



## Notice of Temporary and Permanent Adoption

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

August 15, 2012

### I. Adopted Rule Amendments

As authorized by Colorado Elections Law<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Election Rules<sup>3</sup> are adopted on a temporary and permanent basis.

The following rules were considered at the July 23, 2012 rulemaking hearing in accordance with the State Administrative Procedure Act<sup>4</sup>.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations* may be included):

Amendments to Rule 2.7.4:

- 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"male" or "female" as reflected on the card into the applicant's record and consider the application "complete".~~ REPEALED.

New Rule 2.7.5:

- 2.7.5 IF THE COUNTY CLERK AND RECORDER NOTIFIES AN APPLICANT THAT HIS OR HER APPLICATION IS INCOMPLETE, AND THE APPLICANT DOES NOT PROVIDE THE ADDITIONAL INFORMATION NECESSARY TO COMPLETE THE APPLICATION WITHIN 24 MONTHS AFTER THE COUNTY CLERK SENT THE NOTIFICATION, THE APPLICANT MUST REAPPLY IN ORDER TO REGISTER TO VOTE. (SECTION 1-2-509(2), C.R.S.)

Amendments to Rule 2.11:

- 2.11 CHANGES TO AN ELECTOR'S VOTER REGISTRATION STATUS.

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2011).

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2011).

<sup>3</sup> 8 CCR 1505-1.

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2011).

2.11.1 ~~For the purposes of section 1-2-605(4)(a), C.R.S., an~~ AN ELECTOR MAY update to a voter's HIS OR HER INACTIVE registration information to change the voter's STATUS TO ACTIVE status ~~from inactive to active must be provided BY SUBMITTING to the county clerk and recorder by any of the following ways:~~

- (a-) A signed written request, ~~delivered in person or by U.S. mail, fax, or PDF attachment to an email; or~~
- (b-) AN ONLINE VOTER REGISTRATION APPLICATION; OR
- (C) AN ~~Oral~~ IN-PERSON request ~~in person when voter presents~~ WITH identification.

[SECTION 1-2-605(4)(A), C.R.S.]

2.11.12 ~~In the case of the applicant's~~ IF AN ELECTOR IS UNABLE to sign, ANOTHER PERSON MUST WITNESS the elector's mark ~~shall be witnessed by another person.~~ An elector may use a signature stamp because of age, disability, or other need, ~~which shall be.~~ THE STAMP IS treated as a signature and does not require a witness.

Amendments to Rule 2.19.1:

2.19.1 "Confirmation card" means a FORWARDABLE, POSTAGE PREPAID mailing USING THE FORM PRESCRIBED BY THE SECRETARY OF STATE ~~by forwardable mail that includes a registration form so that the voter may update his or her registration or request a mail-in ballot. The mailing shall be postage prepaid and have a returnable portion that is preaddressed to the sending county clerk and recorder.~~

Amendments to Rules 8.6, 8.7, and 8.8:

8.6 Watchers ~~shall be~~ ARE subject to the provisions of section 1-5-503, C.R.S.

8.6.1 THE "IMMEDIATE VOTING AREA" IS THE AREA THAT IS WITHIN SIX FEET OF THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX.

8.6.2 THE DESIGNATED ELECTION OFFICIAL MUST POSITION THE VOTING EQUIPMENT, VOTING BOOTHS, AND THE BALLOT BOX SO THAT THEY ARE IN PLAIN VIEW OF THE ELECTION OFFICIALS AND WATCHERS.

8.6.3 WATCHERS ARE PERMITTED TO WITNESS AND VERIFY THE CONDUCT OF ELECTIONS AND RECOUNT ACTIVITIES. WITNESS AND VERIFY MEANS TO PERSONALLY OBSERVE ACTIONS OF ELECTION JUDGES IN EACH STEP OF THE CONDUCT OF AN ELECTION.

(A) THE CONDUCT OF ELECTION INCLUDES POLLING PLACE AND EARLY VOTING, AND BALLOT PROCESSING AND COUNTING.

(B) WATCHERS MUST REMAIN OUTSIDE THE IMMEDIATE VOTING AREA.

(C) WATCHERS MAY BE PRESENT AT EACH STAGE OF THE CONDUCT OF THE ELECTION, INCLUDING THE RECEIVING AND BUNDLING OF THE BALLOTS RECEIVED BY THE DESIGNATED ELECTION OFFICIAL.

(D) WATCHERS MAY BE PRESENT DURING PROVISIONAL BALLOT PROCESSING BUT

MAY NOT HAVE ACCESS TO CONFIDENTIAL VOTER INFORMATION.

(E) THE NUMBER OF WATCHERS PERMITTED IN ANY ROOM AT ONE TIME IS SUBJECT TO LOCAL SAFETY CODES.

8.6.4 WATCHERS MAY WITNESS AND VERIFY ACTIVITIES DESCRIBED IN ARTICLE I, SECTION 7 THAT ARE OUTSIDE THE IMMEDIATE VOTING AREA, INCLUDING BALLOT PROCESSING AND COUNTING.

8.6.5 WATCHERS APPOINTED UNDER SECTION 1-10.5-101(1)(A), C.R.S., MAY OBSERVE THE CANVASS BOARD WHILE IT PERFORMS ITS DUTIES.

8.6.6 WATCHERS MAY TRACK THE NAMES OF ELECTORS WHO HAVE CAST BALLOTS, CHALLENGE ELECTORS UNDER SECTION 1-9-203, C.R.S., AND RULE 48, AND SUBMIT WRITTEN COMPLAINTS IN ACCORDANCE WITH SECTION 1-1.5.105, C.R.S., AND RULE 31.

8.7 ~~What Watchers May Observe. Duly appointed Watchers may observe polling place voting, early voting and the processing and counting of precinct, provisional, mail, and mail-in ballots. For mail ballot elections, or mail-in ballot processing, watchers may be present at each stage of the election including the receiving and bundling of the ballots received by the designated election official. Watchers may be present during provisional ballot processing but may not have access to confidential voter information.~~ WATCHER OATH. IN ADDITION TO THE OATH REQUIRED BY SECTION 1-7-108(1), C.R.S., A WATCHER MUST AFFIRM THAT HE OR SHE WILL NOT:

8.7.1 ATTEMPT TO DETERMINE HOW ANY ELECTOR VOTED OR REVIEW CONFIDENTIAL VOTER INFORMATION;

8.7.2 DISCLOSE ANY CONFIDENTIAL VOTER INFORMATION THAT HE OR SHE MAY OBSERVE; OR

8.7.3 DISCLOSE ANY RESULTS BEFORE THE POLLS ARE CLOSED AND THE DESIGNATED ELECTION OFFICIAL HAS FORMALLY ANNOUNCED RESULTS.

