



NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State
Election Rules
8 CCR 1505-1

May 30, 2008

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2007), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **June 30, 2008 from 2:00 p.m. to 5:00 p.m.** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

Subject of the Proposed Rulemaking

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning: clarification regarding voter registration of Address Confidentiality Program (ACP) Electors; effective date of mail voter registration applications received at the office of the Secretary of State; watchers; uniform ballot counting standards; determination of voter intent, alternative counting methods, procedures for the use of signature verification devices, custodianship of voter registration information, and revisions as necessary subsequent to implementation of the statewide voter registration database. The Secretary of State shall also consider rules necessary to implement amendments to the election laws made during the 2008 regular session of the 66th General Assembly and other rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

1. Section 1-1-107(2)(a), C.R.S., (2007), which authorizes the Secretary of State "[t]o promulgate, publish and distribute . . . such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2007), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds

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necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 270, Denver, Colorado, 80290, or by calling (303) 894-2200, extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than June 25, 2008 in accordance with section 24-4-103(4)(a), C.R.S., (2006), which states 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.”

The rulemaking hearing on June 30, 2008 will be held in accordance with section 24-4-103, C.R.S., (2007). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on June 30 at 2:00 p.m. in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 30th Day of May, 2008.



William A. Hobbs
Deputy Secretary of State

For

Mike Coffman
Colorado Secretary of State



Proposed Statement of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State Election Rules

May 30, 2008

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and 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, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), U.S.C. 15301 to 15545. See sections 1-1.5-101 *et seq.*, C.R.S. (2007).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Titles 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado and to answer questions arising under Title 1 of the Colorado Revised Statutes, and to implement amendments to the Colorado election laws made during the 2008 regular session of the 66th General Assembly. The adoption of the amendments to the Rules is further necessary to increase the transparency and security of the election process.

The adoption of specific amendments to the Election Rules is necessary as follows:

- The amendments to rules 2.5.3 and 26.4.4 are necessary subsequent to implementation of the statewide voter registration database.
- The amendments to rule 2.12 are necessary to implement amendments made by House Bill 08-1274. Specifically, the term "actual address" shall include the county and voting precinct number.
- New rule 2.14 is necessary to clarify the effective date of a mail voter registration application received at the office of the Secretary of State. Specifically, the effective date shall be the date of the postmark or receipt by the office of the Secretary of State, whichever is earlier.
- The amendments to rule 8 clarify "watcher" eligibility requirements. Specifically, a designated watcher need not be a resident of the county he/she is designated in as long as he/she is an eligible elector in the state of Colorado. Additionally, the

amendments establish what access a designated election official must provide watchers so they may observe the election process.

- New rules 8.14-8.17 are necessary to clarify the designation of watchers.
- The amendments to rule 12.4.11 and 13.17 are necessary to establish that the mail ballot return envelope shall not be required to have a flap covering the signature or otherwise impede the use of a signature verification device in accordance with amendments to section 1-7.5-107, C.R.S, made by House Bill 08-1128.
- The amendments to rule 27 clarify uniform ballot counting standards, and establish rules concerning determination of voter intent and written plan requirements for alternative counting methods.
- New rule 29.12 is necessary to comply with amendments to section 1-8-114.5, CRS, made by House Bill 08-1128, requiring the Secretary of State to establish procedures for using signature verification devices to process mail-in ballots and ballots used in mail ballot elections.
- New rule 49 is necessary to establish rules concerning voter information reports for the purposes of the Public (Open) Records Act, section 24-72-202, C.R.S. Specifically, the rule clarifies custodianship of voter registration information and fees for voter information reports.

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 to the Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments 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. (2007), 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. (2007), 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.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

May 30, 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 June 25, 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 2.5.3 would be amended as follows:

2 2.5.3 A voter making an address change ~~within the same county~~ shall not be charged an
3 additional processing fee.

4 Rule 2.12 would be amended as follows:

5 2.12.3 Pursuant to section 24-21-208(3)(a), C.R.S., the designated election
6 official shall:

7 2.12.3.1 Use the actual address of a program participant for precinct
8 designation and shall keep the participant's address, COUNTY, and VOTING
9 precinct number confidential.

10 2.12.4 Access to ACP participant's voter registration records is restricted pursuant to
11 section 24-21-208(3) (b), C.R.S., as follows:

12 2.12.4.1 An ACP participant's actual address, COUNTY, and VOTING precinct
13 number shall be masked from any public record that is required to be
14 made, maintained, or kept pursuant to sections 1-2-227 and 1-2-301,
15 C.R.S., and shall automatically be confidential in accordance with the

1 provisions of section 24-72-204(3.5), C.R.S., except that the exceptions to
2 such confidentiality set forth in section 24-72-204(3.5) (c), C.R.S., shall
3 not apply to a program participant.

