

Revised Draft of Proposed Rules

September 27, 2006

This document shows and explains the substantive changes proposed for consideration at the Rulemaking Hearing on October 4, 2006.

This draft copy of the proposed rule amendments is made available to the public and posted on the Department of State's web site, in compliance with the requirement of section 24-4-103 (4) (a), C.R.S., that "Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations are included.

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COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

New Rule 12.4.1 would be 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 would be renumbered accordingly.

Rule 12.12.3 would be 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;

- 1 (~~e~~) Verification envelopes with ballots removed;
- 2 (~~f~~) Defective verification envelopes with ballots inside;
- 3 (~~g~~) Ballot packets which were returned as undeliverable.

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6 New Rule 13.6 would be adopted as follows:

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8 13.6 IN ANY ELECTION WHERE A MULTIPLE PAGE PRINTED BALLOT IS USED, A VOTER MUST VOTE
9 AND RETURN ALL PAGES OF THE BALLOT AT THE SAME TIME. ANY VOTER WHO HAS
10 RETURNED AT LEAST ONE PAGE OF A MULTIPLE PAGE PRINTED BALLOT WILL BE
11 CONSIDERED TO HAVE VOTED. ANY ADDITIONAL PAGE RETURNED AT A LATER TIME SHALL
12 NOT BE COUNTED BUT SHALL BE APPROPRIATELY MARKED, SET ASIDE, AND PRESERVED AS
13 OTHER ELECTION MATERIALS IN ACCORDANCE WITH SECTION 1-7-802, C.R.S.

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15 Succeeding subsections of Rule 13 would be renumbered accordingly.

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17 Rule 25 would be amended as follows:

18 25.1 UOCAVA FAX BALLOT RULES;

19 25.1.1 U.S. citizens who are absent from the state and who are members of the
20 Uniformed Services as defined as the U.S. Armed Forces (Army, Navy, Marines,
21 Air Force and Coast Guard), Merchant Marine, and their spouses or dependants,
22 resident overseas electors, or nonresident overseas electors who are otherwise
23 qualified to apply for and vote by absentee ballot, (“UOCAVA citizens”), may
24 request an absentee ballot by facsimile transmission.

25 25.1.2 A designated election official may send and receive absentee ballot applications
26 by facsimile transmission, send blank ballots and accept voted ballots by facsimile
27 transmission from eligible electors who are UOCAVA citizens absent from the
28 state and who are otherwise qualified to vote by absentee ballot.

29 25.1.3 If the designated election official has mailed a Clarification for Voter Status
30 Memorandum to an elector in response to receiving an absentee ballot request and
31 has not received a response to the memo at the time the absentee ballot packet is
32 prepared, the designated election official shall mail the elector a full ballot for
33 which the elector, as a resident, would be eligible to vote (federal, state, local
34 offices and questions).

35 25.1.4 No later than January 1, 2006, the office of each county clerk and recorder shall
36 have a dedicated fax machine located in their office in order to send and receive
37 faxed ballots to and from UOCAVA citizens in accordance with the Help
38 America Vote Act of 2002 and this Rule 25.

39 25.1.65 On the faxed application, the elector shall provide the fax number, including the
40 international country code and local area, province or city code (if applicable),
41 where the ballot shall be faxed.

1 25.146 An Absentee ballot that is completed and returned by the elector via facsimile
2 transmission must contain the elector's printed name, signature, date of birth, and
3 the following statement: "I am a member of the Uniformed Services, a member of
4 the Merchant Marine, spouse/dependant of a Uniformed Services Member or
5 Merchant Marine, resident overseas elector or a nonresident overseas elector and
6 am qualified to apply for and vote by absentee ballot. I also understand that by
7 faxing my voted ballot, I am voluntarily waiving my right to a secret ballot."

