

Title 2. California Secretary of State Notice of Proposed Regulatory Action Ballot Counting

NOTICE IS HEREBY GIVEN that the California 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 **Wednesday, July 5, 2023**.

PUBLIC HEARING AND COMMENT

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 **12:00 AM, on Wednesday, June 21, 2023**. 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. If you have any questions, please contact the Office of Voting Systems Technology Assessment at: (916) 695-1680, or email at votingsystems@sos.ca.gov.

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 **Wednesday, July 5, 2023**.

Written Public Comment Period: May 19, 2023, through July 5, 2023.

AUTHORITY AND REFERENCE

Government Code section 12172.5(d) authorizes the SOS to adopt regulations to ensure the uniform application and administrative of state election laws.

Authority cited: Section 12172.5(d), Government Code, and Sections 10, 15360(c), and 15601, Elections Code.

Reference cited: 52 U.S.C. 21081(a)(6).

Reference cited: 12172.5 Government Code.

Reference cited: Sections 10, 301, 303.3, 320, 335.5, 336.5, 338, 339, 353.5, 358, 359, 361, 362, 2500, 5100, 10004, 12300, 12301, 12302, 12303, 12307, 12308, 12309, 12309.5, 12310, 12311, 12312, 12313, 12314, 12315, 12316, 12318, 12319, 12320, 12321, 12327, 13204, 14287, 14420, 15000, 15003, 15004, 15101, 15102, 15150, 15151, 15152, 15154, 15205, 15207, 15208, 15210, 15260, 15261, 15270, 15271, 15272, 15273, 15274, 15275, 15276, 15277, 15278, 15278.5, 15279, 15280, 15281, 15290, 15301, 15305, 15342, 15342.5, 15360, 15367, 15371, 15372, 15373, 15374, 15375, 15501, 15502, 15600, 15601, 15620, 15621, 15622, 15623, 15624, 15625, 15626, 15628, 15629, 15630, 15631, 15632, 15633, 19202, 19220, 19360, 19380, and 19381, Elections Code.

Reference cited: Sections 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20871, 20872, 20873, 20874, 20875, 20876, 20877, 20878, 20980, 20981, 20982, 20983, and 20984, Title 2, Division 7 of the California Code of Regulations.

INFORMATIVE DIGEST

As authorized by Government Code section 12172.5(d), the SOS is seeking to adopt regulations governing the conduct of manual tallies of ballots to provide clear and uniform guidance to California's 58 counties' election officials for consistent application and administration of state election law.

On September 28, 2020, the SOS submitted the Uniform Vote Counting Standards as emergency regulations to Office of Administrative Law. These emergency regulations were refiled twice and then officially adopted on March 15, 2022, as the Uniform Vote Counting Standards (Article 8 of chapter 8.3, Title 2, Division 7 of the California Code of Regulations), which provide guidance to election officials for how to process ballots and count votes to reduce the chances that a voter's ballot would be deemed invalid, therefore disenfranchising voters. SOS has reviewed the current Uniform Vote Counting Standards and has put forth non-substantive changes to these regulations. These changes are to remove sections of the vote count regulations that are no longer applicable to California elections law because of outdated practices and voting technologies.

In the California Elections Code, Division 15 covers the processes and procedures for election officials to follow when preparing their ballots for counting and canvassing of results. Article 5 and Article 6 of Division 15, specifically cover the manual counting of votes at a precinct or central counting center, respectively.

POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS OF PROPOSAL

The California Secretary of State is proposing changes and additions to the California Code of Regulations to provide requirements and clarity for counting ballots, specifically related to when ballots are manually counted. In proposing these changes and additions to the California Code of Regulations, the California Secretary of State is:

- (1) Making modifications to the current Uniform Vote Counting Standards and Recount regulations which includes renumbering and moving these regulations from Chapters 8.1 and 8.3 to newly created Chapters 4.5 and 4.8;
- (2) Adding new Chapter 4.6 for manual tallying generally and Chapter 4.7 for 1 percent manual tallying as required by Elections Code section 315360.

The proposed regulations provide California jurisdictions and California voters with clarity and uniform practices on how to count ballots when doing so manually. The proposed regulations provide necessary processes and requirements to ensure security, chain of custody, accuracy, fairness and accessibility in the process.

Consistency/Compatibility with Existing State Regulations: The SOS 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 SOS has concluded that these are the only regulations that concern the counting of ballots in California.

Documents Incorporated by Reference: None

Documents Relied Upon in Preparing the Regulations:

- California Elections Code
- California Code of Regulations
- Learning from Recounts-Election Law Journal; Rules, Politics and Policy (Printed and included in the pack)
 - <https://dspace.mit.edu/bitstream/handle/1721.1/134277/elj.2017.0440.pdf?sequence=2&isAllowed=y>
- Confirming Elections, New Hampshire 2012 (Printed and included in the pack)
 - <https://andrewreeves.org/papers/recounts.pdf>
- YouTube Video Titled: Error Rate in Nye County Nevada Initial Count
 - <https://www.youtube.com/watch?v=s31UJNs4nmQ>

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

Local Mandate: No

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

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The SOS has made an initial determination that this regulatory action will

not have a 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: The SOS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business: The SOS has made an initial determination that the proposed regulatory action will have no effect on small business. These proposed regulations pertain to the counting of ballots and are conducted by election officials.

Result of Economic Impact Assessment/Analysis Summary Comments: 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. These regulations pertain to ballot counting and election official responsibilities only. 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 regulations to California residents is establishing greater confidence in the conduct of California's election activities by providing uniform guidance for the counting and processing of ballots and the responsibilities of elections officials. These regulations will ultimately benefit California residents as rules for counting ballots will be clear and uniformly applied throughout California's 58 counties. The regulations do not provide any benefits for worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

The agency 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to alternatives to the proposed regulatory action.

AVAILABILITY OF THE 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.

The documents and other information are available for public inspection during the dates of the public comment period, described below, excluding weekends and holidays, from 8:00 a.m. through 5:00 p.m. The rulemaking file is maintained at the following address:

California Secretary of State
Political Reform Division
1500 11th Street, Room 495
Sacramento, CA 95814

Due to restrictions related to COVID-19, the SOS' public counter is not open to the public. Please contact the contact persons below to arrange for public inspection of the rulemaking documents. Options for public inspection during COVID-19 may include having the rulemaking documents emailed to you or scheduling an in-person review.

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:

Danielle Dawson
California Secretary of State
1500 11th St., 6th Floor
Sacramento, CA 95814
(916) 695-1436
Ddawson@sos.ca.gov

The backup contact person is:

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

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