8.8 ~~Limitations of Watchers. Duly appointed Watchers may observe election judges but may not:~~

8.8.1 ~~interrupt~~ INTERRUPT or disrupt the processing, verification and counting of any ballots or any other stage of the election.

8.8.2 ~~Watchers may track the names of electors who have cast ballots by utilizing their previously obtained lists, but may not write~~ WRITE down any ballot numbers or any other identifying information about the electors.

8.8.3 ~~Watchers may not handle~~ HANDLE the poll books, official signature cards, ballots, mail ballot envelopes, mail-in ballot envelopes, ~~or~~ provisional ballot envelopes, voting or counting machines, or machine components.

8.8.4 ~~Watchers shall not interfere~~ INTERFERE with the orderly ~~process and~~ conduct of any election PROCESS, including ISSUANCE OF ballots ~~issuance~~, receiving of ballots, AND voting or counting of ~~the~~ ballots.

8.8.5 ~~Watchers may not be allowed to interact~~ INTERACT with election officials or election judges AS DEFINED IN SECTION 1-1-104(10), C.R.S., ~~except that each~~ EXCEPT FOR THE INDIVIDUAL designated BY THE election official. ~~shall name at least one individual in each~~

~~precinct polling place or election location to whom Watchers may direct questions or from whom watchers may seek requested information.~~

Amendments to Rule 8.15

8.15 Removal of ~~watchers~~ WATCHERS.

8.15.1 A DESIGNATED ELECTION OFFICIAL MAY REMOVE A WATCHER UPON FINDING THAT THE WATCHER:

- (A) ~~Watchers who commit, encourage, or connive in any~~ COMMITS OR ENCOURAGES fraud in connection with ~~their~~ HIS OR HER duties; ~~who violate any of the election laws, who~~
- (B) ~~Violates any of these~~ ANY OF THE LIMITATIONS OUTLINED IN Rules 8.8; ~~who~~
- (C) ~~Violates their~~ HIS OR HER oath; ~~or who hamper or interfere with the election process may be removed by the designated election official.~~ OR
- (D) IS ABUSIVE OR THREATENING TOWARD ELECTION OFFICIALS OR VOTERS.

8.15.12 ~~If a watcher is removed~~ UPON REMOVAL OF A WATCHER, the designated election official ~~shall immediately~~ MUST inform the political party, candidate, or committee who appointed the watcher ~~via telephone, email, and/or other means.~~

8.15.23 A removed watcher may be replaced by an alternate watcher duly designated ~~pursuant to~~ IN ACCORDANCE WITH sections 1-7-105, 1-7-106, or 1-7-107, C.R.S. Any designated election official who removes a watcher ~~shall~~ MUST, to the best of ~~his/her~~ THE OFFICIAL'S ability, expeditiously certify the appointment of ~~any duly appointed person to replace a removed watcher.~~

Amendments to Rule 9.1:

**Rule 9. Rules Concerning VOTING Assistance to ~~Disabled Voters~~ FOR ELECTORS WITH DISABILITIES**

9.1 ~~A~~ THE COUNTY CLERK AND RECORDER MUST POST A sign AT THE POLLING PLACE OR VOTE CENTER ~~providing substantially as follows shall be posted at the polling place/vote center THAT STATES:~~

*NOTICE  
VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES*

*Colorado law ~~provides that a voter has~~ PROTECTS a VOTER'S legal right to assistance in voting if assistance is needed because of blindness, or other physical A disability. or inability to read or write. The following procedures apply:*

1. ~~The voter must~~ IF YOU REQUIRE ASSISTANCE, PLEASE inform AN ELECTION JUDGE. ~~one of the election judges that he or she needs assistance.~~
2. ~~The voter may be assisted by any~~ ANY PERSON, INCLUDING AN election judge or by any eligible elector selected by the voter ~~MAY ASSIST YOU.~~
3. ~~The person selected~~ IF YOU SELECT A PERSON OTHER THAN AN ELECTION JUDGE, HE OR SHE

*must complete a VOTER ASSISTANCE FORM, WHICH INCLUDES AN OATH ~~‘voter assistance/disabled voter self affirmation form’~~ if all of the following apply THAT STATES:*

- ~~The person selected is not an election judge; and~~
  - ~~The person selected is not the spouse, parent, grandparent, sibling or child eighteen years of age or older, of the voter requesting assistance; and~~
  - ~~The person selected has assisted any other voter at the same election in the same precinct. Section 1-7-111(1)(b), C.R.S.~~
  - ~~The self affirmation form states, ‘I, ....., certify that I am the individual chosen by the disabled elector to assist the disabled elector in casting a ballot.’~~
4. ~~The person selected~~ YOU SELECT may provide any assistance needed by the voter YOU NEED, including entering the voting booth, ~~and~~ preparing the ballot, or operating the voting machine.
  5. The person ~~providing assistance shall~~ ASSISTING YOU MAY not seek to persuade YOU or induce ~~the voter~~ YOU to vote in a particular manner.
  6. The election ~~judges~~ JUDGE shall MUST record the name of each eligible elector assisted VOTER WHO RECEIVES ASSISTANCE and the name of each THE person assisting WHO PROVIDES ASSISTANCE ~~by making an entry in the pollbook or list of eligible electors (or by making an entry on the signature card when IF preprinted signature cards are used in the place of a pollbook and list of eligible electors).~~

Amendments to Rule 10.6:

10.6 Printing primary election ballots.

- 10.6.1 If ~~any~~ A major political party, as defined in section 1-1-104(22.5), C.R.S., has ~~nominated~~ NOMINATES more than one candidate for any office, ~~whether by assembly or petition,~~ THE COUNTY CLERK AND RECORDER MUST CONDUCT the primary election ~~must be conducted~~ for all major political parties.
  - (a) The county clerk must ~~print the ballot to include~~ ON THE BALLOT all offices to which candidates may be nominated in the primary election.
  - (b) If there are no candidates ~~on the ballot~~ for any particular office, the county clerk must print ON THE BALLOT “There are no candidates for this office”.