4 New rule 2.14 would be adopted as follows:

5 2.14 IN ACCORDANCE WITH SECTION 1-2-508, C.R.S., THE EFFECTIVE DATE OF A MAIL VOTER
6 REGISTRATION APPLICATION RECEIVED AT THE OFFICE OF THE SECRETARY OF STATE SHALL
7 BE THE DATE OF THE POSTMARK OR RECEIPT BY THE OFFICE OF THE SECRETARY OF STATE,
8 WHICHEVER IS EARLIER.

9 Rule 8.1.2 would be amended as follows:

10 8.1.2 "Watcher" shall mean an eligible elector, IN THE STATE OF COLORADO, other
11 than a candidate on the ballot who has been selected by a political party
12 chairperson on behalf of the political party, by a party candidate at a primary OR
13 RECALL election, by an unaffiliated candidate at a general, congressional
14 vacancy, ~~or~~ nonpartisan, OR RECALL election by a person designated by either
15 the opponents/proponents in the case of a ballot issue or ballot question. If
16 selected by a political party chairperson, a party candidate, or an unaffiliated
17 candidate, the watcher shall be affiliated with that political party or unaffiliated
18 as shown on the registration books of the county clerk and recorder. A
19 DESIGNATED WATCHER NEED NOT BE A RESIDENT OF THE COUNTY HE OR SHE IS
20 DESIGNATED IN AS LONG AS HE OR SHE IS AN ELIGIBLE ELECTOR IN THE STATE OF
21 COLORADO. *See* section 1-1-104(51), C.R.S.

22 Rule 8.7.1 would be adopted as follows:

23 8.7.1 TO THE EXTENT POSSIBLE, WATCHERS SHALL BE ALLOWED PHYSICAL, VISUAL, AND
24 AUDITORY ACCESS WHEN OBSERVING THE ELECTION PROCESS.

25 Rule 8.9 would be amended as follows:

26 8.9 APPOINTMENT OF WATCHERS

27 ~~8.9~~ 8.9.1 Parties May Appoint Watchers. Major and minor political parties with
28 candidates on the ballot may appoint one Watcher each to be present to observe
29 polling place voting, early voting, and the processing and counting of regular,
30 provisional, mail and mail-in ballots. *See* sections 1-7-105 and 1-7-106, C.R.S.

31 8.9.2 ISSUE COMMITTEES MAY APPOINT WATCHERS. ISSUE COMMITTEES SUPPORTING
32 OR OPPOSING A BALLOT MEASURE MAY APPOINT ONE WATCHER EACH TO BE
33 PRESENT TO OBSERVE POLLING PLACE VOTING, EARLY VOTING, AND THE
34 PROCESSING AND COUNTING OF REGULAR, PROVISIONAL, MAIL AND MAIL-IN
35 BALLOTS.

36 New rules 8.14, 8.15, 8.16, and 8.17 would be adopted as follows:

- 1 8.14 A DESIGNATED ELECTION OFFICIAL SHALL CERTIFY THE APPOINTMENT OF ALL ELIGIBLE
2 WATCHERS DULY DESIGNATED BY A POLITICAL PARTY, CANDIDATE OR COMMITTEE
3 PURSUANT TO SECTIONS 1-1-104(51), 1-7-105, 1-7-106, OR 1-7-107, C.R.S.
- 4 8.15 REMOVAL OF WATCHERS. WATCHERS WHO COMMIT, ENCOURAGE, OR CONNIVE IN ANY
5 FRAUD IN CONNECTION WITH THEIR DUTIES, WHO VIOLATE ANY OF THE ELECTION LAWS,
6 WHO VIOLATE ANY OF THESE RULES, WHO VIOLATE THEIR OATH, OR WHO HAMPER OR
7 INTERFERE WITH THE ELECTION PROCESS MAY BE REMOVED BY THE DESIGNATED ELECTION
8 OFFICIAL.
- 9 8.15.1 IF A WATCHER IS REMOVED, THE DESIGNATED ELECTION OFFICIAL SHALL
10 IMMEDIATELY INFORM THE POLITICAL PARTY, CANDIDATE, OR COMMITTEE WHO
11 APPOINTED THE WATCHER VIA TELEPHONE, EMAIL, AND/OR OTHER MEANS.
- 12 8.15.2 A REMOVED WATCHER MAY BE REPLACED BY AN ALTERNATE WATCHER DULY
13 DESIGNATED PURSUANT TO SECTIONS 1-7-105, 1-7-106, OR 1-7-107, C.R.S. ANY
14 DESIGNATED ELECTION OFFICIAL WHO REMOVES A WATCHER SHALL, TO THE BEST
15 OF HIS/HER ABILITY, FACILITATE THE EXPEDITIOUS REPLACEMENT OF A REMOVED
16 WATCHER.
- 17 8.16 WATCHERS MAY BE DESIGNATED TO OBSERVE MORE THAN ONE PRECINCT OR POLLING
18 PLACE BUT IN NO EVENT SHALL MORE THAN ONE WATCHER BE DESIGNATED FOR ANY
19 SINGLE POLLING PLACE. SEE SECTION 1-7-106, C.R.S.
- 20 8.17 WATCHERS MAY BE APPOINTED TO OBSERVE RECALL ELECTIONS HELD PURSUANT TO
21 ARTICLE 12, TITLE I, C.R.S. AND SHALL BE DESIGNATED IN ACCORDANCE WITH SECTIONS 1-
22 7-106 AND 1-7-107, C.R.S.

