



**NOTICE OF TEMPORARY & PERMANENT ADOPTION**

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

**August 26, 2009**

Pursuant to section 1-107(2)(a), C.R.S. (2008) and 11-1.5-104(1)(e), C.R.S., (2008), and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103, C.R.S. (2008), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the temporary and permanent adoption this 26<sup>th</sup> day of August, 2009 of the following amended rules of the Colorado Secretary of State Election Rules, 8 C.C.R. 1505-1. Such rule amendments are effective immediately. (~~strikethrough~~ text represents deletions from the current rules and text in SMALL CAPS represent additions to the rules):

Rule 2.1 is repealed as follows:

2.1 ~~REPEALED. All requests for lists, printouts, disks, tapes, and other media shall be made in writing.~~

Rule 2.3 is repealed as follows:

2.3 ~~REPEALED. Emergency Registration Application. Prior to the implementation of the statewide voter registration database, when an elector completes an emergency registration application pursuant to section 1-2-217.5 (1)(b), C.R.S., the elector shall be required to present one of the forms of identification set forth in Rule 30.1.6.~~

Rule 2.7 is amended as follows:

2.7 TREATMENT OF APPLICATIONS WHERE THE REQUIRED INFORMATION WAS NOT PROVIDED

2.7.1 If an applicant fails to check the box(es) answering the question(s), "Are you a citizen of the United States?" or "Will you be 18 years of age on or before election day?", the form shall be accepted for registration so long as it is otherwise complete and the affirmation at the bottom of the form is signed.

2.7.2 IF AN APPLICANT FOR VOTER REGISTRATION FAILS TO COMPLETE THE REQUIRED IDENTIFICATION PORTION OF THE FORM IN ACCORDANCE WITH SECTION 1-2-204(2)(F.5) AND (3)(C), C.R.S., AND RULE 2.6.3, THE APPLICATION SHALL BE TREATED AS "INCOMPLETE"; HOWEVER, IF THE APPLICANT SUBMITS A PHOTOCOPY OF HIS/HER DRIVER'S LICENSE OR IDENTIFICATION CARD, THEN THE COUNTY MAY ENTER THE ID NUMBER FROM THE CARD INTO THE APPLICANT'S RECORD AND CONSIDER THE APPLICATION "COMPLETE".

- 2.7.3 IF AN APPLICANT FOR VOTER REGISTRATION FAILS TO PROVIDE A DATE OF BIRTH THE APPLICATION SHALL BE TREATED AS “INCOMPLETE”; HOWEVER, IF THE APPLICANT SUBMITS A PHOTOCOPY OF HIS/HER DRIVER’S LICENSE OR OTHER APPROVED FORM OF ID WHICH INCLUDES THE DATE OF BIRTH, THEN THE COUNTY MAY ENTER THAT INFORMATION INTO THE APPLICANT’S RECORD AND CONSIDER THE APPLICATION “COMPLETE”.
- 2.7.4 IF AN APPLICANT FOR VOTER REGISTRATION FAILS TO PROVIDE HIS OR HER GENDER THE APPLICATION SHALL BE TREATED AS “INCOMPLETE; HOWEVER, IF THE APPLICANT SUBMITS A PHOTOCOPY OF HIS/HER DRIVER’S LICENSE OR OTHER APPROVED FORM OF ID WHICH INCLUDES THE APPLICANT’S GENDER, THEN THE COUNTY MAY ENTER “MALE” OR “FEMALE” AS REFLECTED ON THE CARD INTO THE APPLICANT’S RECORD AND CONSIDER THE APPLICATION “COMPLETE”.

Rule 2.12 is amended as follows:

2.12 Registration of Address Confidentiality Program (ACP) Electors

- 2.12.1 When an ACP participant registers to vote by mail, the elector shall provide identification pursuant to Rule 30.3 and a copy of his/her ACP Authorization Card.
- 2.12.2 ACP participants shall be registered to vote as permanent mail-in ballot voters. Nothing in this rule shall preclude a participant from surrendering his/her mail-in ballot in the same manner as other permanent mail-in ballot voters.
- 2.12.3 Pursuant to section 24-21-208(3)(a), C.R.S., the designated election official shall:
- 2.12.3.1 Use the actual address of a program participant for precinct designation and shall keep the participant’s address, county, and voting precinct AND SPLIT number confidential FROM THE PUBLIC.
- 2.12.3.2 Use the substitute address, as defined in section 24-21-203 (13), C.R.S., for all correspondence and mailings placed in the United States mail.
- ~~2.12.4 Access to ACP participant’s voter registration records is restricted pursuant to section 24-21-208(3)(b), C.R.S., as follows:~~
- ~~2.12.4.1 An ACP participant’s actual address, county, and voting precinct number shall be masked from any public record that is required to be made, maintained, or kept pursuant to sections 1-2-227 and 1-2-301, C.R.S., and shall automatically be confidential in accordance with the provisions of section 24-72-204(3.5), C.R.S., except that the exceptions to such confidentiality set forth in section 24-72-204(3.5) (e), C.R.S., shall not apply to a program participant.~~
- 2.12.4-2.12.4.3A state or local government agency’s access to an ACP participant’s voter registration shall be governed by the disclosure process set forth in section 24-21-210, C.R.S.
- 2.12.5 EXCEPT AS SPECIFICALLY PROVIDED BY PART 2, ARTICLE 21 OF TITLE 24, C.R.S., A PROGRAM PARTICIPANT’S ACTUAL ADDRESS AND TELEPHONE NUMBER MAINTAINED BY A STATE OR LOCAL GOVERNMENT AGENCY IS NOT A PUBLIC RECORD THAT IS SUBJECT TO INSPECTION PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 72 OF TITLE 24 (KNOWN AS “CORA”).