[Sections 1-4-101 and 1-4-104.5, C.R.S.; Election Rule 10.3]

- 10.6.2 If ~~any~~ A minor political party, as defined in section 1-1-104(23), C.R.S., has ~~nominated~~ more than one candidate for any office, ~~whether by assembly or petition,~~ THE COUNTY CLERK AND RECORDER MAY CONDUCT the primary election ~~must be conducted~~ for that party only.
  - (a) The county clerk must ~~print the ballot to include~~ ON THE BALLOT only the ~~raees~~ OFFICES for which there is more than one candidate ~~nominated~~ DESIGNATED.

- (b) If there is ~~not more than~~ ONLY one minor party candidate ~~nominated~~ DESIGNATED for any ~~race~~ OFFICE, the candidate ~~is~~ WILL BE certified to the general election ballot.

[Sections 1-4-101, 1-4-104.5(3), and 1-4-1304, C.R.S.]

## New Rule 10.7

### 10.7 VOIDING BALLOTS DUE TO TIMELY CHANGES IN ADDRESS OR AFFILIATION.

10.7.1 IF AN ELECTOR SUBMITS A TIMELY ADDRESS OR AFFILIATION CHANGE AFTER THE COUNTY MAILES BALLOTS OR SENDS THE VOTER FILE TO THE VENDOR, THE COUNTY MUST VOID THE FIRST BALLOT AND GENERATE A SECOND BALLOT.

(A) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT SENDS THE VOTER FILE TO THE VENDOR BUT BEFORE THE VENDOR PRINTS BALLOTS, THE COUNTY MUST PROVIDE THE VENDOR A VOIDED BALLOT FILE TO PREVENT THE VENDOR FROM PRINTING AND PREPARING VOIDED BALLOTS FOR MAILING.

(B) IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER THE VENDOR HAS PRINTED BALLOTS BUT BEFORE THE VENDOR MAILES BALLOTS, THE COUNTY MUST WORK WITH THE VENDOR TO MAKE EVERY REASONABLE EFFORT TO REMOVE VOIDED BALLOTS BEFORE THEY ENTER THE MAIL STREAM.

10.7.3 IF THE COUNTY MAILES ITS OWN BALLOTS, THE COUNTY CLERK MUST REMOVE ALL VOIDED BALLOTS BEFORE MAILING.

10.7.4 IF THE COUNTY PROCESSES THE CHANGE TO THE ELECTOR'S RECORD AFTER IT MAILES BALLOTS, THE COUNTY MUST COUNT THE FIRST BALLOT RETURNED BY THE ELECTOR EXCEPT AS FOLLOWS:

(A) IN THE CASE OF AN AFFILIATION CHANGE, THE COUNTY MUST COUNT THE BALLOT ISSUED FOR THE NEW PARTY AFFILIATION.

(B) IN THE CASE OF AN ADDRESS CHANGE THAT RESULTS IN A CHANGE OF PRECINCT, THE COUNTY MUST COUNT THE BALLOT ISSUED FOR THE ELECTOR'S NEW ADDRESS.

### Amendments to Rule 12.4.1(a):

#### 12.4 Mail Ballot Plans

##### 12.4.1 Coordinated and non-partisan elections.

- (a) Written plan. ~~As soon as possible, but~~ THE DESIGNATED ELECTION OFFICIAL MUST SUBMIT A MAIL BALLOT PLAN TO THE SECRETARY OF STATE no later than 55 days ~~prior to~~ BEFORE any other election, ~~not including~~ NONPARTISAN ELECTION, AND 90 DAYS BEFORE ANY ELECTION THAT IS COORDINATED WITH OR CONDUCTED BY THE COUNTY CLERK AND RECORDER. ~~a Primary Election, a written plan~~ THE DESIGNATED ELECTION OFFICIAL must be submitted to the Secretary of State which USE THE APPROVED MAIL BALLOT PLAN TEMPLATE THAT includes the following:

Amendments to Rule 12.4.1(b)(2):

- (2) Recall election. If a non-partisan recall election ~~is to~~ WILL be held as a mail ballot election, ~~the governing body~~ THE DESIGNATED ELECTION OFFICIAL ~~shall~~ MUST submit a written plan to the Secretary of State within ~~three business-FIVE CALENDAR days of~~ AFTER calling the election. The Secretary of State WILL ~~shall~~ notify ~~the governing body of the approval or disapproval~~ APPROVE OR DISAPPROVE of the plan within ~~two business-FIVE CALENDAR days OF RECEIPT IN ACCORDANCE WITH SECTION 1-12-111.5, C.R.S.~~

New Rule 12.4.1(d):

- (D) REQUEST FOR BALLOT BY INACTIVE – FAILED TO VOTE ELECTOR. IN A COORDINATED OR NONPARTISAN ELECTION, THE DESIGNATED ELECTION OFFICIAL MAY NOT MAIL A BALLOT TO AN ELECTOR WHOSE REGISTRATION RECORD IS MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A REGISTRATION UPDATE OR A REQUEST FOR A BALLOT UNDER SECTION 1-7.5-107(3), C.R.S., AND RULE 12.11.

Amendments to Rule 12.4.2(a):

12.4.2 Primary Elections conducted as a mail ballot election.

- (a) Written plan. ~~Pursuant to Article 7.5 of Title 1, C.R.S., no later than 120 days prior to the election t~~The county clerk and recorder must submit a ~~written~~ MAIL BALLOT plan to the Secretary of State NO LATER THAN 90 DAYS BEFORE THE ELECTION. THE COUNTY CLERK MUST USE THE APPROVED MAIL BALLOT PLAN TEMPLATE that includes the following:

Amendments to Rule 12.11:

12.11 Request for a replacement ballot by an active elector and request for a ballot by an inactive elector

- 12.11.1 ~~Requests may be made~~ AN ELECTOR MAY REQUEST A REPLACEMENT BALLOT in-person beginning on the twenty-second day before the election and ~~until~~ ENDING AT 7:00 p.m., MT on election day. If the elector ~~wishes~~ REQUESTS to receive the ballot by mail, ~~the~~ HE OR SHE MUST MAKE THE request ~~must be received~~ no later than the close of business on the seventh day before the election.