23 Rule 12.4.11 would be amended as follows:

- 24 12.4.11 All return envelopes used in a mail ballot election coordinated by the
25 county clerk and recorder shall MAY be formatted in such a manner that the
26 voter's signature on the back of the envelope is concealed.
27 [Sections 1-7.5-106 and 1-7.5-107, C.R.S.]
- 28 a. ~~Any county may apply to the Secretary of State for an exemption to this~~
29 ~~requirement by submitting a written application based on hardship or other~~
30 ~~good cause shown.~~
- 31 b. ~~All applications for an exception shall include a statement of the hardship~~
32 ~~or good cause for which the exception is sought. The Secretary of State~~
33 ~~shall have ten (10) business days to approve or disapprove an application~~
34 ~~for such exemption.~~

35 Rule 13.17 would be amended as follows:

- 36 13.17 All return mail-in ballot envelopes used in an election coordinated by the county clerk
37 and recorder shall MAY be formatted in such a manner that the voter's signature on the
38 back of the envelope is concealed.

1 ~~13.17.1 Any county may apply to the Secretary of State for an exemption to this~~
2 ~~requirement by submitting a written application based on hardship or other good~~
3 ~~cause shown.~~

4 ~~13.17.2 All applications for an exception shall include a statement of the hardship or~~
5 ~~good cause for which the exception is sought. The Secretary of State shall have~~
6 ~~ten (10) business days to approve or disapprove an application for such~~
7 ~~exemption.~~

8 Rule 26.4.4 would be amended as follows:

9 26.4.4 Verification of an elector's eligibility to have his or her provisional ballot counted
10 shall be limited to the following sources to determine proof of voter registration:

11 (a) Sources provided by the Secretary of State or law enforcement agencies
12 regarding felons who are serving a sentence of detention or confinement
13 or on parole;

14 (b) ~~The local election office voter registration database;~~ THE STATE OF
15 COLORADO STATEWIDE VOTER REGISTRATION DATABASE;

16 (c) ~~The Secretary of State's voter registration database;~~

17 (d)(c) The DMV Motor Voter database (Note: Possession of a driver's license is
18 not conclusive proof of voter registration; elector must have registered to
19 vote through the DMV.)

20 Rule 27.1 would be amended as follows:

21 27.1.1 **BALLOT MEASURE.** AS USED IN THIS RULE 27, BALLOT MEASURE SHALL MEAN A
22 BALLOT ISSUE OR BALLOT QUESTION AS DEFINED IN SECTIONS 1-1-104 (2.3) AND 1-
23 1-104 (2.7), C.R.S.

24 ~~27.1.1~~27.1.2 **Blank Ballot.** A blank ballot is one on which the voter has made no marks
25 in any voting position, or has been marked with an unreadable marker, or is one
26 which has been consistently marked outside of the "read" area of the scanner.

27 ~~27.1.2~~27.1.3 **Damaged Ballot.** A damaged ballot is one that has been torn, bent, or
28 otherwise mutilated or rendered unreadable, so that it cannot be processed by the
29 optical scanner ballot reader.

30 ~~27.1.3~~27.1.4 **Duplicated Ballot.** A duplicated ballot is one for which a true copy is
31 made in order to be properly processed and counted due to damage, improper
32 marking or some other reason which would prevent a ballot tabulating machine
33 from accurately counting the ballot.

34 ~~27.1.4~~27.1.5 **Duplicated Provisional Ballot.** A duplicated provisional ballot includes
35 ballots duplicated for federal and state ~~issues~~ **BALLOT MEASURES** for which a
36 provisional voter is eligible to vote.

1 ~~27.1.5~~27.1.6 Overvote. An overvote is a race, ~~question or issue~~ OR BALLOT MEASURE
2 which contains votes for more than the maximum number of candidates or
3 responses for a ballot ~~question or issue~~ MEASURE allowed.

4 ~~27.1.6~~27.1.7 Undervote. An undervote occurs when the voter does not vote for a ANY
5 candidate IN A RACE, OR FOR OR AGAINST A ~~question, or issue~~ BALLOT MEASURE,
6 or, when more than one person in a race is available, the voter does not vote for
7 the maximum number of votes allowed.

8 [Existing rule 27.1.7 would be relocated as new Rule 27.4.3.]

