

## Misconceptions and Falsehoods Concerning Final Rulemaking

**False Claim #1:** Changes to Rule 2.13.2 decrease clerk authority to inactivate or otherwise process election records.

**Truth:** Changes to Rule 2.13.2 will not change clerk processing of voter records in any way.

**Explanation:** The changes to Rule 2.13.2 only relate to cancelling records that meet the criteria for cancellation under Section 1-2-605(7), C.R.S. The changes adopted in the rule amendment reflect practice that has been followed by county clerks and the Colorado Department of State since 2018. In lieu of requiring every county to manually cancel those records, the statewide voter file (SCORE) has been developed to process these cancellations automatically. This development was completed under a prior administration and has been a significant cost and time savings for county clerks around the state. This change will not take away or alter the responsibility or authority for county clerks to otherwise update, inactivate, or process voter registration records in Colorado.

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**False Claim #2:** Changes to Rule 7.6 (formerly 7.7) will alter the process for voters with a disability to receive and return an electronic ballot. The changes would allow voters who qualify to return a ballot without affirming they have a disability and without signing or returning an ID.

**Truth:** The changes to Rule 7.6 are required by SB 21-188 and do not alter the process for voters with a disability to receive and return a ballot beyond the changes made in that legislation. A voter with a disability must still return a handwritten signature or copy of an ID with their ballot.

**Explanation:** With the passage of SB 21-188, the Department of State is required to implement two specific changes. First, the Department is required to enable voters with a qualifying disability to return a ballot electronically. Second, the Department is required to allow voters with a disability to return an acceptable form of ID in lieu of a handwritten signature for the purpose of identifying the voter. The changes made to this rule clarify that if a ballot is returned from a voter with a disability who received their ballot electronically, that ballot must contain the application (which includes an affirmation that the voter was qualified to receive their ballot electronically under this section) and either a signature or an acceptable form of ID. If either of those requirements are missing, the rule requires the county clerk to send a letter to the voter to “cure” their ballot by providing the missing information. If the missing information is not provided by 8 days after election day, the ballot will not be counted.

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**False Claim #3:** Changes to Rule 7.7.1 (formerly 7.8.1) alter the signature verification process to reduce accountability.

**Truth:** The changes incorporate into rule the practice that is already required by statute.

**Explanation:** Section 1-7.5-107.3, C.R.S. describes a very specific process for the review of signatures on a mail ballot. That section of code states that the first review is to be conducted by “an election judge,” who compares the signature on the envelope with the signature stored in SCORE. This change clarifies in rule what is already required by statute. This rule does not alter the practice of using bipartisan teams of judges at any subsequent review level.

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**False Claim #4:** Changes to Rule 7.8.11 (formerly 7.7.11) remove the requirement for clerks to test a signature verification device before its use in an election

**Truth:** The changes maintain and clarify the requirement that county clerks must test signature verification devices before their use in an election.

**Explanation:** Over the last election cycle, it was brought to the Department's attention that the current rules regarding the testing of signature verification devices did not standardize how and when these devices should be tested. In response, the Department has provided this change. The change requires the county clerk to test the devices on the first 150 ballot envelopes received before deploying them for full use. The test involves the use of a bipartisan team of election judges who review the same signatures as the machine to determine if the machine is accepting signatures correctly. In the event that a discrepancy is identified, the clerk is required to cease use of that device until any issues are identified and a solution is offered.

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**False Claim #5:** Changes to Rule 9.2.2 make it more difficult to remove deceased voters from voter roll.

**Truth:** Rule 9.22 relates to mail ballot challenges. Those challenges have never resulted in removing a voter from the voter rolls. Rather, these challenges could potentially lead to a ballot not being counted, not that voter's removal from the voter rolls. County clerks regularly remove deceased Coloradans from the rolls under Section 1-2-602, C.R.S. These changes do not alter that process in any way.

**Explanation:** In Colorado, voter records are cancelled due to the death of the registrant under Section 1-2-602, C.R.S. That section of the code allows county clerks to cancel a voter record if they receive information from the Colorado Department of Public Health and Environment that the registrant is deceased. County clerks may also cancel a record for a registrant if they receive written notice from a family member that the voter is dead. Challenging a mail ballot due to the death of the voter does not, and never did, result in removing that voter from the rolls. It can, however, result in that mail ballot not being counted, and this rule change does not alter that fact.

The current rule does not identify how a challenge should be processed in the event that two election judges disagree. The Department relied on other similar bipartisan judge provisions in Colorado statute when proposing the current version of the rule. See e.g. Section 1-7.5-107.3 (2)(a), C.R.S. (signature on envelope rejected if two judges agree it is discrepant). Like a disagreement over a signature on a mail ballot envelope, the rule accepts the challenged ballot for processing in the event that election judges do not agree on the challenge. In the event that the challenge is rejected, it will still be forwarded on to the voter and the District Attorney following the election, as required by statute.

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**False Claim #6:** Repeal of rules 20.11.2 and 20.19.5 will eliminate or reduce chain-of- custody logs and other security measures.

**Truth:** None of the rule changes will eliminate or reduce chain of custody logs and other security measures. The rules referenced for this claim are being removed because they refer to systems and machines that are no longer used in Colorado.

**Explanation:** This false claim is premised on a basic misunderstanding of the applicability of rules 20.11.2 and 20.19.5.

Rule 20.11.2 put in place requirements for transporting memory cards or cartridges. The memory cards and cartridges referred to in this rule have not been in use in Colorado since at least 2019. The Department has repealed this rule as a clean-up measure. The Department regularly reviews election rules for outdated references and removes those references when they are no longer needed.

Similarly, Rule 20.19.5 put in place chain of custody requirements for ballot scanners. As used in this rule, the term “ballot scanners” refers to precinct-based ballot scanners, which have not been used in Colorado since 2016. Like Rule 20.11.2, the Department has included this repeal as a clean-up measure.

The rules do not alter rules that are related to chain of custody logs and the secure transportation of equipment currently in use in Colorado. Those rules remain in place and are not part of this rulemaking. See Election Rules 1.1.13, 1.1.39, 1.1.43, 11.3.2(e)(1), 18.4.6, 20.3, 20.11.1, 20.11.3, 20.11.4, 20.17, 20.19.3, 25.2.2(d), 25.2.3(a), 26.10.4(a).