

STATE OF COLORADO
Department of State

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Gigi Dennis
Secretary of State

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NOTICE OF ADOPTION

Pursuant to sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2006) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103 C.R.S. (2006), I, Ginette Dennis, Colorado Secretary of State, do hereby adopt and give NOTICE of the temporary and permanent rule adoption this 10th day of October, 2006, of the amendments to the following Secretary of State Election Rules (8 CCR 1505-1), as follows (~~strickethrough~~ text represents deletions from the current rules and text in SMALL CAPS represent additions to the rules):

New Rule 12.4.1 is adopted as follows:

12.4.1 IN ANY ELECTION WHERE A MULTIPLE PAGE PRINTED BALLOT IS USED, A VOTER MUST VOTE AND RETURN ALL PAGES OF THE BALLOT AT THE SAME TIME. ANY VOTER WHO HAS RETURNED AT LEAST ONE PAGE OF A MULTIPLE PAGE PRINTED BALLOT WILL BE CONSIDERED TO HAVE VOTED.

Succeeding subsections of Rule 12.4 are renumbered accordingly.

Rule 12.12.3 is amended as follows:

Rule 12.12.3 The judges shall deliver all election materials bound separately as follows:

- (a) Ballots which were counted;
- (b) Ballots which were defective, as defined in 1-7-309(4);
- (c) ADDITIONAL BALLOT PAGES RETURNED AFTER THE VOTER CAST HIS/HER BALLOT THAT WERE APPROPRIATELY MARKED AND NOT COUNTED IN ACCORDANCE WITH RULE 12.4.1;
- (eD) Ballots/verification envelopes which may be challenged;
- (dE) Verification envelopes with ballots removed;
- (eF) Defective verification envelopes with ballots inside;
- (fG) Ballot packets which were returned as undeliverable.

New Rule 13.6 is adopted as follows:

- 13.6 IN ANY ELECTION WHERE A MULTIPLE PAGE PRINTED BALLOT IS USED, A VOTER MUST VOTE AND RETURN ALL PAGES OF THE BALLOT AT THE SAME TIME. ANY VOTER WHO HAS RETURNED AT LEAST ONE PAGE OF A MULTIPLE PAGE PRINTED BALLOT WILL BE CONSIDERED TO HAVE VOTED. ANY ADDITIONAL PAGE RETURNED AT A LATER TIME SHALL NOT BE COUNTED BUT SHALL BE APPROPRIATELY MARKED, SET ASIDE, AND PRESERVED AS OTHER ELECTION MATERIALS IN ACCORDANCE WITH SECTION 1-7-802, C.R.S.

Succeeding subsections of Rule 13 are renumbered accordingly.

Rule 25 is amended as follows:

25.1 UOCAVA FAX BALLOT RULES:

- 25.1.1 U.S. citizens who are absent from the state and who are members of the Uniformed Services as defined as the U.S. Armed Forces (Army, Navy, Marines, Air Force and Coast Guard), Merchant Marine, and their spouses or dependants, resident overseas electors, or nonresident overseas electors who are otherwise qualified to apply for and vote by absentee ballot, (“UOCAVA citizens”), may request an absentee ballot by facsimile transmission.
- 25.1.2 A designated election official may send and receive absentee ballot applications by facsimile transmission, send blank ballots and accept voted ballots by facsimile transmission from eligible electors who are UOCAVA citizens absent from the state and who are otherwise qualified to vote by absentee ballot.
- 25.1.3 If the designated election official has mailed a Clarification for Voter Status Memorandum to an elector in response to receiving an absentee ballot request and has not received a response to the memo at the time the absentee ballot packet is prepared, the designated election official shall mail the elector a full ballot for which the elector, as a resident, would be eligible to vote (federal, state, local offices and questions).
- 25.1.4 No later than January 1, 2006, the office of each county clerk and recorder shall have a dedicated fax machine located in their office in order to send and receive faxed ballots to and from UOCAVA citizens in accordance with the Help America Vote Act of 2002 and this Rule 25.
- 25.1.65 On the faxed application, the elector shall provide the fax number, including the international country code and local area, province or city code (if applicable), where the ballot shall be faxed.
- 25.1.66 An Absentee ballot that is completed and returned by the elector via facsimile transmission must contain the elector’s printed name, signature, date of birth, and the following statement: “I am a member of the Uniformed Services, a member of the Merchant Marine, spouse/dependant of a Uniformed Services Member or Merchant Marine, resident overseas

elector or a nonresident overseas elector and am qualified to apply for and vote by absentee ballot. I also understand that by faxing my voted ballot, I am voluntarily waiving my right to a secret ballot.”