Rule 2.13 is amended as follows:

2.13 Preservation of Voter Registration Records. NOTWITHSTANDING THE RETENTION TIMELINES SPECIFIED IN SECTION 1-2-227, C.R.S., PAPER VOTER REGISTRATION RECORDS MAY BE DESTROYED AS SOON AS THEY HAVE BEEN DIGITALLY RECORDED IN THE STATEWIDE VOTER REGISTRATION DATABASE KNOWN AS "SCORE". SUCH RECORDS SHALL BE RETAINED IN PERPETUITY IN DIGITAL FORMAT BY THE VOTER REGISTRATION DATABASE IN ACCORDANCE WITH TITLE 1, C.R.S. AND THIS RULE. ~~The county clerk and recorder may destroy paper voter registration records pursuant to section 1-2-227, C.R.S., only if the documents have been digitally recorded in the voter registration database. Voter Registration records shall be retained in perpetuity in digital format by the voter registration database.~~

Rule 2.15 is repealed as follows:

2.15 ~~Notification that elector has moved and registered in a different county:--REPEALED.~~

2.15.1 ~~Upon receipt of the information transferred pursuant to section 1-2-603, C.R.S., the county clerk and recorder of the new county shall transfer the elector's registration record from the old county in accordance with 1-2-603(1), C.R.S. the following provisions:~~

2.15.1.1 ~~----- If the voter provides a name, date of birth, and prior address and the county clerk and recorder can match the name, date of birth, and prior address to the voter's prior registration record, the voter's registration record shall be transferred from the old county;~~

2.15.1.2 ~~----- If the voter provides a name and date of birth but does not provide a prior address, the voter's registration record shall be transferred from the old county only if:~~

2.15.1.2.1 ~~----- The voter provides a driver's license or identification card number, and the county clerk and recorder of the county can match the name, date of birth, and driver's license or identification card number to the voter's prior registration record; or~~

2.15.1.2.2 ~~----- The voter provides a social security number, and the county clerk and recorder of the county can match the name, date of birth, and social security number to the voter's prior registration record.~~

2.15.1.3 ~~----- If the voter does not provide a prior address, driver's license number, or social security number, the voter shall not be transferred from the old county unless the elector submits a request to have his name removed from the voter list in accordance with section 1-2-601, C.R.S. The county clerk and recorder of the county of prior residence may send notice to the voter by forwardable mail to the voter's address of record. Any such notice shall have a returnable portion that has the return postage prepaid and is preaddressed to the sending county clerk and recorder, and shall include an area for the voter to indicate if the voter has moved to another county and wishes to have his or her voter registration record transferred from the old county.~~

Rules 6.5.2(e) and (f) are amended as follows:

(E) IN ACCORDANCE WITH SECTION 1-5-407(5)(B), C.R.S., WHETHER INITIATED OR REFERRED, EVERY PROPOSED CHANGE TO THE COLORADO CONSTITUTION SHALL BE CALLED AN "AMENDMENT" AND EVERY PROPOSED CHANGE TO THE COLORADO REVISED STATUTES SHALL BE CALLED A "PROPOSITION"

(e)(F) Ballot issues from the various political subdivisions shall be ordered on the ballot as provided in section 1-5-407 (5), C.R.S:

1. EACH CATEGORY OF INITIATED AND REFERRED STATE AMENDMENTS AND PROPOSITIONS SHALL BE NUMBERED AND LISTED ON THE BALLOT IN THE FOLLOWING SERIES:

01-99	STATE INITIATED CONSTITUTIONAL AMENDMENTS
A-Z	STATE REFERRED CONSTITUTIONAL AMENDMENTS
101-199	STATE INITIATED STATUTORY PROPOSITIONS
AA-ZZ	STATE REFERRED STATUTORY PROPOSITIONS

2. Each category of initiated LOCAL ballot issues and questions shall be numbered in the following series:

<del>01-99</del>	State Issues
<del>100-199-200-299</del>	County Issues
<del>200-299-300-399</del>	Municipal Issues
<del>300-399-400-499</del>	School District Issues
<del>400-499-500-599</del>	Ballot Issues and Questions for other political subdivisions greater than a county.
<del>500-599-600-699</del>	Ballot Issues and Questions for other political subdivisions which are wholly within a county.