- (a) ~~An active elector may request a replacement ballot in person, by mail, fax, email, or telephone.~~

- (i) ~~The elector shall complete a self-affidavit, as required by section 1-7.5-107(3)(d)(I), C.R.S., on a form provided by the designated election official.~~
- (ii) ~~If the elector requests that the replacement ballot be mailed, the self-affidavit may be included in the ballot packet, and must be completed and received by the designated election official on or before 7:00 p.m. MT on election day.~~

~~(iii) The outside of the return envelope shall indicate that the self-affidavit required by this Rule must be returned with the voted ballot. No replacement ballot shall be counted until it has been determined that an affidavit has been completed and returned by the deadline.~~

~~(b) Except as otherwise provided in section 1-7.5-107(3)(c), C.R.S., an inactive elector may make a written request for a ballot in person, by mail, fax, or email. The request must include the elector's name, date of birth, residence address, and signature, and must be received by the designated election official before the ballot is issued. At the time the request is received the elector's record will be marked active.~~

12.11.2 If an elector moved at least 30 days before the election, he or she may include the address change with the ballot request.

12.11.3 REQUEST FOR A REPLACEMENT BALLOT BY AN ACTIVE ELECTOR. AN ACTIVE ELECTOR MAY REQUEST A REPLACEMENT BALLOT IN PERSON, BY MAIL, FAX, EMAIL, OR TELEPHONE.

(A) THE ELECTOR MUST COMPLETE THE SELF-AFFIDAVIT ON THE APPROVED FORM.

(B) IF THE ELECTOR REQUESTS TO RECEIVE THE REPLACEMENT BALLOT BY MAIL, THE DESIGNATED ELECTION OFFICIAL MAY INCLUDE THE SELF-AFFIDAVIT IN THE MAIL BALLOT PACKET. THE ELECTOR MUST COMPLETE AND RETURN THE SELF-AFFIDAVIT NO LATER THAN 7:00 P.M. MT ON ELECTION DAY.

(C) THE DESIGNATED ELECTION OFFICIAL MUST INDICATE ON THE OUTSIDE OF THE RETURN ENVELOPE THAT THE ELECTOR MUST COMPLETE AND RETURN THE SELF-AFFIDAVIT.

(D) THE DESIGNATED ELECTION OFFICIAL MAY NOT COUNT A REPLACEMENT BALLOT UNLESS THE ELECTOR COMPLETED AND RETURNED THE SELF-AFFIDAVIT BY THE DEADLINE.

12.11.4 AN INACTIVE ELECTOR IN A NONPARTISAN MAIL BALLOT ELECTION WILL BE ISSUED A BALLOT IF THE ELECTOR SUBMITS A REGISTRATION UPDATE OR A BALLOT REQUEST.

(A) THE INACTIVE ELECTOR MUST SUBMIT A REGISTRATION UPDATE OR A WRITTEN REQUEST FOR A BALLOT BEFORE THE DESIGNATED ELECTION OFFICIAL MAY MARK THE ELECTOR'S RECORD ACTIVE AND ISSUE THE BALLOT.

(B) THE ELECTOR MAY SUBMIT A REGISTRATION UPDATE OR WRITTEN REQUEST FORM ONLINE, IN PERSON, BY MAIL, FAX, OR EMAIL.

(C) THE WRITTEN REQUEST FORM MUST INCLUDE THE ELECTOR'S NAME, DATE OF BIRTH, RESIDENCE ADDRESS, AND SIGNATURE.

12.11.5 A MILITARY OR OVERSEAS ELECTOR WHOSE REGISTRATION RECORD IS INACTIVE OR WHOSE BALLOT REQUEST HAS LAPSED MAY DOWNLOAD AN APPLICATION AND BALLOT USING THE ELECTRONIC BALLOT DELIVERY SYSTEM.

(A) THE ELECTOR MUST SUBMIT THE BALLOT AND APPLICATION IN ACCORDANCE



WITH THE DEADLINES IN SECTION 1-8.3-111 AND 1-8.3.113, C.R.S., FOR THE BALLOT TO BE COUNTED.

- (B) EVERY COUNTY MUST USE THE APPROVED ELECTRONIC DELIVERY SYSTEM TO IMPLEMENT THIS RULE, EXCEPT THAT A COUNTY MAY OBTAIN A WAIVER. THE SECRETARY WILL CONSIDER THE FOLLOWING FACTORS IN APPROVING OR DENYING A REQUEST FOR WAIVER:
  - I. NUMBER OF MILITARY OR OVERSEAS ELECTORS REGISTERED TO VOTE IN THE COUNTY;
  - II. HISTORICAL DATA REGARDING THE NUMBER OF MILITARY AND OVERSEAS ELECTORS WHO HAVE REGISTERED AND VOTED IN THE COUNTY; AND
  - III. STAFF OR OTHER RESOURCE LIMITATIONS.

12.11.6 IF A COUNTY CLERK AND RECORDER CONDUCTS A PRIMARY ELECTION BY MAIL BALLOT, HE OR SHE MUST MAIL A BALLOT TO AN ELECTOR WHOSE RECORD IS MARKED INACTIVE – FAILED TO VOTE IN ACCORDANCE WITH SECTION 1-7.5-107(3)(A)(II)(A), C.R.S.

New Rules 13.19 and 13.20:

13.19 FOR ANY ELECTION THAT IS NOT A PRIMARY MAIL BALLOT ELECTION, THE DESIGNATED ELECTION OFFICIAL MAY NOT ISSUE A MAIL-IN BALLOT TO AN ELECTOR WHOSE RECORD IS MARKED INACTIVE – FAILED TO VOTE UNTIL THE ELECTOR SUBMITS A TIMELY APPLICATION FOR A MAIL-IN BALLOT.

13.20 A MILITARY OR OVERSEAS ELECTOR WHOSE REGISTRATION RECORD IS INACTIVE OR WHOSE BALLOT REQUEST HAS LAPSED MAY DOWNLOAD AN APPLICATION AND BALLOT USING THE ELECTRONIC BALLOT DELIVERY SYSTEM.

13.20.1 THE ELECTOR MUST SUBMIT THE BALLOT AND APPLICATION IN ACCORDANCE WITH THE DEADLINES IN SECTION 1-8.3-111 AND 1-8.3.113, C.R.S., FOR THE BALLOT TO BE COUNTED.