9 ~~27.1.7~~ ~~Vote in Optical Scan Ballots. A correctly voted optical scan ballot occurs when a~~
10 ~~voter, using a readable marker, fills in or connects the minimum number of~~
11 ~~ovals/arrows per race, question, or issue, not to exceed the maximum allowable~~
12 ~~votes per race, question or issue, without extending the vote mark beyond the~~
13 ~~parameters of the instructions.~~

14 ~~27.1.9~~27.1.8 TARGET AREA SHALL MEAN ANY OF THE FOLLOWING:

- 15 A. THE SQUARE OR OVAL OPPOSITE THE CANDIDATE'S NAME OR BALLOT
16 RESPONSE ON A PAPER BALLOT; OR
- 17 B. THE OVAL, INCOMPLETE LINE, OR INCOMPLETE ARROW OPPOSITE THE
18 CANDIDATE'S NAME OR BALLOT RESPONSE (EXAMPLES: "YES", "NO",
19 "FOR" OR "AGAINST") ON AN OPTICAL SCAN BALLOT

20 ~~27.1.8~~27.1.9 Write-In Vote. A vote on a ballot on which the voter physically writes in
21 the name of a legally qualified write-in candidate in the space reserved on the
22 ballot for write-in votes and properly marks the oval or connects the arrow on
23 optical scan ballots according to the directions provided to the voter.

24 Rule 27.2 would be amended as follows:

25 27.2 Multiple Page Ballots. In any election where a multiple page printed ballot is used, a
26 voter must vote and return all pages of the ballot at the same time. Any voter who has
27 returned at least one page of a multiple page printed ballot will be considered to have
28 voted AND THE VOTES ON THE SUBMITTED PAGE(S) SHALL BE COUNTED. Any additional
29 page returned at a later time shall not be counted but shall be appropriately marked, set
30 aside, and preserved as other election materials in accordance with section 1-7-802,
31 C.R.S.

32 Rule 27.3 would be amended as follows:

33 27.3.1 Judges counting ballots on election day shall take into consideration the intent of
34 the voter IN ACCORDANCE WITH RULE 27.7.

35 27.3.2 If a ballot contains markings for more than the maximum votes allowed in a
36 candidate race or for a ballot ~~issue or question~~-MEASURE, no vote shall count for
37 that race, ~~question, or issue~~ OR BALLOT MEASURE. ~~Judges shall take into~~

1 consideration ~~any notation by the voter that would clearly indicate the choice of~~
2 ~~the voter.~~

3 27.3.3 If ~~an issue, question or~~ A candidate race OR BALLOT MEASURE contains no
4 markings by the voter, no tally will be made for that race, ~~question, or issue~~ OR
5 BALLOT MEASURE, but all other candidate races, ~~issues, or questions~~ OR BALLOT
6 MEASURES properly marked by the voter on the ballot shall be counted.

7 27.3.4 A ballot which has no markings for any candidate races, ~~issues or questions~~ OR
8 BALLOT MEASURES shall be tallied as a blank ballot, but the voter shall be given
9 credit for voting.

10 ~~27.3.5 If the intent of the voter is clear on a write-in vote, the write-in vote shall be~~
11 ~~counted for a legally qualified candidate.~~

12 Rule 27.4.2 would be amended as follows:

13 27.4.2 Central Count Optical Scan Procedures

14 (b) Sequence of Resolution Procedures

15 (1) A zero tape shall be run indicating no votes cast or counted before
16 the counting begins.

17 (2) Official ballots shall be processed through the optical scanner, with
18 sorted overvotes, blank ballots, and write-in ballots viewed and
19 resolved by the resolution board. Only ballots sorted by the
20 OPTICAL SCAN EQUIPMENT ~~machine~~ shall be subject to review by
21 the resolution board. A VOTER'S INTENT SHALL NOT BE REVIEWED
22 OR DETERMINED UPON INITIAL COUNTING OF BALLOTS UNLESS SUCH
23 BALLOT IS SORTED BY THE OPTICAL SCAN EQUIPMENT. If there are
24 no legally qualified write-in candidates, the write-in sort option
25 shall not be utilized. The number of each duplicated ballot shall be
26 entered on the resolution board log sheet.

27 (c) Resolution of optical scan ballots

28 (1) Damaged or defective ballots shall be duplicated utilizing the
29 ballot duplication procedures as provided in Rule ~~27.4.2(e)(5)~~ 27.6.

30 (2) Blank ballots shall be examined by the resolution board to
31 determine if the ballot is a true blank ballot or one that has been
32 marked with a non-detectable mark. Resolution board members
33 must make a duplicate copy of the ballot which has been marked
34 with a non-detectable mark utilizing the ballot duplication
35 procedures as set forth in Rule ~~27.4.2(e)(5)~~ 27.6. If a ballot is truly
36 blank it shall be sent back for the resolution pass through the
37 scanner, and the ballot tabulated with no races, ~~issues or questions~~
38 OR BALLOT MEASURES voted.