8 25.2 LIMITED ELECTRONIC MAIL BALLOT RULES

9 25.2.1 A UNIFORMED SERVICES ELECTOR SERVING OUTSIDE THE UNITED STATES MAY
10 RECEIVE AND RETURN AN APPLICATION OR BALLOT BY ELECTRONIC MAIL IN
11 CIRCUMSTANCES WHERE A MAIL BALLOT OR FAX BALLOT IS NOT AVAILABLE OR
12 FEASIBLE.

13 (A) AN EMAIL ABSENTEE REQUEST APPLICATION MUST BE RECEIVED NO LATER
14 THAN CLOSE OF BUSINESS THE FRIDAY IMMEDIATELY PRECEDING THE
15 ELECTION

16 (B) AN EMAIL REQUEST FOR A REPLACEMENT BALLOT MUST BE RECEIVED BY
17 5:00 P.M. ON ELECTION DAY.

18 25.2.2 UPON RECEIPT AND VERIFICATION OF AN APPLICATION, THE DESIGNATED ELECTION
19 OFFICIAL SHALL AUTHORIZE THE TRANSMISSION OF A BLANK BALLOT CONTAINING
20 ALL CONTESTS AND QUESTIONS FOR WHICH THE ELECTOR IS ELIGIBLE TO VOTE.

21 (A) THE DESIGNATED ELECTION OFFICIAL SHALL FAX THE ELECTION
22 MATERIALS, WHICH SHALL INCLUDE A BLANK BALLOT AND VOTER
23 INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT) TO THE FEDERAL
24 VOTING ASSISTANCE PROGRAM (FVAP) ELECTRONIC TRANSMISSION
25 SERVICE (ETS). THE DESIGNATED ELECTION OFFICIAL SHALL NOT SEND
26 THE VOTING MATERIALS DIRECTLY TO THE ELECTOR BY ELECTRONIC MAIL.
27 OR

28 (B) THE DESIGNATED ELECTION OFFICIAL MAY STORE THE BALLOT
29 ELECTRONICALLY WITH ETS USING THE PROCEDURES OUTLINED IN THE
30 FVAP ETS GUIDE, AND AUTHORIZE THE TRANSMISSION OF THE BLANK
31 BALLOT AND INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT) TO THE
32 ELECTOR BY FAXING A COMPLETED ELECTRONIC TRANSMISSION
33 COVERSHEET TO ETS,

34 25.2.3 THE ELECTRONIC PACKAGE TRANSMITTED TO ETS SHALL CONTAIN:

- 35 • A COMPLETED ELECTRONIC TRANSMISSION COVERSHEET;
- 36 • THE BLANK BALLOT, IF NOT STORED WITH ETS, WITH VOTING
37 INSTRUCTIONS (INCLUDING THE ELECTOR AFFIDAVIT); AND

- 1 • THE CONTACT INFORMATION FOR THE DESIGNATED ELECTION OFFICIAL
2 INCLUDING: NAME, TITLE, MAILING ADDRESS, EMAIL ADDRESS, PHONE, AND
3 FAX NUMBER.

4 25.2.4 AN ABSENTEE BALLOT THAT IS COMPLETED AND RETURNED BY THE ELECTOR VIA
5 ELECTRONIC MAIL MUST CONTAIN THE ELECTOR'S PRINTED NAME, SIGNATURE,
6 DATE OF BIRTH, AND THE FOLLOWING STATEMENT: "I AM A MEMBER OF THE
7 UNIFORMED SERVICES AND AM QUALIFIED TO APPLY FOR AND VOTE BY ABSENTEE
8 BALLOT. I ALSO UNDERSTAND THAT BY FAXING MY VOTED BALLOT, I AM
9 VOLUNTARILY WAIVING MY RIGHT TO A SECRET BALLOT."

10 25.2.5 TO RETURN A VOTED ABSENTEE BALLOT AND AFFIDAVIT BY ELECTRONIC MAIL, THE
11 ELECTOR MUST HAVE ACCESS TO THE TECHNOLOGY TO SCAN THE DOCUMENTS,
12 SAVE THE DOCUMENTS IN A SECURE FORMAT, AND RETURN THE DOCUMENTS AS AN
13 ELECTRONIC MAIL ATTACHMENT.