13.20.2 EVERY COUNTY MUST USE THE APPROVED ELECTRONIC DELIVERY SYSTEM TO IMPLEMENT THIS RULE, EXCEPT THAT A COUNTY MAY OBTAIN A WAIVER. THE SECRETARY WILL CONSIDER THE FOLLOWING FACTORS IN APPROVING OR DENYING A REQUEST FOR WAIVER:

- (A) NUMBER OF MILITARY OR OVERSEAS ELECTORS REGISTERED TO VOTE IN THE COUNTY;
- (B) HISTORICAL DATA REGARDING THE NUMBER OF MILITARY AND OVERSEAS ELECTORS WHO HAVE REGISTERED AND VOTED IN THE COUNTY; AND
- (C) STAFF OR OTHER RESOURCE LIMITATIONS.

Repeal and relocate Rule 26.1.6

~~26.1.6 Voter Access to Provisional Ballot Information Required by section 1-8.5-111, C.R.S.~~

~~26.1.6.1 The system shall be made available to the voter for no less than thirty (30) days following the date of the election.~~

~~26.1.6.2 The system shall provide access to information at no cost to the voter, regardless of the voter's location, by toll free telephone call, internet website, or other suitable medium, pursuant to 1-8.5-111, C.R.S. REPEALED.~~

Amendments to Rule 26.10:

26.10 Treatment of the provisional ballot affidavit as an application for, or a change to registration

26.10.1 If AN ELECTOR IS NOT REGISTERED TO VOTE AND HE OR SHE COMPLETES a provisional ballot affidavit, ~~is treated as~~ THE COUNTY CLERK AND RECORDER MUST TREAT THE AFFIDAVIT AS an application for registration for future elections. ~~in accordance with section 1-8.5-103(2), C.R.S., such~~ THE application shall be IS subject to the requirements ~~for~~ OF any other voter registration application.

26.10.2 ~~In the case of an~~ IF A REGISTERED elector ~~who is registered, if the~~ COMPLETES A provisional ballot affidavit THAT contains changes to the elector's registration, ~~his or her record shall be updated~~ THE COUNTY CLERK AND RECORDER MUST UPDATE THE ELECTOR'S REGISTRATION RECORD accordingly BEFORE MARKING THE PROVISIONAL BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER REGISTRATION DATABASE AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

26.10.3 If THE COUNTY CLERK AND RECORDER ~~a provisional ballot is counted because it was determined that an elector was~~ cancelled or consolidated AN ELECTOR'S RECORD in error, THE CLERK MUST REINSTATE OR UNCONSOLIDATE AND UPDATE the elector's record ~~shall be reinstated or unconsolidated and updated accordingly~~ BEFORE MARKING THE ELECTOR'S PROVISIONAL BALLOT AS ACCEPTED OR REJECTED IN THE STATEWIDE VOTER REGISTRATION DATABASE AND BEFORE LINKING IT TO THE ELECTOR'S RECORD.

New Rule 26.11:

26.11 PROCESSING PROVISIONAL BALLOT AFFIDAVITS IN THE STATEWIDE VOTER REGISTRATION DATABASE. BEFORE CLOSING AN ELECTION, THE COUNTY CLERK AND RECORDER MUST:

26.11.1 ENTER ALL PROVISIONAL BALLOT AFFIDAVITS INTO THE PROVISIONAL MODULE OF THE STATEWIDE VOTER REGISTRATION DATABASE.

26.11.2 LINK ALL PROVISIONAL BALLOT AFFIDAVITS TO THE APPROPRIATE ELECTOR'S RECORD.

New Rule 26.12:

26.12 THE COUNTY CLERK AND RECORDER MUST PROCESS ALL POLLBOOKS OR SIGNATURE CARDS IN THE STATEWIDE VOTER REGISTRATION DATABASE BEFORE PROCESSING PROVISIONAL BALLOTS.

New Rule 26.13:

26.13 VOTER ACCESS TO PROVISIONAL BALLOT INFORMATION

26.13.1 THE SECRETARY OF STATE WILL PROVIDE A PROVISIONAL BALLOT LOOKUP ON THE SECRETARY'S WEBSITE.

26.13.2 THE COUNTY CLERK AND RECORDER MUST NUMBER THE PROVISIONAL BALLOT ENVELOPE OR AFFIDAVIT STOCK USING THE STANDARD NUMBERING CONVENTION APPROVED BY THE SECRETARY OF STATE.

26.13.3 AN ELECTOR MAY ACCESS THE SYSTEM DURING THE 45 DAYS FOLLOWING THE ELECTION.

[SECTION 1-8.5-111, C.R.S.]

Amendments to Rule 29.1.1:

29.1.1 ~~When the election judge reviews the~~ IF A mail, MAIL-IN, OR PROVISIONAL ballot return envelope ~~pursuant to section 1-7.5-107.3, C.R.S., or mail in ballot return envelope pursuant to section 1-8-114.5, C.R.S., or the provisional ballot return envelope pursuant to section 1-8.5-105(3)(a), C.R.S., and notices that the envelope lacks a signature,~~ the election judge ~~shall~~ MUST contact the eligible elector in writing no later than two calendar days after election day. THE DESIGNATED ELECTION OFFICIAL MUST USE THE LETTER AND FORM PRESCRIBED BY THE SECRETARY OF STATE AND KEEP A COPY ~~of the written notification shall be kept in an official file, which shall become~~ AS part of the official election record. Nothing in this rule ~~shall be construed to~~ prohibits the designated election official from calling the elector; ~~however,~~ BUT a phone call ~~shall~~ MAY not substitute for ~~notification to the elector in writing~~ WRITTEN CONTACT. IF THE DESIGNATED ELECTION OFFICIAL CALLS ANY ELECTOR HE OR SHE MUST CALL ALL ELECTORS WHOSE AFFIDAVITS ARE UNSIGNED.

[SECTIONS 1-7.5-107.3, 1-8-114.5, AND 1-8.5-105(3)(A), C.R.S.]

Amendments to Rules 29.1.3 and 29.1.4:

29.1.3 The letter AND MISSING SIGNATURE AFFIDAVIT FORM ~~sent by the election official shall~~ DOES not ~~constitute a violation of~~ VIOLATE section 1-13-801, C.R.S.

29.1.4 The LETTER OR MISSING SIGNATURE AFFIDAVIT form ~~shall~~ MUST include the following language:

“Any person who knowingly violates any of the provisions of the election code relative to the casting of ballots or who aids or abets fraud in connection with any vote cast, or to be cast, or attempted to be cast shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Section 1-13-803, C.R.S.”