3. Each category of LOCAL referred ballot issues and questions shall be designated by a letter or a number and a letter in the following series:

A-Z	State Issues
1A-1Z	County Issues
2A-2Z	Municipal Issues
3A-3Z	School District Issues
4A-4Z	Ballot Issues and Questions for other political subdivisions greater than a county.
5A-5Z	Ballot Issues and Questions for other political subdivisions which are wholly within a county.

Rule 11.5.4.1 is amended as follows:

- 11.5.4.1 Within ~~twenty four (24)~~ FORTY-EIGHT (48) hours of the close of polls on election night, the Secretary of State shall notify the designated election official which voting devices and which race or races on the ballots have been selected for auditing purposes based on the submitted hardware inventory list referred to in Rule 11.4.2.

Rule 12.5 is amended as follows:

12.5 Mail-in and Early Voting.

- 12.5.1 ~~In a mail ballot election, an elector who, will be absent from his or her address of record and requests that a mail ballot be sent to an alternate address, shall be issued a mail ballot in accordance with section 1-7.5-107., except that the return envelope shall contain the affidavit set forth in section 1-8-114, C.R.S. IN A MAIL BALLOT ELECTION, ANY ELECTOR WITH A MAIL-IN BALLOT REQUEST SHALL BE SENT A MAIL BALLOT TO THE REQUESTED ADDRESS IN ACCORDANCE WITH SECTION 1-8-111(1), C.R.S. MAIL-IN BALLOTS SHALL BE TREATED AS MAIL BALLOTS FOR ALL OTHER PURPOSES.~~

- ~~12.5.2 An "in person" request for a ballot that is delivered to the absent elector in the clerk and recorder's office may be filed any time after January 1 of the year of the election, but no later than the close of business on the Friday prior to the election; except that, if the applicant wishes to receive the ballot by mail, the application shall be filed no later than the close of business on the seventh day before the election.~~

- ~~12.5.3 Upon receipt of a request for a mail in ballot, the designated election official shall deliver the original ballot or a replacement ballot to that elector.~~

- ~~12.5.4 A record shall be made on the registration rolls that a request for a mail in ballot was received,~~

~~a ballot was mailed to the alternate address, and the ballot number shall be recorded.~~

~~12.5.5 For mail ballot elections, the notation "Mail in Ballot No. M.I.V. \_\_\_\_\_" shall not be required on the mail in ballots.~~

12.5.6-2 Establishment of polling place for early voting shall not be required for a mail ballot election, however the location for walk-in balloting shall be maintained.

Rule 12.7 is amended as follows:

12.7 If a voter has been directed to return a document with his/her voted ballot, the election judge shall open the returned envelope to retrieve the required form.

12.7.1 If the required form cannot be found in the return envelope, the election judge shall open the secrecy envelope/sleeve to find the required form or document in an effort not to disenfranchise the voter.

12.7.2 IF THE VOTER WAS DIRECTED TO RETURN A COPY OF IDENTIFICATION WITH HIS/HER VOTED BALLOT AND FAILED TO DO SO, THE VOTER SHALL BE SENT A LETTER IN ACCORDANCE WITH SECTION 1-7.5-107(3.5)(D), C.R.S. NOTHING IN THIS RULE SHALL BE CONSTRUED TO PROHIBIT THE DESIGNATED ELECTION OFFICIAL FROM CALLING THE ELECTOR; HOWEVER, A PHONE CALL SHALL NOT SUBSTITUTE FOR NOTIFICATION TO THE ELECTOR IN WRITING.

12.7.3 IF THE ELECTOR PROVIDES A COPY OF HIS/HER IDENTIFICATION WITHIN EIGHT DAYS AFTER ELECTION DAY, THEN THE BALLOT SHALL BE VERIFIED AND COUNTED IN THE SAME MANNER AS OTHER MAIL BALLOTS IN ACCORDANCE WITH SECTIONS 1-7.5-107 AND 1-7.5-107.3, C.R.S.