25.2 LIMITED ELECTRONIC MAIL BALLOT RULES

25.2.1 A UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES MAY RECEIVE AND RETURN AN APPLICATION FOR, OR AN ABSENTEE BALLOT BY ELECTRONIC MAIL IN CIRCUMSTANCES WHERE A MAIL BALLOT OR FAX BALLOT IS NOT AVAILABLE OR FEASIBLE.

- (A) AN APPLICATION FOR ABSENTEE ELECTRONIC MAIL BALLOT MUST BE RECEIVED NO LATER THAN CLOSE OF BUSINESS THE FRIDAY IMMEDIATELY PRECEDING THE ELECTION
- (B) AN EMAIL REQUEST FOR A REPLACEMENT BALLOT MUST BE RECEIVED BY 5:00 P.M. MOUNTAIN TIME ON ELECTION DAY.

25.2.2 UPON RECEIPT AND VERIFICATION OF AN APPLICATION, THE DESIGNATED ELECTION OFFICIAL SHALL AUTHORIZE THE TRANSMISSION OF A BLANK BALLOT CONTAINING ALL CONTESTS AND QUESTIONS FOR WHICH THE ELECTOR IS ELIGIBLE TO VOTE.

- (A) THE DESIGNATED ELECTION OFFICIAL SHALL FAX THE ELECTION MATERIALS, WHICH SHALL INCLUDE A BLANK BALLOT AND VOTER INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT) TO THE FEDERAL VOTING ASSISTANCE PROGRAM (FVAP) ELECTRONIC TRANSMISSION SERVICE (ETS). THE DESIGNATED ELECTION OFFICIAL SHALL NOT SEND THE VOTING MATERIALS DIRECTLY TO THE ELECTOR BY ELECTRONIC MAIL. OR,
- (B) THE DESIGNATED ELECTION OFFICIAL MAY STORE THE BALLOT ELECTRONICALLY WITH ETS USING THE PROCEDURES OUTLINED IN THE FVAP ETS GUIDE, AND AUTHORIZE THE TRANSMISSION OF THE BLANK BALLOT AND INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT) TO THE ELECTOR BY FAXING A COMPLETED ELECTRONIC TRANSMISSION COVERSHEET TO ETS.

25.2.3 THE ELECTRONIC PACKAGE TRANSMITTED TO ETS SHALL CONTAIN:

- (A) A COMPLETED ELECTRONIC TRANSMISSION COVERSHEET;
- (B) THE BLANK BALLOT, IF NOT STORED WITH ETS, WITH VOTING INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT); AND
- (C) THE CONTACT INFORMATION FOR THE DESIGNATED ELECTION OFFICIAL INCLUDING: NAME, TITLE, MAILING ADDRESS, EMAIL ADDRESS, PHONE, AND FAX NUMBER.

25.2.4 AN ABSENTEE BALLOT THAT IS COMPLETED AND RETURNED BY THE ELECTOR VIA ELECTRONIC MAIL MUST CONTAIN THE ELECTOR’S PRINTED

NAME, SIGNATURE, DATE OF BIRTH, AND THE FOLLOWING STATEMENT: “I AM A MEMBER OF THE UNIFORMED SERVICES AND AM QUALIFIED TO APPLY FOR AND VOTE BY ABSENTEE BALLOT. I ALSO UNDERSTAND THAT BY TRANSMITTING MY VOTED BALLOT BY ELECTRONIC MAIL, I AM VOLUNTARILY WAIVING MY RIGHT TO A SECRET BALLOT.”

25.2.5 TO RETURN A VOTED ABSENTEE BALLOT AND AFFIDAVIT BY ELECTRONIC MAIL, THE ELECTOR MUST HAVE ACCESS TO THE TECHNOLOGY TO SCAN THE DOCUMENTS, SAVE THE DOCUMENTS IN A SECURE FORMAT, AND RETURN THE DOCUMENTS AS AN ELECTRONIC MAIL ATTACHMENT.