Amendments to Rule 29.8:

29.8 The ELECTION OFFICIAL MUST USE THE ~~form of the letter as well as~~ AND the SIGNATURE VERIFICATION form ~~sent to the elector shall be approved by the Secretary of State. pursuant to section 1-1-109, C.R.S.~~

29.9 The letter AND SIGNATURE VERIFICATION FORM ~~sent by the election official shall~~ DOES not ~~constitute a violation of~~ VIOLATE section 1-13-801 C.R.S.

Amendments to Rule 30.1.6(a):

30.1.6 “ID” as used in these rules shall mean A COPY OF ANY OF THE FOLLOWING 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. 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-II) A paycheck from a government institution or private company; OR
  - (IV-III) A Certificate of Degree of Indian or Alaskan Native Blood.; or
  - (V) A valid identification card issued by a federally recognized tribal government certifying tribal membership.
- (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.;

- (L) A VALID VETERAN IDENTIFICATION CARD ISSUED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION WITH A PHOTOGRAPH OF THE ELIGIBLE ELECTOR; OR
- (M) A VALID IDENTIFICATION CARD ISSUED BY A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT CERTIFYING TRIBAL MEMBERSHIP.

Repeal and renumber Rules 32.1, 32.2, 32.3, and 32.4:

- 32.1 ~~In any recall election of a partisan office, the successor nominee's party affiliation shall be listed with his or her name on the ballot.~~ REPEALED.
- 32.23 ~~Petition sufficiency occurs when upon review, it is established that the petition contains the required number of valid signatures.~~ REPEALED.
- 32.34 ~~When a protest is filed, petition sufficiency is sustained upon conclusion of the protest when the designated election official or the district judge maintains that there are sufficient valid signatures.~~ REPEALED.
- 32.45 ~~When an officer subject to being recalled resigns within the five days after the sufficiency of the recall petition has been sustained, the recall election does not go forward, and the position is declared vacant and filled according to statute.~~ REPEALED.

Amendments to Rule 41:

#### **Rule 41. Rules Concerning Canvassing**

##### 41.1 Definitions

(a) ~~“Canvass” shall mean the audit function of the election and the process of reconciling the number of ballots counted to the number of voters who voted. The canvass also includes the process of reconciling detailed ballot logs and Statement of Ballots Forms.~~

41.1.1 “CANVASS BOARD” MEANS A COMMITTEE COMPOSED OF THE COUNTY CLERK AND RECORDER AND THE REGISTERED ELECTORS APPOINTED BY THE MAJOR PARTIES IN ACCORDANCE WITH SECTION 1-10-101, C.R.S.

(b)41.1.2 “Canvass workers” ~~shall mean~~s workers appointed or hired by the designated election official to assist in the preparation and conduct of the canvass.

41.1.3 “Statement of Ballots Forms” ~~shall mean~~s the form used at the polling location pursuant to sections 1-7-505(2) and 1-7-601(2), C.R.S., that accounts for all ballots at that location AND INCLUDES ALL INFORMATION REQUIRED BY THIS RULE. ~~The form includes information required by this rule.~~

##### 41.2 APPOINTMENT TO THE CANVASS BOARD

41.2.1 IN ALL CASES, THE CANVASS BOARD MUST CONSIST OF AN ODD NUMBER OF MEMBERS, AND EACH MEMBER HAS EQUAL VOTING RIGHTS.

41.2.2 FOR A PARTISAN ELECTION, EACH MAJOR PARTY MAY HAVE NO MORE THAN TWO REPRESENTATIVES ON THE CANVASS BOARD. THE BOARD MUST INCLUDE AN EQUAL NUMBER OF REPRESENTATIVES FROM EACH MAJOR PARTY, UNLESS A MAJOR PARTY

FAILS TO CERTIFY REPRESENTATIVES FOR APPOINTMENT.

41.2.3 EACH MAJOR PARTY REPRESENTATIVE ON THE CANVASS BOARD MUST BE REGISTERED TO VOTE IN THE COUNTY WHERE THE REPRESENTATIVE WILL SERVE AND AFFILIATED WITH THE PARTY HE OR SHE REPRESENTS.

41.2.4 A CANDIDATE FOR OFFICE AND MEMBERS OF THE CANDIDATE'S IMMEDIATE FAMILY MAY NOT SERVE ON THE CANVASS BOARD.

### 41.3 DUTIES OF THE CANVASS BOARD

41.3.1 THE CANVASS BOARD MUST MAKE ITS DETERMINATIONS BY MAJORITY VOTE IN ACCORDANCE WITH SECTION 1-10-101.5(3), C.R.S.

41.3.2 THE CANVASS BOARD'S DUTIES ARE:

(A) CONDUCT THE CANVASS IN ACCORDANCE WITH SECTION 1-10.5-101, C.R.S., INCLUDING:

I. ACCOUNT AND BALANCE THE ELECTION AND CERTIFY THE OFFICIAL ABSTRACT OF VOTES;

II. RECONCILE THE NUMBER OF BALLOTS COUNTED TO THE NUMBER OF BALLOTS CAST; AND

III. RECONCILE THE NUMBER OF BALLOTS CAST TO THE NUMBER OF VOTERS WHO VOTED BY REVIEWING THE RECONCILED DETAILED BALLOT LOGS AND STATEMENT OF BALLOTS;

(B) OBSERVE THE POST-ELECTION AUDIT IN ACCORDANCE WITH SECTION 1-7-514(4), C.R.S., AND ELECTION RULE 11.5.4;

(C) IN COORDINATION WITH THE COUNTY CLERK AND RECORDER, INVESTIGATE AND REPORT DISCREPANCIES FOUND IN THE AUDIT UNDER SECTION 1-7-514(2), C.R.S.; AND

(D) CONDUCT ANY RECOUNT IN ACCORDANCE WITH SECTION 1-10.5-107, C.R.S., AND ELECTION RULE 14. THE CANVASS BOARD'S ROLE IN CONDUCTING A RECOUNT INCLUDES SELECTING BALLOTS FOR THE RANDOM TEST, OBSERVING THE RECOUNTING OF BALLOTS, AND CERTIFYING THE RESULTS.

41.3.3 IF THE BOARD IDENTIFIES A DISCREPANCY IN THE STATEMENT OF BALLOTS, THE BOARD MAY REVIEW THE PARTICULAR BALLOTS AT ISSUE TO IDENTIFY, CORRECT, AND ACCOUNT FOR THE ERROR.

