

# COLORADO SECRETARY OF STATE

## 8 CCR 1505-1

### ELECTION RULES

#### Preliminary Draft of Proposed Rules

February 29, 2008

*Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.*

*A final copy of the proposed rule changes will be available to the public no later than March 24, 2008, and a copy will be 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 "[a]ny 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 or underlined. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.*

1 Rule 2.7.1 would be repealed as follows:

2 2.7 ~~First Time Voter Who Registers by Mail.~~

3 ~~2.7.1 Prior to the implementation of the statewide voter registration database,~~  
4 ~~when a first time voter registers to vote by mail, the voter shall provide a~~  
5 ~~copy of one of the forms of identification set forth in Rule 30.1.6.~~

6 Succeeding sections would be renumbered accordingly.

7 New Rule 2.12 would be adopted as follows:

8 2.12 REGISTRATION OF ADDRESS CONFIDENTIALITY PROGRAM (ACP) ELECTORS

9 2.12.1 WHEN AN ACP PARTICIPANT REGISTERS TO VOTE BY MAIL, THE ELECTOR  
10 SHALL PROVIDE IDENTIFICATION PURSUANT TO RULE 30.3.2 AND A COPY OF  
11 HIS/HER ACP AUTHORIZATION CARD.

1 2.12.2 ACP PARTICIPANTS SHALL BE REGISTERED TO VOTE AS PERMANENT MAIL-IN  
2 BALLOT VOTERS. NOTHING IN THIS RULE SHALL PRECLUDE A PARTICIPANT  
3 FROM SURRENDERING HIS/HER MAIL-IN BALLOT IN THE SAME MANNER AS  
4 OTHER PERMANENT MAIL-IN BALLOT VOTERS.

5 2.12.3 PURSUANT TO SECTION 24-21-208(3)(A), C.R.S., THE DESIGNATED  
6 ELECTION OFFICIAL SHALL:

7 2.12.3.1 USE THE ACTUAL ADDRESS OF A PROGRAM PARTICIPANT FOR  
8 PRECINCT DESIGNATION AND SHALL KEEP THE PARTICIPANT'S  
9 ADDRESS AND PRECINCT NUMBER CONFIDENTIAL.

10 2.12.3.2 USE THE SUBSTITUTE ADDRESS, AS DEFINED IN SECTION 24-  
11 21-203 (13), C.R.S., FOR ALL CORRESPONDENCE AND MAILINGS  
12 PLACED IN THE UNITED STATES MAIL.

13 2.12.4 ACCESS TO ACP PARTICIPANT'S VOTER REGISTRATION RECORDS IS  
14 RESTRICTED PURSUANT TO SECTION 24-21-208(3) (B) AS FOLLOWS:

15 2.12.4.1 AN ACP PARTICIPANT'S ACTUAL ADDRESS AND PRECINCT  
16 NUMBER SHALL BE MASKED FROM ANY PUBLIC RECORD THAT IS  
17 REQUIRED TO BE MADE, MAINTAINED, OR KEPT PURSUANT TO  
18 SECTIONS 1-2-227 AND 1-2-301, C.R.S., AND SHALL  
19 AUTOMATICALLY BE CONFIDENTIAL IN ACCORDANCE WITH THE  
20 PROVISIONS OF SECTION 24-72-204(3.5); EXCEPT THAT THE  
21 EXCEPTIONS TO SUCH CONFIDENTIALITY SET FORTH IN SECTION 24-  
22 72-204(3.5) (C) SHALL NOT APPLY TO A PROGRAM PARTICIPANT.

23 2.12.4.3 A STATE OR LOCAL GOVERNMENT AGENCY'S ACCESS TO AN  
24 ACP PARTICIPANT'S VOTER REGISTRATION SHALL BE GOVERNED BY  
25 THE DISCLOSURE PROCESS SET FORTH IN SECTION 24-21-210, C.R.S.

26 New Rule 2.13 would be adopted as follows:

27 2.13 PRESERVATION OF VOTER REGISTRATION RECORDS. THE COUNTY CLERK AND  
28 RECORDER MAY DESTROY PAPER VOTER REGISTRATION RECORDS PURSUANT TO  
29 SECTION 1-2-227, C.R.S., ONLY IF THE DOCUMENTS HAVE BEEN DIGITALLY  
30 RECORDED IN THE VOTER REGISTRATION DATABASE. VOTER REGISTRATION  
31 RECORDS SHALL BE RETAINED IN PERPETUITY IN DIGITAL FORMAT BY THE VOTER  
32 REGISTRATION DATABASE.