25.2.6 UPON RECEIPT OF THE VOTED BALLOT, THE DESIGNATED ELECTION OFFICIAL SHALL VERIFY THE ELECTOR’S SIGNATURE PURSUANT TO SECTION 1-8-114.5, C.R.S. AND RULE 29. UPON VERIFICATION OF THE ELECTOR’S SIGNATURE, THE BALLOT SHALL BE DUPLICATED PURSUANT TO 1-8-103.5(2) C.R.S. AND PROCESSED.

25.3 OVERALL UOCAVA REQUIREMENTS

25.83.1 Absentee ballots sent by ETS OR facsimile transmission shall be in text format on 8 ½” x 11” white paper to increase the readability of the ballot and to avoid possible misinterpretations of the elector’s intended choice because of poor transmission of the document.

25.93.2 Instructions SENT BY ETS OR faxed to the elector with the blank ballot shall be in text format on 8 ½” x 11” white paper and shall include the following information:

- (a) The dedicated fax number OR EMAIL ADDRESS for ETS to which the voted ballot shall be returned (if applicable);
- (b) The total number of pages transmitted;
- (c) The total number of ballot pages;
- (d) The telephone number or e-mail address where the eligible elector may send questions regarding the fax absentee ballot;
- (e) A notice that the ballot shall not be duplicated for any other elector;
- (f) A notice that once the ballot is returned by an elector, it will be counted pursuant to section 1-8-116(4), C.R.S.; however, if an elector requests a replacement ballot, the first ballot returned will be counted pursuant to section 1-8-111(3), C.R.S.;
- (g) A notice that the voted ballot must be received by the clerk and recorder or Secretary of State no later than 7:00 p.m. Mountain Standard Time on election day;

- (h) A request for an e-mail address to which a confirmation notice of receipt of the ballot may be sent at the discretion of the county clerk and recorder; and
- (i) Any other information deemed necessary by the Secretary of State or the designated election official.

25.403.3 The designated election official shall fax a blank ballot with the instructions to the fax number provided by the elector, OR TO ETS (IF APPLICABLE). If the transmission is unsuccessful, the designated election official shall attempt to fax the ballot at least two more times.

25.3.54 ~~Faxed~~ ABSENTEE ballot applications returned via facsimile transmission OR ELECTRONIC MAIL by the elector to the county clerk and recorder or the Secretary of State via ETS shall be received in the clerk and recorder's office or the Secretary of State's office no later than the close of business on the Friday immediately preceding the election.

25.42.3.5 Any voted ballot by a Uniformed Services elector or an overseas elector received by the office of the Secretary of State by 7:00 p.m. Mountain ~~Standard~~ Time on election day shall be forwarded to the appropriate county clerk and recorder by overnight mail, fax, or courier no later than the next business day. The office of the Secretary of State shall immediately notify the appropriate county clerk and recorder of the receipt and forwarding of the ballot.

25.3.5.1 If a county is notified by the Secretary of State by 7:00 p.m. on election day that an absentee ballot has been received by the office of the Secretary of State, the clerk and recorder shall retain a minimum of ten (10) voted ballots, which shall be counted with the ballot received by the Secretary of State to ensure voter secrecy.

25.5-13.6 Any ballot ~~faxed~~ TRANSMITTED to an elector BY ETS OR FACSIMILE shall contain a unique identification number for tracking and auditing purposes.

25.3.7 A log shall be kept by the designated election official of each ballot ~~sent~~ TRANSMITTED to an elector by ETS OR facsimile indicating:

- (a) The name of the elector;
- (b) The fax number to which the ballot was sent, OR EMAIL ADDRESS (IF APPLICABLE);
- (c) The unique identification number of the ~~faxed~~ ballot;
- (d) The date the ballot and instructions were ~~faxed~~ TRANSMITTED; and
- (e) The initials of the employee of the designated election official ~~sending the fax~~ TRANSMITTING THE BALLOT.

25.7.1 The ~~fax~~-ELECTRONIC transmission log as well as any other ETS OR fax records shall be maintained as part of the official election record.

25.43.8 The county clerk and recorder shall report to the Secretary of State's office no later than sixty (60) days from the date of the election:

- (a) The combined number of absentee ballots transmitted (faxed, ~~and~~ mailed, AND TRANSMITTED VIA ETS)
- (b) The combined number of absentee ballots that were returned (faxed, ~~and~~ mailed, AND TRANSMITTED VIA ETS);
- (c) The total number of absentee ballots that were counted (faxed, ~~and~~ mailed, AND TRANSMITTED VIA ETS).