41.3.4 THE CANVASS BOARD MAY NOT PERFORM DUTIES TYPICALLY RESERVED FOR ELECTION JUDGES, INCLUDING:

(A) DETERMINING VOTER INTENT;

(B) EVALUATING VOTER ELIGIBILITY; AND

- (C) REQUESTING NEW LOGS OR REPORTS THAT WERE NOT CREATED TO CONDUCT THE ELECTION.

#### 41.24 Detailed Ballot Log

- 41.24.1 The designated election official ~~shall~~ MUST keep a detailed BALLOT log THAT ACCOUNTS FOR EVERY BALLOT ISSUED AND RECEIVED ~~of all ballots. The designated election official shall BEGINNING the log as soon as~~ WHEN ballots are ordered and received. ~~The log shall include the polling location and/or precinct number(s), ballot style(s), and account for every ballot that is received and distributed.~~ The ELECTION JUDGES MUST RECONCILE THE ~~detailed ballot log shall be reconciled~~ at the conclusion of each workday.
- 41.24.2 The designated election official ~~shall~~ MUST keep and reconcile daily logs of mail-in, mail, and early voting ballots.
- 41.24.3 The designated election official ~~shall~~ MUST indicate in the detailed log the number of paper ballots that are sent to each polling location for use on election day.
- 41.24.4 THE DESIGNATED ELECTION OFFICIAL MUST KEEP ~~All~~ required logs ~~may be kept either by~~ IN EITHER electronic or manual ~~means~~ FORMAT.

#### 41.35 Election Day Tracking Process

- 41.35.1 The designated election official ~~shall~~ MUST supply each polling location with a Statement of Ballots Form. ~~Combined precincts may use one form. The form MUST include a place for the judges to account for the following information:~~
- (a) The name or number(s) of the precinct or vote center;
  - (b) The number of ballots provided to the polling location;
  - (c) The number of ballots cast;
  - (d) The number of unvoted ballots;
  - (e) The number of damaged or spoiled ballots; and
  - (f) The number of voted provisional ballots.
- 41.35.2 The ELECTION JUDGE MUST RECONCILE THE total number of voted ballots ~~should be reconciled to~~ WITH the number of voters who voted.
- 41.35.3 The ELECTION JUDGE MUST VERIFY THAT THE total number of voted ballots, spoiled or damaged ballots, provisional ballots, and unvoted ballots ~~should be reconciled to be the same as~~ IS THE SAME AS the number of total ballots ~~received at~~ SUPPLIED TO the polling location ~~before voting begins~~.
- 41.35.4 The ~~designated election official shall~~ ELECTION JUDGE MUST ~~ensure that the total of~~ RECONCILE the number of people who signed the pollbook ~~is reconciled to~~ the total of the number of ballots cast.

- 41.35.5 If there is a discrepancy in the numbers on the Statement of Ballots form, the judge ~~shall~~ MUST EXPLAIN THE DISCREPANCY IN WRITING ~~make written notation explaining why the numbers do not balance~~ (for example, THE voter signed in but left the polling place without voting, etc.).
- 41.35.6 The ~~judges~~ JUDGE ~~shall~~ MUST return the completed Statement of Ballots form to the designated election official with the other precinct supplies and mail a duplicate copy ~~pursuant to section 1-7-505, C.R.S.~~ TO THE DESIGNATED ELECTION OFFICIAL'S OFFICE.
- 41.46 Designated Election Official's Disposition of Forms
- 41.46.1 The designated election official ~~shall~~ MUST review the Statement of Ballots form ~~and ensure that it is complete and correct~~ FOR COMPLETION AND ACCURACY.
- 41.46.2 If the designated election official or the canvass board discovers a problem with the Statement of Ballots form that cannot be easily resolved, ~~THEY he or she shall have the right to~~ MAY contact the election judges ~~and ensure that~~ FOR AN EXPLANATION OR CORRECTION ~~the discrepancy is explained or corrected~~.
- 41.57 Procedures for the Day of the Canvass
- 41.57.1 ~~In order for the canvass board established pursuant to section 1-10-101, C.R.S., to perform its duties, pursuant to section 1-10-101.5, C.R.S.,~~ THE designated election official ~~shall~~ MUST provide the following information TO THE CANVASS BOARD:
- (a) The name of each candidate ~~receiving votes, the office, and the total number of~~ votes received;
  - (b) The number/letter of each ballot issue or question ~~and the votes received~~;
  - (c) The number of voters who voted early;
  - (d) The number of mail-in or mail ballots cast, including the number accepted and rejected; AND
  - (e) The number of provisional ballots counted.
- ~~41.5.2 The canvass board shall confirm that the number of ballots cast is less than or equal to the number of people who actually voted in each precinct or vote center.~~
- ~~41.5.3 The designated election official shall use a canvass form that is approved by the Secretary of State.~~
- 41.57.4.2 Any written documentation regarding official numbers ~~shall be~~ IS included as part of the canvass.
- 41.68 Official Abstract
- 41.68.1 The designated election official ~~shall~~ MUST ~~ensure that~~ INCLUDE the number of active ELIGIBLE voters on election day ~~pursuant to section 1-10-105(5)(c), C.R.S., is the number used on the official abstract.~~