Rule 12.9.3 is amended as follows:

12.9.3 Any eligible elector may deliver in person to the designated or coordinated election official's office no more than ~~5-TEN (10)~~ voted mail ballots. ~~from members of his or her household.~~

Rule 12.10.1 is amended as follows:

12.10.1 Requests for replacement ballots may be made in writing, by mail, by fax, by email, or by telephone. AN ELECTOR WHO WISHES TO RECEIVE THE REPLACEMENT BALLOT BY MAIL MUST MAKE SUCH REQUEST NO LATER THAN THE CLOSE OF BUSINESS ON THE SEVENTH DAY BEFORE THE ELECTION. HOWEVER, IN ACCORDANCE WITH SECTION 1-7.5-107(3)(D), C.R.S, AN ELECTOR MAY REQUEST A REPLACEMENT BALLOT IN PERSON AT THE COUNTY CLERK AND RECORDER'S OFFICE UNTIL 7:00 P.M. ON ELECTION DAY.

Rules 13.2 & 13.3 are amended as follows:

13.2 The county clerk and recorder shall keep a list, to the extent possible, of the names and mailing addresses of all individuals who deliver more than ~~five (5)-TEN (10)~~ voted mail-in ballots to the designated or coordinated election official's office or the designated drop site for mail-in ballots.

13.3 The county clerk and recorder shall notify each individual on the list required by 13.2 by letter that they have violated section 1-8-113, C.R.S., by delivering more than ~~five (5)-TEN (10)~~ mail-in ballots to the

designated election official.

Rule 13.8 is amended as follows:

13.8 If the marked return envelope does not contain proper identification, the ballot shall be treated as a provisional ballot. The outside of the return envelope shall be marked "provisional". The provisional ballot shall be verified and counted ~~in accordance with section 1-8.5-105(5), C.R.S.~~ AS FOLLOWS:

13.8.1 IN ACCORDANCE WITH SECTION 1-8-113(3)(D), C.R.S., THE ELECTOR SHALL BE SENT A LETTER EXPLAINING THAT HE/SHE HAS NOT PROVIDED IDENTIFICATION. NOTHING IN THIS RULE SHALL BE CONSTRUED TO PROHIBIT THE DESIGNATED ELECTION OFFICIAL FROM CALLING THE ELECTOR; HOWEVER, A PHONE CALL SHALL NOT SUBSTITUTE FOR NOTIFICATION TO THE ELECTOR IN WRITING.

13.8.2 IF THE ELECTOR PROVIDES A COPY OF HIS/HER IDENTIFICATION WITHIN EIGHT DAYS AFTER ELECTION DAY, THEN THE BALLOT SHALL BE VERIFIED AND COUNTED IN THE SAME MANNER AS OTHER MAIL-IN BALLOTS IN ACCORDANCE WITH SECTION 1-8-113, C.R.S.

Rule 13.12 is amended as follows:

13.12 ~~Voters who appear in person at their correct polling place, but who requested mail-in ballots, will nevertheless be permitted to cast provisional ballots upon their declaration that they have not and will not cast any vote in the election other than by that provisional ballot. The provisional ballot is then to be counted, once election officials determine that the voter did not in fact cast the mail-in ballot.~~ MAIL-IN VOTERS WHO APPEAR IN PERSON AT THE POLLING PLACE SHALL BE PERMITTED TO CAST A BALLOT IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

13.12.1 MAIL-IN VOTERS WHO HAVE REQUESTED AND HAVE BEEN ISSUED A MAIL-IN BALLOT, WHO APPEAR AT THE POLLING PLACE ON ELECTION DAY SHALL BE PERMITTED TO CAST A PROVISIONAL BALLOT IN ACCORDANCE WITH SECTION 1-8.5-101(3), C.R.S.

13.12.2 MAIL-IN VOTERS WHO HAVE REQUESTED AND HAVE BEEN ISSUED A MAIL-IN BALLOT WHO APPEAR AT AN EARLY VOTING LOCATION MAY VOTE A REGULAR BALLOT IN ACCORDANCE WITH SECTION 1-8-113(1)(E), C.R.S. THE MAIL-IN BALLOT MUST BE VOIDED PRIOR TO ISSUING THE EARLY VOTING BALLOT.

13.12.3 UNAFFILIATED MAIL-IN VOTERS WHO HAVE NOT BEEN ISSUED A MAIL-IN BALLOT, WHO APPEAR AT THEIR CORRECT POLLING PLACE IN A PRIMARY ELECTION MAY AFFILIATE AND BE ISSUED A REGULAR BALLOT IN ACCORDANCE WITH SECTIONS 1-7-201 AND 1-8.5-101(5), C.R.S.

Rule 13.13 is amended as follows:

13.13 Permanent Mail-in Voting.

13.13.1 An application for a mail-in ballot received by the county clerk and recorder shall be treated as an application for permanent mail-in ballot only if the applicant makes such designation. If the applicant does not specify the length of the request for a mail-in ballot, the application shall be treated as an application for the current calendar year. If the applicant marks both the permanent and calendar year boxes, the application shall be treated as an application for permanent mail-in ballot.