1 (3) Overvoted ballots shall be inspected by the resolution board AND
2 RESOLVED IN ACCORDANCE WITH RULE 27.7. ~~Ballots that reflect~~
3 ~~marks that are clearly identified as unintentional but register an~~
4 ~~overvote on the scanner must be duplicated by the resolution board~~
5 ~~utilizing the procedures for duplication of ballots. If more marks~~
6 ~~are completed in a race, question, or issue than what is allowed for~~
7 ~~that race, question, or issue the duplication board can only~~
8 ~~duplicate if there is a notation by the voter that would clearly~~
9 ~~indicate the choice of the voter.~~

10 (4) Write-in votes sorted by the optical scan equipment on election day
11 shall be delivered to the assigned write-in board for hand counting.
12 DURING THE INITIAL BALLOT COUNT, ~~in~~ order to be counted, the
13 oval must be darkened or the arrow connected according to the
14 appropriate voting instructions. Only votes for legally qualified
15 write-in candidates shall be counted. ~~When a race with a valid~~
16 ~~write-in is overvoted and the duplication board finds that a mark~~
17 ~~has been made for a valid candidate and the voter also wrote in the~~
18 ~~name of the same candidate on the write in line and made a mark,~~
19 ~~the duplication board shall duplicate the ballot by making a mark~~
20 ~~by the name of the candidate printed on the ballot.~~

21 (5) The resolution board shall duplicate ballots by clearly labeling the
22 new duplicate ballot as a "DUPLICATE" and assign a serial
23 number which shall be recorded on both the original and duplicate
24 ballot. For example, the first ballot in Precinct # 1 to be duplicated
25 could be labeled as #1/001 with the duplicate labeled D#1/001.
26 Original ballots shall be separated from the duplicate ballots and
27 placed in an envelope clearly marked "ORIGINAL BALLOTS."
28 The duplicate ballots shall be counted in lieu of the original ballots.

29 (d) Recount Procedures for Optical Scan

30 (1) Optical scan equipment must be set to consistent sensitivity
31 standards for each system type, must be tested prior to the recount,
32 and shall be programmed to sort undervotes for the individual
33 race(s), ~~issue(s) or question(s)~~ OR BALLOT MEASURE(S) being
34 recounted.

35 New rule 27.4.3 would be adopted as follows:

36 27.4.3 VOTE ON OPTICAL SCAN BALLOTS. A CORRECTLY VOTED OPTICAL SCAN BALLOT
37 OCCURS WHEN A VOTER, USING A READABLE MARKER, FILLS IN OR CONNECTS THE
38 MINIMUM NUMBER OF OVALS/ARROWS PER RACE OR BALLOT MEASURE, NOT TO
39 EXCEED THE MAXIMUM ALLOWABLE VOTES PER RACE OR BALLOT MEASURE,
40 WITHOUT EXTENDING THE VOTE MARK BEYOND THE PARAMETERS OF THE
41 INSTRUCTIONS.

1 New rule 27.5 would be adopted as follows:

2 27.5 UNIFORM COUNTING STANDARDS FOR DREs. A VOTE THAT IS PROPERLY RECORDED, AS
3 SPECIFIED BY THE VOTING INSTRUCTIONS, ON THE VOTING DEVICE FOR AN OFFICE OR
4 BALLOT MEASURE SHALL BE COUNTED.

5 [Succeeding rules will be renumbered]

6 New rule 27.7 would be adopted as follows:

7 27.7 DETERMINATION OF VOTER INTENT

8 27.7.1 IF A VOTER USES A CONSISTENT ALTERNATE BALLOT MARKING METHOD THAT
9 DEVIATES FROM THE METHOD SPECIFIED BY THE VOTING INSTRUCTIONS (SUCH AS
10 CIRCLING OR PLACING A CHECK MARK BEHIND A CANDIDATE'S NAME OR BALLOT
11 RESPONSE) AND DOES NOT PLACE AN "X", CHECK OR OTHER APPROPRIATE MARK IN
12 THE TARGET AREA(S), THE VOTER WILL BE CONSIDERED TO HAVE VOTED FOR THE
13 APPROPRIATE CANDIDATES AND OR BALLOT RESPONSES AND THE BALLOT SHALL BE
14 DUPLICATED; EXCEPT THAT, IF A VOTER MARKS ANY OF HIS/HER CHOICES BY
15 PLACING AN "X", CHECK OR OTHER APPROPRIATE MARK IN ANY TARGET AREA ON
16 THE VOTER'S BALLOT, ONLY THOSE CHOICES WHERE THE TARGET AREA HAS BEEN
17 MARKED SHALL BE COUNTED.

18 27.7.2 A BALLOT THAT HAS A MARK IN THE TARGET AREA THAT PARTIALLY EXTENDS INTO
19 ANOTHER TARGET AREA OR AREAS SHALL NOT BE COUNTED FOR THAT OFFICE OR
20 BALLOT MEASURE.

21 27.7.3 A BALLOT THAT HAS ANY MARK, OTHER THAN A STRAY MARK, IN THE TARGET
22 AREA THAT PARTIALLY EXTENDS INTO AN AREA SURROUNDING A CANDIDATE OR
23 BALLOT RESPONSE, OTHER THAN ITS TARGET AREA, SHALL BE COUNTED AS A VOTE
24 FOR THE CANDIDATE OR BALLOT RESPONSE SO MARKED.

