therefore, we have amended the deadline to reflect their comments and proposed solutions.

The revised text states that the county election officials are encouraged to retrieve as many ballots as is practicable before 11:59 p.m. on Election Day, and must retrieve all ballots from all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election. This addresses elections officials' concerns with retrieving ballots from a large number of ballot drop boxes in a compressed time frame and that the location of some of the ballot drop boxes is very far from the county central office, making it extremely burdensome if not impossible for them to retrieve all ballots from all the drop boxes before 11:59 p.m. on Election Day. This proposed language provides the county elections officials the necessary flexibility to retrieve ballots from all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election.

We added paragraph (1) to subdivision (f), which includes two sub-paragraphs (a) and (b). The purpose of this paragraph is to address any situation where an elections official is unable to retrieve all ballots for all staffed and unstaffed drop boxes by 8:00 p.m. on the day after the election. In this situation, the elections official is required to notify the Secretary of State in a timely manner and with sufficient detail such as the location of the drop box(es) from which all ballots may not be retrieved prior to 8:00 p.m. on the day after the election, the last time ballots were retrieved from that/those drop box(es), and specific details on why all ballots may not be timely retrieved from that/those drop box(es). This paragraph is necessary to ensure the effective administration of the canvassing activities after the election. It is also necessary to ensure that the Secretary of State and the elections official have the same information regarding the outstanding ballots that have not yet been retrieved from the drop boxes in order to provide consistent and accurate information to the public and the media. This notification requirement

will also increase the efficiency and reduce the unnecessary workload on both the county and Secretary of State staff who repeatedly contact the county election office staff to know the status of the unretrieved ballots from the drop boxes.

We added paragraph (2) to subdivision (f). The purpose of this paragraph is to require the elections official to immediately notify the Secretary of State that they have retrieved all ballots from all staffed and unstaffed drop boxes. This paragraph is necessary to ensure that the Secretary of State has the up to date information about the status of the unretrieved ballots from the drop boxes. It is also necessary to ensure that the Secretary of State disseminates current and accurate information to the public and media regarding the status of the unretrieved ballots from the drop boxes.

We added paragraph (3) to subdivision (f). The purpose of this paragraph is to make sure that the safety and security of the unretrieved ballots remain intact. Therefore, we have proposed that the location of the drop box(es) from which all ballots cannot be retrieved prior to 8:00 p.m. on the day after the election shall be exempt from disclosure under the California Public Records Act. We are proposing a very narrow limit on the disclosure of this information to the public. It is limited to the location of the drop boxes. There can be a situation where a county may not be able to retrieve all ballots from all staffed and unstaffed drop boxes in a timely manner as provided above. In that situation, if the location of those drop boxes are disclosed before all ballots have been retrieved from them, then there is a risk that some bad actors can take benefit of this information and damage or destroy those drop boxes and or ballots. Additionally, a bad actor may use this information on future elections to anticipate what drop boxes may not be serviced by 8:00 p.m. on the day after the election. Therefore, it is vital not only for the safety and security of ballots but also for the public trust in the democratic process that location of ballot drop boxes from which all ballots cannot be retrieved prior to 8:00 p.m. on the day after the election must not be disclosed.

The regulation references Government Code section 6255, which acts as a “catch-all” exemption for certain records to be exempt from public disclosure under the California Public Records Act (CPRA). This exemption allows an agency subject to the CPRA to exclude certain records from disclosure under the CPRA if the public interest of preventing disclosure clearly outweighs the public interest served by disclosure of the record. In this case, we believe that burden is met. As stated above, bad actors could use the location of drop box(es) that elections officials have not retrieved ballots from by 8:00 p.m. on the day after the election to target those box(es) before the ballots are retrieved, both in a current or future election. This regulation creates a presumptive exemption rather than a explicit exemption, and as such does not supersede but rather clarifies the Secretary of State’s interpretation of this provision as it relates to these particular records. Stating this requirement in regulation informs both the Secretary of State and elections officials of the expectation that these records not be disclosed under the CPRA. However, this portion of the regulation does not prevent disclosure should the agency or a court deem that the referenced provision of the CPRA does not apply.