- A. If a registered elector submits a mail-in ballot application that does not contain all of the information required by section 1-8-104.5, C.R.S., the county clerk and recorder may not process the application, unless the county clerk and recorder can confidently identify the elector, except that in no event shall an application be processed if such application does not contain the elector's signature.
- B. If the county clerk and recorder is unable to confidently identify the elector, the county clerk shall promptly notify the elector what additional information is required.

13.13.2 IF AN ELECTOR WHO IS ELIGIBLE AND WISHES TO VOTE IN A MUNICIPAL OR SPECIAL DISTRICT ELECTION WISHES TO HAVE A MAIL-IN BALLOT SENT TO AN ADDRESS OTHER THAN HIS OR HER ADDRESS OF RECORD, THE ELECTOR SHALL FILE A SEPARATE MAIL-IN BALLOT REQUEST WITH THE DESIGNATED ELECTION OFFICIAL OF THAT JURISDICTION.

Rule 15.1 is amended as follows:

15.1 ~~Each petition shall be verified according to the procedures set forth in Rule 17.1.~~ REGISTRATION, LICENSE, AND FILING PROCEDURES.

15.1.1 IN ACCORDANCE WITH SECTION 1-40-135, C.R.S., ANY PERSON OR ISSUE COMMITTEE THAT INTENDS TO COMPENSATE PETITION CIRCULATORS MUST REGISTER WITH, AND OBTAIN A PETITION ENTITY LICENSE FROM THE SECRETARY OF STATE PRIOR TO COMPENSATING ANY CIRCULATOR.

15.1.2 TO REGISTER AND APPLY FOR A LICENSE THE DESIGNATED AGENT OF A PETITION ENTITY MUST PAY A FEE AND SUBMIT A SIGNED APPLICATION INCLUDING:

- A. THE BALLOT TITLE FOR WHICH A PETITION WILL BE CIRCULATED BY PAID CIRCULATORS,
- B. THE NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE PETITION ENTITY,
- C. THE NAME OF THE DESIGNATED AGENT,
- D. AN AFFIRMATION THAT THE ENTITY WILL NOT PAY ANY CIRCULATOR MORE THAN 20% OF HIS OR HER COMPENSATION ON A PER SIGNATURE OR PER PETITION BASIS; AND
- E. AN AFFIRMATION THAT AT LEAST ONE REPRESENTATIVE OF THE ENTITY HAS READ AND UNDERSTANDS COLORADO PETITION LAWS AS OUTLINED IN ARTICLE 40, TITLE 1, C.R.S., AND HAS COMPLETED THE CIRCULATOR TRAINING PROGRAM PROVIDED BY THE SECRETARY OF STATE.

15.1.3 DETERMINATIONS REGARDING THE DENIAL OF AN APPLICATION OR REVOCATION OF A LICENSE WILL BE MADE, OR THE RESOLUTION OF ALLEGED VIOLATIONS INVOLVING PETITION ENTITIES SHALL BE ADDRESSED, IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 1-40-135, C.R.S.

15.1.4 AT THE TIME THE PETITION IS FILED, THE PROPONENTS SHALL FILE WITH THE SECRETARY OF STATE A COPY OF THE LIST OF CIRCULATORS AND A COPY OF THE LIST OF NOTARIES REQUIRED BY SECTION 1-40-111(4), C.R.S., AS WELL AS THE CAMPAIGN FINANCE DISCLOSURE REPORT REQUIRED BY SECTION 1-40-121(1), C.R.S.



Rules 25.2.1, 25.2.2, and 25.2.3 are amended as follows:

25.2.1 A uniformed services elector serving outside the United States may receive and return an application for, or a mail-in ballot by electronic mail in circumstances where a mail ballot or fax ballot is not available or feasible.

~~(a) An application for an 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 TRANSMIT ~~fax~~ the election materials, which shall include a blank ballot and voter instructions (including the elector affidavit) TO THE ELECTOR EITHER DIRECTLY BY ELECTRONIC MAIL OR FAX, OR FORWARD THROUGH ~~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 THE ELECTOR EITHER DIRECTLY OR VIA 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.

Rule 25.3 is amended as follows:

### 25.3 Overall UOCAVA Requirements

25.3.1 If the designated election official has mailed a Clarification for Voter Status Memorandum to an elector in response to receiving mail-in ballot request and has not received a response to the memo at the time the mail-in 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).