25 27.7.4 WHEN RESOLVING AN OVERVOTED RACE, MARKS INDICATING THE VOTER'S INTENT
26 SHALL INCLUDE, BUT NOT BE LIMITED TO, CIRCLING THE CANDIDATE'S NAME AND
27 STRIKE-OUTS OR CORRECTIONS OF CHOICES.

28 27.7.5 WRITE-IN VOTES

29 27.7.5.1 IF A VOTER DESIGNATES A VOTE FOR A NAMED CANDIDATE ON THE
30 BALLOT AND WRITES IN THE NAME OF THE SAME CANDIDATE IN THE WRITE-
31 IN AREA, THE VOTE SHALL BE COUNTED.

32 27.7.5.2 IF A VOTER DESIGNATES A NAMED CANDIDATE ON THE BALLOT AND
33 WRITES IN THE NAME OF A DIFFERENT CANDIDATE IN THE WRITE-IN AREA, IT
34 SHALL BE CONSIDERED AN OVERVOTE FOR THAT OFFICE IF THE NUMBER OF
35 CHOSEN CANDIDATES EXCEEDS THE NUMBER PERMITTED TO BE VOTED FOR
36 IN THAT OFFICE AND NO VOTE SHALL BE COUNTED.

1 27.7.5.3 DURING ANY RECOUNT OF VOTES OR DURING THE INITIAL COUNT
2 FOR HAND-COUNTED PAPER BALLOTS PURSUANT TO SECTION 1-7-305,
3 C.R.S., THE WRITTEN NAME OF A WRITE-IN CANDIDATE IN THE WRITE-IN
4 SPACE SHALL BE COUNTED WHETHER OR NOT THE TARGET AREA
5 DESIGNATING THE SELECTION OF A WRITE-IN CANDIDATE HAS BEEN
6 MARKED, PROVIDED THAT THE NUMBER OF CANDIDATES CHOSEN DOES NOT
7 EXCEED THE NUMBER PERMITTED IN THAT OFFICE.

8 New rule 27.8 would be adopted as follows:

9 27.8 WRITTEN PLAN FOR ALTERNATIVE COUNTING METHOD

10 27.8.1 GENERAL INFORMATION CONCERNING PLAN SUBMITTAL

11 27.8.1.1 IN ACCORDANCE WITH SECTION 1-7-603, C.R.S., AS SOON AS
12 POSSIBLE, BUT NO LATER THAN SIXTY (60) DAYS PRIOR TO AN ELECTION, IF
13 A DESIGNATED ELECTION OFFICIAL WISHES TO IMPLEMENT AN ALTERNATIVE
14 COUNTING METHOD, THE A DESIGNATED ELECTION OFFICIAL MAY SUBMIT A
15 WRITTEN PLAN DELINEATING THE ALTERNATIVE COUNTING LOCATION OR
16 THE ALTERNATIVE COUNTING METHOD TO THE SECRETARY OF STATE.

17 27.8.1.2 THE SECRETARY OF STATE SHALL APPROVE OR DISAPPROVE THE
18 ALTERNATIVE COUNTING PLAN NO LATER THAN FORTY-FIVE (45) DAYS
19 BEFORE THE ELECTION AT WHICH THE PLAN IS TO BE IMPLEMENTED.

20 27.8.1.3 NO ALTERNATIVE COUNTING PLAN MAY BE IMPLEMENTED WITHOUT
21 EXPRESS WRITTEN APPROVAL FROM THE SECRETARY OF STATE. ANY
22 SUBMITTED PLAN MUST ESTABLISH MINIMUM PROCEDURES IN ACCORDANCE
23 WITH THE REQUIREMENTS OF THIS RULE 27.8.

24 27.8.2 TRANSFER LOGS

25 27.8.2.1 THE TRANSFER LOGS SHALL AT MINIMUM CONTAIN: THE DATE OF
26 THE ELECTION; THE PRECINCT NUMBER; THE NAMES OF THE POLLING PLACE
27 JUDGE(S), THE TRANSFER JUDGE(S), AND THE COUNTING JUDGE(S) WHO
28 CARRYOUT THE BALLOT TRANSFER; THE TOTAL NUMBER OF BALLOTS
29 TRANSFERRED FROM THE BALLOT BOX TO THE TRANSFER CASE AND FROM
30 THE TRANSFER CASE TO THE COUNTING LOCATION.

31 27.8.2.2 THERE SHALL BE A TOTAL OF FOUR (4) COPIES OF EACH TRANSFER
32 LOG FOR EACH TRANSFER FROM A POLLING PLACE: ONE (1) COPY OF THE
33 TRANSFER LOG SHALL REMAIN IN THE POSSESSION OF A POLLING PLACE
34 JUDGE TO BE TRANSPORTED WITH ALL OTHER ELECTION MATERIALS AFTER
35 THE CLOSE OF THE POLLS; ONE (1) COPY OF THE TRANSFER LOG SHALL
36 REMAIN WITH THE TRANSFER CASE; ONE (1) COPY OF THE TRANSFER LOG
37 SHALL REMAIN AT THE COUNTING LOCATION; AND ONE (1) COPY SHALL BE
38 MAILED BY A POLLING PLACE JUDGE AT THE NEAREST POST OFFICE OR POST-
39 OFFICE BOX TO THE DESIGNATED COUNTING CENTER.