33 Rule 12 would be amended by the addition of new rule 12.1.1.2, as follows:

34 12.1.1.2 THE SECRECY SLEEVE, SECRECY ENVELOPE, OR VOTER  
35 INSTRUCTIONS SHALL:

36 (A) INFORM THE VOTER THAT ACCESSIBLE VOTING SYSTEMS ARE  
37 AVAILABLE FOR USE; AND

1 (B) INFORM THE VOTER TO CONTACT THE COUNTY CLERK AND  
2 RECORDER FOR ANY OTHER RELEVANT INFORMATION SUCH  
3 AS THE DATE, TIME, AND LOCATION SUCH MACHINES ARE  
4 AVAILABLE.

5 Rule 12.3 would be amended by the addition of new Rule 12.3.2.1, as follows:

6 12.3.2.1 IN ADDITION TO THE FOREGOING, ANY HOME RULE  
7 MUNICIPALITY SHALL INCLUDE IN ITS PLAN A DECLARATION, AS  
8 FOLLOWS:

9 “NOTHING IN THIS PLAN REFLECTS LOCALLY ADOPTED MAIL BALLOT  
10 ELECTION PROCEDURES DIFFERENT FROM THOSE SET FORTH IN THE  
11 COLORADO MAIL BALLOT ELECTION ACT, SECTION 1-7.5-101-11,  
12 C.R.S., AS FROM TIME TO TIME AMENDED, AND ANY REGULATIONS  
13 ADOPTED PURSUANT THERETO.”

14 THE SECRETARY OF STATE SHALL NOT REVIEW THE MAIL BALLOT  
15 PLAN OF ANY HOME RULE MUNICIPALITY THAT FAILS TO INCLUDE  
16 THE ABOVE DECLARATION.

17 New Rule 43.11 would be adopted as follows:

18 43.11 LEASE, LOAN, OR RENTAL OF ELECTION EQUIPMENT

19 43.11.1 NOTHING IN THIS RULE SHALL BE CONSTRUED TO REQUIRE A  
20 COUNTY CLERK TO LEASE, LOAN, OR RENT ANY ELECTION  
21 EQUIPMENT TO ANY MUNICIPALITY, SPECIAL DISTRICT OR OTHER  
22 LOCAL JURISDICTION.

23 43.11.2 A COUNTY CLERK WHO CHOOSES TO LEASE, LOAN, OR RENT  
24 ANY CERTIFIED ELECTION EQUIPMENT TO A MUNICIPALITY, SPECIAL  
25 DISTRICT, OR OTHER LOCAL JURISDICTION FOR USE IN THEIR  
26 ELECTIONS SHALL FOLLOW AT LEAST ONE OF THE FOLLOWING  
27 PROCEDURES IN ORDER TO MAINTAIN OR REESTABLISH AN  
28 ACCEPTABLE CHAIN OF CUSTODY AND APPROPRIATE  
29 DOCUMENTATION PURSUANT TO RULE 43.8.

30 A. AFTER THE CERTIFIED EQUIPMENT HAS BEEN RETURNED TO  
31 THE COUNTY CLERK BY THE APPLICABLE JURISDICTION, AND  
32 PRIOR TO USE OF THE EQUIPMENT IN ANY PRIMARY,  
33 GENERAL, CONGRESSIONAL VACANCY, STATEWIDE BALLOT  
34 ISSUE (INCLUDING RECALL), OR SPECIAL ELECTION  
35 CONDUCTED BY THE COUNTY CLERK, REINSTATEMENT OR  
36 VERIFICATION OF THE TRUSTED BUILD, PURSUANT TO RULE  
37 43.8.11.3(A), SHALL BE COMPLETED.

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B. THE COUNTY CLERK OR THEIR DEPUTIZED REPRESENTATIVE SHALL:

I. DELIVER THE CERTIFIED EQUIPMENT TO THE JURISDICTION;

II. WITNESS AND DOCUMENT THE INSTALLATION OF THE MEMORY CARD(S) OR CATRIDGE(S) TO BE USED BY THE JURISDICTION;

III. PLACE ONE OR MORE SECURE AND NUMBERED SEALS ON THE VOTING EQUIPMENT PURSUANT TO RULE 43.8.2. IF DURING THE COURSE OF THE JURISDICTION’S ELECTION, THE DESIGNATED ELECTION OFFICIAL REQUIRES REMOVAL OF A MEMORY CARD OR CARTIDGE AS A FUNCTION OF THE ELECTION PROCESS, THE COUNTY CLERK OR THEIR DEPUTIZED REPRESENTIVE SHALL WITNESS AND DOCUMENT THE REMOVAL AND PROPER RESEALING OF THE MEMORY CARD OR CARTRIDGE; AND

IV. UPON RETURN OF THE EQUIPMENT TO THE COUNTY CLERK AND RECORDER, THE COUNTY CLERK SHALL VERIFY AND DOCUMENT THAT THE SEALS ARE INTACT. IF ANY SEAL APPEARS TO BE DAMAGED OR REMOVED, THE COUNTY CLERK SHALL REINSTALL OR VERIFY THE TRUSTED BUILD IN ACCORDANCE WITH THIS RULE 43.