25.3.2 Mail-in ballots sent by ~~ETS~~ ELECTRONIC MAIL 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.

25.3.3 Instructions sent by ~~ETS~~ ELECTRONIC MAIL 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 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 REGARDING BALLOT RETURN DEADLINES. ~~that the voted ballot must be received by the clerk and recorder or Secretary of State no later than 7:00 p.m. Mountain Time on election day;~~
  - (I) ALL BALLOTS MUST BE TRANSMITTED AND RECEIVED BY THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE NO LATER THAN 7:00 P.M. MOUNTAIN TIME ON ELECTION DAY, UNLESS THE BALLOT IS CAST BY A UNIFORMED SERVICE MEMBER SERVING OVERSEAS.
  - (II) ALL BALLOTS CAST BY OVERSEAS UNIFORMED SERVICE MEMBERS MUST BE VOTED AND MAILED OR TRANSMITTED NO LATER THAN 7:00 P.M. MOUNTAIN TIME ON ELECTION DAY, AND RECEIVED BY THE COUNTY CLERK AND RECORDER OR THE SECRETARY OF STATE NO LATER THAN THE CLOSE OF BUSINESS ON THE EIGHTH DAY AFTER 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.

25.3.4 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.

25.3.5 DEADLINES FOR UOCAVA MAIL-IN BALLOT APPLICATIONS AND REPLACEMENT BALLOT REQUESTS TRANSMITTED BY EMAIL, FAX, OR ETS. ~~Mail-in 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.~~

(A) AN APPLICATION FOR A MAIL-IN BALLOT MUST BE RECEIVED NO LATER THAN THE CLOSE OF BUSINESS THE FRIDAY IMMEDIATELY PRECEDING THE ELECTION.

(B) A REQUEST FOR A REPLACEMENT BALLOT MUST BE RECEIVED BY 5:00 P.M. MOUNTAIN TIME ON ELECTION DAY. A REQUEST FOR SUCH REPLACEMENT BALLOT INCLUDES A REQUEST FOR AN ELECTRONICALLY TRANSMITTED BALLOT BY A VOTER WHO HAS ALREADY BEEN ISSUED A BALLOT BY REGULAR MAIL.

25.3.6 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 Time on election day~~ THE DEADLINES SPECIFIED IN SECTIONS 1-8-103.5 AND 1-8-113, C.R.S., 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.

25.3.6.1 If a county is notified by the Secretary of State by ~~7:00 p.m. on election day~~ that a mail-in 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.

25.3.7 Any ballot transmitted to an elector by ~~ETS~~ ELECTRONIC MAIL or facsimile shall contain a unique identification number for tracking and auditing purposes.

25.3.8 A log shall be kept by the designated election official of each ballot transmitted to an elector by ELECTRONIC MAIL ~~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 ballot;
- (d) The date the ballot and instructions were transmitted; and
- (e) The initials of the employee of the designated election official transmitting the ballot.

25.3.8.1 The electronic transmission log as well as any other ELECTRONIC MAIL, ETS, or fax records shall be maintained as part of the official election record.

25.3.9 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 mail-in ballots transmitted (faxed, mailed, and ~~transmitted via ETS~~ EMAILED)

- (b) The combined number of mail-in ballots that were returned (faxed, mailed, and ~~transmitted via ETS-EMAILED~~);
- (c) The total number of mail-in ballots that were counted (faxed, mailed, and ~~transmitted via ETS-EMAILED~~).

New Rule 25.3.10 is adopted as follows:

25.3.10 IF AN UNREGISTERED UNIFORMED OR OVERSEAS ELECTOR SUBMITS A FEDERAL WRITE-IN ABSENTEE BALLOT (“FWAB”), AND THE FORM IS RECEIVED BY THE COUNTY CLERK AND RECORDER MORE THAN 29 DAYS PRIOR TO THE ELECTION, THE FORM MAY BE CONSIDERED A TIMELY APPLICATION FOR REGISTRATION AND STATE MAIL-IN BALLOT PURSUANT TO SECTION 1-8-117, C.R.S.

Rule 26.1.3 is amended as follows:

26.1.3 An elector who has requested AND HAS BEEN ISSUED a mail-in ballot shall be permitted to cast a provisional ballot ON ELECTION DAY upon his or her declaration that they have not and will not cast any vote in the election other than by that provisional ballot.

Rule 26.5.4 is amended as follows:

26.5.4 Rejection Codes (Any ballot given a rejection code shall not be counted):

- RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
- RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
- RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter’s eligibility.
- RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to section 1-2-605(10), C.R.S.
- REE (Rejection envelope empty) Provisional ballot envelope is empty.
- RAB (Rejection voter voted mail-in ballot) Designated election official has confirmed that voter voted a mail-in ballot.
- REV (Rejection based on ballot cast in early voting) Voter voted early.
- RED (REJECTION BASED UPON BALLOT CAST ON ELECTION DAY) VOTER VOTED IN A POLLING PLACE
- RIP (Rejection based on incorrect party) Incorrect Party in Primary Election.
- RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.

- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established. Section 1-2-509(3), C.R.S.