14 25.2.6 UPON RECEIPT OF THE VOTED BALLOT, THE DESIGNATED ELECTION OFFICIAL SHALL
15 VERIFY THE ELECTOR'S SIGNATURE PURSUANT TO SECTION 1-8-114.5, C.R.S. AND
16 RULE 29. UPON VERIFICATION OF THE ELECTOR'S SIGNATURE, THE BALLOT SHALL
17 BE DUPLICATED PURSUANT TO 1-8-103.5(2) C.R.S. AND PROCESSED.

18 25.3 OVERALL UOCAVA REQUIREMENTS

19 25.83.1 Absentee ballots sent by ETS OR facsimile transmission shall be in text
20 format on 8 ½" x 11" white paper to increase the readability of the ballot and to
21 avoid possible misinterpretations of the elector's intended choice because of poor
22 transmission of the document.

23 25.93.2 Instructions SENT BY ETS OR faxed to the elector with the blank ballot
24 shall be in text format on 8 ½" x 11" white paper and shall include the following
25 information:

- 26 (a) The dedicated fax number OR EMAIL ADDRESS to which the voted ballot
27 shall be returned (if applicable);
- 28 (b) The total number of pages transmitted;
- 29 (c) The total number of ballot pages;
- 30 (d) The telephone number or e-mail address where the eligible elector may
31 send questions regarding the fax absentee ballot;
- 32 (e) A notice that the ballot shall not be duplicated for any other elector;
- 33 (f) A notice that once the ballot is returned by an elector, it will be counted
34 pursuant to section 1-8-116(4), C.R.S.; however, if an elector requests a
35 replacement ballot, the first ballot returned will be counted pursuant to
36 section 1-8-111(3), C.R.S.;

- 1 (g) A notice that the voted ballot must be received by the clerk and recorder or
2 Secretary of State no later than 7:00 p.m. Mountain Standard Time on
3 election day;
- 4 (h) A request for an e-mail address to which a confirmation notice of receipt
5 of the ballot may be sent at the discretion of the county clerk and recorder;
6 and
- 7 (i) Any other information deemed necessary by the Secretary of State or the
8 designated election official.

9 25.403.3 The designated election official shall fax a blank ballot with the
10 instructions to the fax number provided by the elector, OR TO THE ETS (IF
11 APPLICABLE). If the transmission is unsuccessful, the designated election official
12 shall attempt to fax the ballot at least two more times.

13 25.3.54 Faxed ballot applications returned via facsimile transmission OR
14 ELECTRONIC MAIL by the elector to the county clerk and recorder or the Secretary
15 of State shall be received in the clerk and recorder's office or the Secretary of
16 State's office no later than the close of business on the Friday immediately
17 preceding the election.

18 25.42.3.5 Any voted ballot by a Uniformed Services elector or an overseas elector
19 received by the office of the Secretary of State by 7:00 p.m. Mountain Standard
20 Time on election day shall be forwarded to the appropriate county clerk and
21 recorder by overnight mail, fax, or courier no later than the next business day.
22 The office of the Secretary of State shall immediately notify the appropriate
23 county clerk and recorder of the receipt and forwarding of the ballot.

24 25.3.5.1 If a county is notified by the Secretary of State by 7:00 p.m. on
25 election day that an absentee ballot has been received by the office of the
26 Secretary of State, the clerk and recorder shall retain a minimum of ten
27 (10) voted ballots, which shall be counted with the ballot received by the
28 Secretary of State to ensure voter secrecy.

29 25.5.13.6 Any ballot ~~faxed~~-TRANSMITTED to an elector BY ETS OR FACSIMILE shall
30 contain a unique identification number for tracking and auditing purposes.

31 25.3.7 A log shall be kept by the designated election official of each ballot ~~sent~~
32 TRANSMITTED to an elector by ETS OR facsimile indicating:

- 33 (a) The name of the elector;
- 34 (b) The fax number to which the ballot was sent, OR EMAIL ADDRESS (IF
35 APPLICABLE);
- 36 (c) The unique identification number of the ~~faxed~~-ballot;
- 37 (d) The date the ballot and instructions were ~~faxed~~-TRANSMITTED; and

1 (e) The initials of the employee of the designated election official ~~sending the~~
2 ~~fax~~-TRANSMITTING THE BALLOT.