C. THE COUNTY CLERK AND RECORDER SHALL DESIGNATE COUNTY STAFF TO BE STATIONED WITH THE LOANED CERTIFIED EQUIPMENT AT ALL TIMES WHILE THE EQUIPMENT IS UNDER USE BY THE DESIGNATED ELECTION OFFICIAL. THE CERTIFIED EQUIPMENT SHALL NOT BE ALLOWED OUT OF THE PHYSICAL CUSTODY OF THE COUNTY STAFF AT ANY TIME. THE COUNTY STAFF SHALL ENSURE THAT NO UNAUTHORIZED ACCESS SHALL OCCUR.

D. PURSUANT TO SECTION 1-5-605.5, C.R.S., THE COUNTY CLERK SHALL APPOINT THE DESIGNATED ELECTION OFFICIAL AS A DEPUTY FOR THE PURPOSES OF SUPERVISING THE CERTIFIED VOTING EQUIPMENT. THE DESIGNATED ELECTION OFFICIAL SHALL:

I. SIGN AND SUBMIT TO THE COUNTY CLERK AND RECORDER AN AFFIRMATION THAT HE/SHE WILL ENSURE THE SECURITY AND INTEGRITY OF THE CERTIFIED VOTING EQUIPMENT AT ALL TIMES;

1 II. AFFIRM THAT THE USE OF THE CERTIFIED VOTING  
2 EQUIPMENT SHALL BE CONDUCTED IN ACCORDANCE  
3 WITH RULE 43 AND THE SPECIFIC CONDITIONS FOR USE  
4 OF THE CERTIFIED VOTING EQUIPMENT; AND

5 III. AGREE TO MAINTAIN ALL CHAIN OF CUSTODY LOGS FOR  
6 THE VOTING DEVICE(S).

7 43.11.3 UPON RETURN OF THE CERTIFIED VOTING EQUIPMENT TO THE  
8 COUNTY CLERK AND RECORDER, THE COUNTY CLERK SHALL NOT BE  
9 REQUIRED TO VERIFY THE TRUSTED BUILD IF THE DOCUMENTATION  
10 AND CHAIN OF CUSTODY SUPPORT THE PROPER MAINTENANCE OF  
11 THE TRUSTED BUILD SOFTWARE AND CHAIN OF CUSTODY.

12 New Rule 48 would be adopted as follows:

13 **RULE 48. CHALLENGES TO VOTING**

14 48.1 PURSUANT TO SECTION 1-9-203(7), C.R.S., A PERSON CHALLENGED ON THE  
15 GROUNDS OF RESIDENCY SHALL BE OFFERED A REGULAR BALLOT BY THE ELECTION  
16 JUDGE WHEN THE PERSON CHALLENGED SATISFACTORILY ANSWERS THE  
17 CHALLENGE QUESTION(S) AS FOLLOWS:

18 48.1.1. SITUATION 1

19 A. YES, HE/SHE HAS RESIDED IN THIS STATE AND PRECINCT FOR THIRTY  
20 (30) DAYS IMMEDIATELY PRECEDING THIS ELECTION; AND

21 B. NO, HE/SHE HAS NOT BEEN ABSENT FROM THIS STATE DURING THE  
22 THIRTY (30) DAYS IMMEDIATELY PRECEDING THIS ELECTION;

23 48.1.2 SITUATION 2

24 A. YES, HE/SHE HAS RESIDED IN THIS STATE AND PRECINCT FOR THIRTY  
25 (30) DAYS IMMEDIATELY PRECEDING THIS ELECTION;

26 B. YES, HE/SHE HAS BEEN ABSENT FROM THIS STATE DURING THE  
27 THIRTY (30) DAYS IMMEDIATELY PRECEDING THIS ELECTION;

28 C. YES, WHEN HE/SHE LEFT, IT WAS FOR A TEMPORARY PURPOSE WITH  
29 THE INTENT OF RETURNING;

30 D. YES, WHILE ABSENT, HE/SHE LOOKED UPON AND REGARDED THIS  
31 STATE AS HIS/HER HOME; AND

32 E. NO, WHILE ABSENT, HE/SHE DID NOT VOTE IN ANY OTHER STATE OR  
33 ANY TERRITORY OF THE UNITED STATES.

1 48.2 IF THE PERSON CHALLENGED ANSWERS UNSATISFACTORILY OR REFUSES TO ANSWER  
2 THE CHALLENGE QUESTIONS, THE ELECTOR SHALL BE OFFERED A PROVISIONAL  
3 BALLOT.