Rule 30.1.6 is amended as follows:

30.1.6 "ID" as used in these rules shall mean identification as defined in compliance with section 1-1-104(19.5), C.R.S., as a copy of one of the following:

- (A) A valid Colorado driver's license;
- (B) A valid identification card issued by the Department of Revenue in accordance with the requirements of Part 3 of Article 2 of Title 42, C.R.S.;
- (C) A valid U.S. passport;
- (D) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;
- (E) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;
- (F) A valid U.S. military identification card with a photograph of the eligible elector;
- (G) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. ~~(A cable bill, a telephone bill, documentation from a public institution of higher education in Colorado containing at least the name, date of birth, and legal residence address of the student elector, a paycheck from a government institution, or a Certificate of Degree of Indian or Alaskan Native Blood are sufficient forms of identification);~~ FOR EXAMPLE:
  - ⊖-(I) A CABLE BILL OR TELEPHONE BILL,
  - ⊖-(II) DOCUMENTATION FROM A PUBLIC INSTITUTION OF HIGHER EDUCATION IN COLORADO CONTAINING AT LEAST THE NAME, DATE OF BIRTH, AND LEGAL RESIDENCE ADDRESS OF THE STUDENT ELECTOR,
  - ⊖-(III) A PAYCHECK FROM A GOVERNMENT INSTITUTION OR PRIVATE COMPANY; OR

- ⊖(IV) A CERTIFICATE OF DEGREE OF INDIAN OR ALASKAN NATIVE BLOOD.
- (H) A valid Medicare or Medicaid card issued by the Centers for Medicare and Medicaid Services (formerly the United States Health Care Financing Administration);
- (I) A certified copy of a U.S. birth certificate for the elector issued in the United States;
- (J) Certified documentation of naturalization; or
- (K) A valid student identification card with a photograph of the eligible elector issued by an institute of higher education in Colorado, as defined in section 23-3.1-102(5), C.R.S.

Rule 42.2.2 is amended as follows:

42.2.2 Requests for emergency mail-in ballots issued for administrative reasons pursuant to Section 1-8-115(2), C.R.S. must be received by the designated election official no later than ~~7:00~~ 5:00 P.M. on the day of the election.

Dated this 26<sup>th</sup> day of August, 2009.



William A. Hobbs  
Deputy Secretary of State

For

Bernie Buescher  
Colorado Secretary of State



## **Statement of Basis, Purpose, and Specific Statutory Authority**

### **Office of the Secretary of State Election Rules**

**August 26, 2009**

#### **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 adopted 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"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, and to increase the transparency and security of the election process. The Secretary of State finds that these amendments are further necessary to implement amendments to the election laws made during the 2009 first regular session of the 67th General Assembly and answer questions arising under Title 1 of the Colorado Revised Statutes.

After consideration of all written and oral comments submitted, the Secretary of State finds that the adoption and enactment of the amendments and revisions to specific rules are necessary as follows:

- The amendments to rule 2.7 are necessary to clarify the procedures for processing voter registration applications that are missing required information. These amendments clarify that where an applicant fails to provide required information on the application, the application is incomplete unless the county discovers the missing information in other documentation provided by the applicant with their application.
- The amendments to rule 2.12 are necessary to implement amendments to the Address Confidentiality Program (ACP) Act made by House Bill 08-1274. In particular, the amendments clarify confidentiality requirements and the availability of certain registration documents under the Colorado Open Records Act restrictions.
- The revisions to rule 2.13 are necessary to clarify document retention procedures for voter registration applications. Specifically, the revisions to this rule allow for the destruction of paper applications once those applications have been properly digitally recorded in the appropriate voter's record. Additionally, these amendments implement procedures that

further the state's interest in efficient electronic government. Regarding existing procedures to safeguard records retained in electronic format: records in the Statewide Colorado Registration and Elections System, known as "SCORE", are backed up daily. Once a weekly backup is completed successfully off-site, the daily backup is recycled. Furthermore, monthly backups are retained off-site for six months and yearly backups retained off-site for two years.