3 25.7.1 The ~~fax~~-ELECTRONIC transmission log as well as any other ETS OR fax
4 records shall be maintained as part of the official election record.

5 25.13.8 The county clerk and recorder shall report to the Secretary of State's office
6 no later than sixty (60) days from the date of the election:

7 (a) The combined number of absentee ballots transmitted (faxed, ~~and~~ mailed,
8 AND EMAILED)

9 (b) The combined number of absentee ballots that were returned (faxed, ~~and~~
10 mailed, AND EMAILED);

11 (c) The total number of absentee ballots that were counted (faxed, ~~and~~ mailed,
12 AND EMAILED).

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14 New Rule 27.2 would be adopted as follows:

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16 27.2 MULTIPLE PAGE BALLOTS. IN ANY ELECTION WHERE A MULTIPLE PAGE PRINTED BALLOT IS
17 USED, A VOTER MUST VOTE AND RETURN ALL PAGES OF THE BALLOT AT THE SAME TIME.
18 ANY VOTER WHO HAS RETURNED AT LEAST ONE PAGE OF A MULTIPLE PAGE PRINTED
19 BALLOT WILL BE CONSIDERED TO HAVE VOTED. ANY ADDITIONAL PAGE RETURNED AT A
20 LATER TIME SHALL NOT BE COUNTED BUT SHALL BE APPROPRIATELY MARKED, SET ASIDE,
21 AND PRESERVED AS OTHER ELECTION MATERIALS IN ACCORDANCE WITH SECTION 1-7-802,
22 C.R.S.

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24 Succeeding subsections of Rule 27 would be renumbered accordingly.

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27 The petition for the repeal of temporary Rule 46 will be considered:

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29 **Rule 46. Rules Concerning Vacancies in Nomination**

30 46.1 If a vacancy occurs and is filled by the appropriate vacancy committee more than 18 days
31 but less than 70 days before a general election pursuant to section 1-4-1002(2.3)(a),
32 C.R.S., (2005) the designated election official shall make a reasonable attempt to have
33 the replacement candidate's name printed on the official ballots.

34 46.1.1 For the purposes of this Rule 46, a vacancy shall be considered filled on the date
35 that the replacement candidate files an acceptance of nomination with the
36 appropriate filing officer pursuant to section 1-4-1002(5)(a), C.R.S., (2005).

37 46.1.2 Notwithstanding other events, if absentee or polling place ballots have been
38 printed and are in the possession of the designated election official, the designated
39 election official shall not be required to print or issue replacement ballots.

1 46.2 If the designated election official is unable to provide corrected ballots, after reasonably
2 attempting to ensure that the replacement candidate's name is printed on the ballots
3 pursuant to Rule 46.1, the designated election official shall meet all requirements
4 provided in section 1-4-1002(2.3)(b), C.R.S., (2005), and all votes cast for the
5 withdrawing candidate shall be counted for the replacement candidate.
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7 46.2.1 If a replacement candidate receives a plurality of votes cast at the general election,
8 the replacement candidate shall be certified as the winning candidate.
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11 New Rule 47 would be adopted as follows:
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13 **RULE 47. RULES CONCERNING FLEEING VOTERS**
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15 47.1 A FLEEING VOTER IS ANY VOTER WHO LEAVES THE VOTING AREA WITHOUT COMPLETING
16 THE VOTING PROCESS THROUGH THE FINAL STEP OF CASTING HIS OR HER BALLOT.
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18 47.2 IF A VOTER LEAVES THE VOTING AREA WITHOUT COMPLETING THE VOTING PROCESS, TWO
19 JUDGES OF DIFFERENT AFFILIATION SHALL CAST THE BALLOT AS THE VOTER LEFT IT.
20