1 27.8.3 PROCEDURES TO BE FOLLOWED AT THE POLLING PLACE

2 27.8.3.1 EACH POLLING PLACE SHALL HAVE AVAILABLE FOR USE A MINIMUM
3 OF TWO (2) BALLOT BOXES TO ENSURE THAT AT LEAST ONE (1) BALLOT BOX
4 IS ALWAYS AVAILABLE TO RECEIVE VOTED BALLOTS.

5 27.8.3.2 AT TIME OF BALLOT TRANSFER, A BIPARTISAN TEAM OF AT LEAST
6 TWO (2) TRANSPORT JUDGES AND ONE (1) POLLING PLACE JUDGE SHALL
7 TRANSFER BALLOTS IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

8 27.8.3.2.1 IN FULL VIEW OF THE BIPARTISAN TEAM OF TRANSPORT
9 JUDGES, THE POLLING PLACE JUDGE SHALL REMOVE THE SEAL FROM
10 THE BALLOT BOX, OPEN THE BALLOT BOX, REMOVE THE VOTED
11 BALLOTS FROM THE BALLOT BOX, DELIVER THE VOTED BALLOTS TO
12 THE TRANSFER JUDGES, CLOSE THE BALLOT BOX, AND AFFIX A NEW
13 SEAL ON THE BALLOT BOX. THE NEW SEAL NUMBER ON THE BALLOT
14 BOX SHALL BE APPROPRIATELY NOTED AND RECORDED.

15 27.8.3.2.2 IN FULL VIEW OF THE POLLING PLACE JUDGE, THE
16 TRANSPORT JUDGES SHALL COUNT THE NUMBER OF BALLOTS TO BE
17 TRANSPORTED, AND COMPLETE THE TRANSFER LOG IN TRIPPLICATE
18 BY PROVIDING ALL INFORMATION REQUESTED ON THE TRANSFER
19 LOG.

20 27.8.3.2.3 IN FULL VIEW OF THE POLLING PLACE JUDGE, THE
21 TRANSPORT JUDGES SHALL PLACE THE VOTED BALLOTS INTO THE
22 TRANSFER CASE.

23 27.8.3.2.4 BOTH TRANSFER JUDGES AND THE POLLING PLACE JUDGE
24 SHALL REVIEW THE TRANSFER LOGS TO ENSURE THAT ALL
25 INFORMATION IS COMPLETE AND ACCURATE. WHEN ALL
26 INFORMATION IS COMPLETE AND ACCURATE, BOTH TRANSFER
27 JUDGES AND THE POLLING PLACE JUDGE SHALL INITIAL ALL COPIES
28 OF THE TRANSFER LOGS.

29 27.8.3.2.5 IN FULL VIEW OF THE POLLING PLACE JUDGE, THE TRANSFER
30 JUDGES SHALL SECURE THE TRANSFER LOG THAT IS TO REMAIN WITH
31 TRANSFER CASE TO THE EXTERIOR OF THE TRANSFER CASE. THE
32 TRANSFER JUDGES SHALL THEN SEAL THE TRANSFER CASE IN SUCH A
33 WAY AS TO PREVENT TAMPERING WITH THE CASE OR ITS CONTENTS.
34 THE SEAL NUMBER OF THE SEAL TO BE USED SHALL BE NOTED ON
35 THE TRANSFER LOGS PRIOR TO SEALING THE TRANSFER CASE.

36 27.8.3.2.6 AT THE CLOSE OF THE POLLS, THE DUPLICATE COPIES OF THE
37 POLLING PLACE TRANSFER LOG(S) SHALL BE MAILED AT THE
38 NEAREST POST OFFICE OR POST-OFFICE BOX BY A POLLING PLACE
39 JUDGE TO THE DESIGNATED ELECTION OFFICIAL.

1 27.8.3.2.7 DULY APPOINTED WATCHERS MAY BE PRESENT AND
2 OBSERVE ALL ASPECTS OF THE BALLOT TRANSFER AND
3 RECONCILIATION PROCESS DESCRIBED IN THIS RULE 27.8.3.

4 27.8.4 PROCEDURES TO BE FOLLOWED DURING TRANSPORT

5 27.8.4.1 DURING BALLOT TRANSPORT, THE SEALED BALLOT TRANSFER CASE
6 SHALL BE WITHIN THE CLOSE PHYSICAL PROXIMITY OF THE BIPARTISAN
7 TEAM OF TRANSFER JUDGES AT ALL TIMES.