- Rule 2.15 is repealed as a result of the statutory amendments implemented by House Bill 09-1018 that codified in statute the minimum matching requirements previously set forth in the rule. As a result, the rule is no longer necessary.
- The revisions to rule 6.5.2 and rule 15 are necessary to implement changes to statute implemented by House Bill 09-1326. The revisions to these rules clarify the numbering and ordering of ballot issues to address the new categories for state constitutional amendments and state statutory propositions. These amendments also implement the petition entity licensing and registration procedures for circulation of state initiative petitions.
- The amendment to rule 11.5.4.1 provides the Secretary of State an additional 24 hours to notify the counties of the equipment that will be audited following the election. In order to notify every county of the equipment to be audited, the Secretary of State must receive an updated list of all equipment used in the election from each county, conduct a random selection, and provide a list to each county of the equipment selected. This revision is necessary because it is not feasible to complete this process for all 64 counties within 24 hours after an election. To fully ensure that the equipment is selected at random, the selection occurs at the close of polls rather than after the publication of the vote count tabulations. This process protects against any concerns of bias in selecting the equipment, for example, this process would preclude selection of the equipment based upon the number of votes cast on the machines.
- The amendments to rule 12 are necessary to implement amendments made by House Bills 09-1015, 09-1216, 09-1336, and 09-1337. In accordance with House Bill 09-1337, the amendments to these rules clarify the procedures for ID deficient voters who fail to provide a copy of identification with their ballot as required by state law. These amendments further clarify the deadline for requesting a replacement ballot in a mail ballot election. Additionally, the amendments are necessary to clarify that in a mail ballot election, mail-in ballots are treated as mail ballots, except that any requests for a mail-in ballot to be sent to an alternate address will be sent to the requested address in accordance with mail-in ballot deadlines.
- The revisions to rule 13 are necessary to implement amendments made by House Bills 09-1186, 09-1216, 09-1336, and 09-1337. These revisions implement the procedures for unaffiliated mail-in voters as set forth in House Bill 09-1216. The amendments also clarify the procedures for voters who are required to provide a copy of identification with their ballot and do not in accordance with House Bill 09-1337. These revisions establish the procedures for voiding a mail-in ballot to allow a mail-in voter to vote during early voting in accordance with House Bill 09-1216. These amendments also implement the permanent mail-in voting procedures enacted by Senate Bill 09-087 and House Bill 09-1216.



- The amendments to rule 25 are necessary to address concerns that arose in the 2008 general election regarding delayed ballots that were transmitted through the Electronic Transmission Service (ETS). These amendments change the procedures for transmitting ballots by electronic mail for overseas military voters, by removing the requirement that the county clerk and recorder utilize the ETS and allow the clerk to transmit the ballot directly to the voter. These amendments also clarify the treatment of federal write-in ballots that are submitted by electors who are not registered to vote, and implement the changes to the ballot transmission deadlines made by House Bills 09-1015, 09-1205, 09-1336, and 09-1337.
- The amendments to Rule 26 are necessary to implement changes enacted by House Bill 09-1216 to clarify that a mail-in voter who had not been issued a ballot may vote a regular ballot on election day. These revisions also create a code to account for provisional ballots cast by voters who have already cast a ballot on election day.
- The amendments to rule 30.1.6 are necessary to clarify the meaning of the term “paycheck” for the purpose of providing examples of acceptable government documents as defined by section 1-1-104(19.5), C.R.S. Additionally, the rule has been renumbered for efficiency and easier citation of the rule.
- The amendment to rule 42.2.2 is necessary to conform the deadline for an administrative emergency mail-in ballot request to other replacement ballot deadlines.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of these amendments to the Election 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. (2008), 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. (2008), 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.”

3. Section 1-7-514(5), C.R.S. (2008), which provides that:

“The secretary of state shall promulgate such rules, in accordance with article 4 of title, 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting any audit required by this section.”

4. Section 1-8-103.5(3), C.R.S. (2008), which provides that:

(3) The secretary of state shall prescribe by rule the procedures or requirements necessary to implement the provisions of this section. The rules shall specify the procedures for sending and returning a ballot by electronic means. The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.



**Statement of Justification and Reasons for Adoption of Emergency Rules**  
**August 26<sup>th</sup>, 2009**

**Amended Rules: 2, 6.5, 11.5.4.1, 12, 13, 15.1, 25, 26.1.3, 26.5.4, 30.1.6, 42.2.2**  
**New Rule: 25.3.10**

**Secretary of State Election Rules**

Under section 1-1-107(2)(a), C.R.S. (2008), 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. (2008), authorizes the Secretary of State “to promulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

Certain amendments to the existing election rules must be adopted and effective immediately for the uniform and proper administration and enforcement of the election laws of the State of Colorado during the 2009 election cycle. These rules are necessary to implement the enactment of new legislation and recommendations made by the Secretary of State, Elections Division staff, County Clerk and Recorders, and interested parties throughout the State of Colorado.

A public Rulemaking hearing was conducted pursuant to section 24-4-103(4)(a), C.R.S. (2008), on August 3, 2009 to receive comment and testimony on the proposed rules. The Secretary of State finds that the proposed rules must be adopted and effective immediately in order to provide clear guidance to county clerks given the close proximity of the November 2009 Coordinated Election.

Additionally, the Secretary of State finds that, in order to ensure the uniform and proper administration and enforcement of the election laws in accordance with section 1-1-107 (1)(c), C.R.S., the adoption of these 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. (2008), the Secretary of State finds that adoption of the amendments 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.”