New Rule 27.2 is adopted as follows:

27.2 MULTIPLE PAGE BALLOTS. IN ANY ELECTION WHERE A MULTIPLE PAGE PRINTED BALLOT IS USED, A VOTER MUST VOTE AND RETURN ALL PAGES OF THE BALLOT AT THE SAME TIME. ANY VOTER WHO HAS RETURNED AT LEAST ONE PAGE OF A MULTIPLE PAGE PRINTED BALLOT WILL BE CONSIDERED TO HAVE VOTED. ANY ADDITIONAL PAGE RETURNED AT A LATER TIME SHALL NOT BE COUNTED BUT SHALL BE APPROPRIATELY MARKED, SET ASIDE, AND PRESERVED AS OTHER ELECTION MATERIALS IN ACCORDANCE WITH SECTION 1-7-802, C.R.S.

Succeeding subsections of Rule 27 are renumbered accordingly.

New Rule 47 is adopted as follows:

RULE 47. RULES CONCERNING FLEEING VOTERS

47.1 A FLEEING VOTER IS ANY VOTER WHO LEAVES THE VOTING AREA WITHOUT COMPLETING THE VOTING PROCESS THROUGH THE FINAL STEP OF CASTING HIS OR HER BALLOT.

47.2 IF A VOTER LEAVES THE VOTING AREA WITHOUT COMPLETING THE VOTING PROCESS, TWO JUDGES OF DIFFERENT AFFILIATION SHALL TO THE EXTENT POSSIBLE, COVER THE VOTER'S CHOICES, AND CAST THE BALLOT AS THE VOTER LEFT IT.

Such amendments are effective immediately. In accordance with section 24-4-103(6), C.R.S (2006), attached is a statement of the findings of the Secretary of State justifying the adoption of these amendments on an emergency basis.

Dated this 10th Day of October, 2006.

/s/ Ginette Dennis
Ginette Dennis
Colorado Secretary of State

STATE OF COLORADO

Department of State

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William A. Hobbs
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Statement of Justification and Reasons for Adoption of Emergency Rules

Office of the Secretary of State

Amended and Revised Rules (Rules: 12.4, 12.12, 13.6, 25, 27.2, and 47)

Colorado Secretary of State Election Rules

As Amended October 10, 2006

Under section 1-1-107(2)(b), C.R.S. (2006), the Secretary of State has the power “[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.” In addition, section 1-1.5-104(1)(e), C.R.S. (2006), authorizes the Secretary of State to “[p]romulgate rules . . . as the secretary finds necessary for the proper administration, implementation, and enforcement of [the “Help America Vote Act of 2002”, P.L. No. 107-252].”

Certain amendments to the existing election rules are immediately necessary for the uniform and proper administration and enforcement of the election laws of the State of Colorado during the 2006 election cycle. These rules are necessary to implement requirements of SB06-062 and to establish uniform procedures for multiple page ballots and fleeing voters in advance of the 2006 general election.

The Secretary of State finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of the temporary amendments to the Secretary of State Election Rules is necessary both to comply with law and to preserve the public welfare generally.

Therefore, in accordance with section 24-4-103(6), C.R.S. (2006), the Secretary of State finds that temporary adoption of the amendments and revisions to existing election rules is “imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest.”

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Statements of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Amended and Revised Rules (Rule 12.4, 12.12, 13.6, 25, 27.2, and 47)
Colorado Secretary of State Election Rules
As Amended October 10, 2006

1. Basis and Purpose

This statement pertains to the amendments and revisions to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Article 1, Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, specifically, with regard to the requirements of, SB06-062 and the requirements of the "Help America Vote Act of 2002", P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2006).

The amendments and revisions to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. The Secretary of State finds that the adoption and enactment of these amendments and revisions is necessary in order to comply with the requirements of SB06-062, to provide uniform guidance for the administration of the 2006 general election, and to further increase the transparency and security of the election process.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the permanent adoption of the amendments and revisions to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments and revisions to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2006), which authorizes the Secretary of State "[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."

2. Section 1-1.5-104(1), C.R.S. (2006), which provides that:

"The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article."