8 27.8.4.2 DELIVERY OF THE SEALED BALLOT TRANSFER CASE TO THE
9 COUNTING LOCATION SHALL BE MADE AT ONCE AND WITH ALL CONVENIENT
10 SPEED. HOWEVER, NOTHING IN THIS RULE 27.8.4.2 SHALL BE INTERPRETED
11 TO PROHIBIT TRANSFER JUDGES FROM STOPPING AT MULTIPLE POLLING
12 PLACES BEFORE ARRIVING AT THE COUNTING LOCATION.

13 27.8.5 PROCEDURES TO BE FOLLOWED AT THE COUNTING LOCATION

14 27.8.5.1 UPON ARRIVAL AT THE COUNTING LOCATION, THE BIPARTISAN TEAM
15 OF TRANSFER JUDGES SHALL DELIVER THE SEALED BALLOT TRANSFER CASE
16 TO THE DESIGNATED ELECTION OFFICIAL OR COUNTING JUDGES.

17 27.8.5.2 THE DESIGNATED ELECTION OFFICIAL OR COUNTING JUDGES SHALL
18 NOTE DELIVERY AND TAKE POSSESSION OF EACH BALLOT TRANSFER CASE
19 DELIVERED BY THE TRANSFER JUDGES.

20 27.8.5.3 UPON REVIEWING THE TRANSFER LOGS TO ENSURE THAT THE SEAL IS
21 IN TACT AND THAT THE BALLOT TRANSFER CASE CONTAINS THE PROPER
22 NUMBER OF BALLOTS, THE DESIGNATED ELECTION OFFICIAL OR COUNTING
23 JUDGES MAY BEGIN PROCESSING AND COUNTING THE VOTED BALLOTS
24 PURSUANT TO STATUTORY COUNTING PROCEDURES.

25 27.8.6 OFFICIAL CANVASS OF VOTES

26 27.8.6.1 NOTHING IN THIS RULE 27.8 SHALL RELIEVE THE DESIGNATED
27 ELECTION OFFICIAL OF THE REQUIREMENTS OF RULE 41.

28 27.8.6.2 PRIOR TO CERTIFYING THE OFFICIAL ABSTRACT OF VOTES CAST, THE
29 CANVASS BOARD SHALL COMPARE THE TRANSFER LOGS FROM THE POLLING
30 PLACE, TRANSFER JUDGES, AND COUNTING CENTER TO ENSURE THAT ALL
31 BALLOTS ARE ACCOUNTED FOR.

32 New Rule 29.12 would be adopted as follows:

33 RULE 29.12 USE OF SIGNATURE VERIFICATION DEVICES

34 29.12.1 A COUNTY CLERK AND RECORDER WHO CHOOSES TO USE A SIGNATURE
35 VERIFICATION DEVICE TO PROCESS MAIL-IN OR MAIL BALLOTS IN ACCORDANCE

1 WITH SECTIONS 1-7.5-107.3 OR 1-8-114.5, C.R.S., SHALL CONDUCT ACCEPTANCE
2 TESTING ON THE DEVICE PRIOR TO ITS USE IN AN ELECTION.

3 29.12.2 THE ACCEPTANCE TESTING CONDUCTED IN ACCORDANCE WITH THIS RULE
4 SHALL BE SUFFICIENT TO VERIFY THE ACCURACY OF THE DEVICE. THE ACCEPTANCE
5 TESTING SHALL ENSURE THAT THE DEVICE WILL NOT ACCEPT A SIGNATURE THAT A
6 REASONABLE, TRAINED ELECTION JUDGE WOULD REJECT.

7 New rule 49 would be adopted as follows:

8 **RULE 49. RULES CONCERNING VOTER INFORMATION REPORTS FOR THE PURPOSES OF**
9 **SECTION 24-72-202, C.R.S.**

10 49.1 CUSTODIANSHIP OF VOTER REGISTRATION INFORMATION

11 49.1.1 THE SECRETARY OF STATE SHALL BE THE OFFICIAL CUSTODIAN OF THE
12 INFORMATION CONTAINED IN THE CENTRALIZED STATEWIDE REGISTRATION SYSTEM
13 AND THE COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST CREATED AND
14 MAINTAINED PURSUANT TO SECTION 1-2-301, C.R.S.

15 49.1.2 THE COUNTY CLERK AND RECORDER FOR EACH COUNTY SHALL BE THE OFFICIAL
16 CUSTODIAN OF THE VOTER REGISTRATION INFORMATION ONLY FOR ELECTORS
17 WITHIN THAT COUNTY.

18 49.2 VOTER INFORMATION REPORT

19 49.2.2 THE SECRETARY OF STATE SHALL CHARGE FEES FOR VOTER INFORMATION REPORTS
20 PURSUANT TO SECTION 24-21-104(3), C.R.S.

21 49.2.2 THE COUNTY CLERK AND RECORDER OF EACH COUNTY MAY CHARGE FEES FOR
22 COUNTY VOTER INFORMATION REPORTS. HOWEVER, FEES SHALL NOT EXCEED
23 COUNTY DIRECT AND INDIRECT COSTS FOR PROVIDING SUCH REPORTS.
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