- 41.68.2 The CANVASS BOARD MUST USE THE official abstract ~~shall be compiled on~~ IN a format approved by the Secretary of State.
- 41.68.3 The official abstract ~~shall~~MUST include, by precinct/ballot style or vote center, where applicable:
- (a) The statement of votes counted by race and ballot question or issue;
  - (b) The total active registered electors in the precinct and the total for the jurisdiction holding the election;
  - (c) The total number of electors voting in each precinct; and the total for the jurisdiction holding the election;
  - (d) The number of voters who voted early;
  - (e) The number of emergency registrations;
  - (f) The number of mail-in or mail ballots counted and the number rejected;
  - (g) The number of provisional ballots counted and the number rejected listed by each rejection code ~~pursuant to Rule 26.5.4~~; and
  - (h) The number of damaged and spoiled ballots.
- 41.79 The Abstract ~~shall be~~ IS the Official, Permanent Record.
- 41.79.1 The designated election official ~~shall~~MUST keep all official canvass reports and forms as part of the official permanent election record.
- 41.9.2 ONCE THE CANVASS BOARD CERTIFIES THE ABSTRACT IT MAY NOT WITHDRAW THE CERTIFICATION. IN THE EVENT OF A RECOUNT, THE CANVASS BOARD MAY ONLY AFFIRM OR AMEND THE ABSTRACT.
- 41.810 Appointment of Canvass Workers. 41.10.1 ~~—~~The designated election official may ~~utilize~~ APPOINT canvass workers to ~~assist in the preparation~~HELP PREPARE and conduct of the canvass.
- 41.911 Voter History
- 41.911.1 After the canvass ~~process is completed~~, the designated election official ~~shall~~MUST give credit to each voter who votes by mail, at an early voting site, or at a polling location.
- 41.911.2 If the voter history records do not match the number of voters who voted at that election, the designated election official ~~shall~~MUST ensure the following:
- (a) Each voter ~~was given~~RECEIVED credit for voting; and
  - (b) All pollbooks and signature cards are accounted for.
- 41.911.3 All research concerning discrepancies ~~shall~~MUST be explained and documented.

41.1012 Written Complaints. ~~In accordance with section 1-7-514(2)(b), C.R.S., the~~ THE designated election official ~~shall~~ MUST provide to the canvass board WITH any written complaint about a ~~voting device~~ submitted by a registered elector ABOUT A VOTING DEVICE. ~~and,~~

41.12.1 ~~if~~ IF THE COMPLAINT IS resolved, ~~how it was resolved and if~~ THE DESIGNATED ELECTION OFFICIAL MUST PROVIDE THE DETAILS OF THE RESOLUTION

41.12.2 IF THE COMPLAINT IS pending RESOLUTION WHEN THE BOARD MEETS TO CONDUCT THE CANVASS, THE DESIGNATED ELECTION OFFICIAL MUST PROVIDE a proposal for how the issue will be resolved.

41.13 ROLE OF WATCHERS. WATCHERS APPOINTED UNDER SECTION 1-10.5-101(1)(A), C.R.S., MAY OBSERVE THE BOARD WHILE IT PERFORMS ITS DUTIES, SUBJECT TO RULE 8.

41.14 ROLE OF THE SECRETARY OF STATE. AS PART OF THE SECRETARY'S DUTIES UNDER SECTION 1-1-107, C.R.S., THE SECRETARY MAY PROVIDE GUIDANCE AND INVESTIGATE IMPERFECTIONS AS OUTLINED BELOW.

41.14.1 THE COUNTY CLERK AND RECORDER OR THE CANVASS BOARD MAY REQUEST THAT THE SECRETARY OF STATE PROVIDE GUIDANCE AND SUPPORT TO THE CANVASS BOARD IN THE EXERCISE OF THE BOARD'S DUTIES.

41.14.2 IF, IN THE COURSE OF ASSISTING A CANVASS BOARD, THE SECRETARY OF STATE DISCOVERS AN IMPERFECTION THAT THE SECRETARY BELIEVES MAY AFFECT THE CONDUCT OF OTHER CANVASS BOARDS, THE SECRETARY MAY PROVIDE NOTICE TO OTHER COUNTIES REGARDING THE NATURE OF THE IMPERFECTION.

41.14.3 IMPERFECT RETURNS OR FAILURE TO CERTIFY.

(A) IF THE CANVASS BOARD FAILS TO CERTIFY OR CERTIFIES IMPERFECT RETURNS THAT HAVE NO REASONABLE POTENTIAL TO CHANGE THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF STATE AND COUNTY CLERK MUST CERTIFY THE ELECTION AND ORDER RECOUNTS, IF ANY, IN ACCORDANCE WITH PART 1, ARTICLE 11 OF TITLE 1, C.R.S.

(B) IF THE CANVASS BOARD FAILS TO CERTIFY OR CERTIFIES IMPERFECT RETURNS THAT HAVE A REASONABLE POTENTIAL TO CHANGE THE OUTCOME OF ANY RACE OR BALLOT MEASURE, THE SECRETARY OF STATE WILL CONDUCT AN INVESTIGATION TO IDENTIFY THE NATURE OF, AND ADVISE THE COUNTY CLERK AND RECORDER IN CORRECTING, THE INACCURACY.

Amendments to Rule 42.2:

42.2 "Electronic Transfer" ~~shall mean~~ the use of facsimile and shall not include the use of FAX OR e-mail ~~under~~ (section 1-8-115, C.-R.-S.).

Amendments to Rule 42.6:

42.6 The transmission ~~shall~~ MUST also include a mail-in ballot self-affirmation pursuant to 1-8-114 (1) C. R. S.

Amendments to Rule 42.11.2:

42.11.2 If the designated election official is unable to provide a mail-in ballot to an elector by any other means, the designated election official may ~~seek authority from the Secretary of State to provide a~~ SEND AN EMERGENCY mail-in ballot to the elector ~~under section 1-8-115(4), C.R.S., and this Rule.~~

Repeal Rules 42.11.3, 42.11.4, 42.11.5, 42.11.6, and 42.11.7:

42.11.3 ~~No later than 21 days prior to the election, the Secretary of State will post on its website and email counties a designated point of contact for each election for Emergency Electronic Transfer Requests. REPEALED.~~

42.11.4 ~~A request to send a ballot by electronic transfer must be submitted to the designated point of contact via email using the approved Emergency Electronic Transfer form posted on the Secretary of State website. If possible, the designated election official should attempt to consolidate requests to the Secretary of State. REPEALED.~~

42.11.5 ~~At a minimum, a request for an emergency electronic transfer shall include:~~

- ~~(a) Contact information, including name, address, phone number, fax number, and e-mail address for the designated election official or their designee;~~
- ~~(b) Date and time of request sent by designated election official;~~
- ~~(c) Confirmation e-mail to designated election official by Secretary of State upon receipt of request~~
- ~~(d) Justification as to why the ballot(s) need to be sent by fax, which includes the following required information:
  - ~~(i) The elector's name;~~
  - ~~(ii) When the elector applied for the mail-in ballot;~~
  - ~~(iii) The date when the designated election official sent the mail-in ballot to the elector (if applicable);~~
  - ~~(iv) The date the elector contacted the designated election official with information regarding failure to receive the ballot;~~
  - ~~(v) A suggested timeframe for the Secretary of State to respond;~~
  - ~~(vi) The quantity of ballots to be sent by fax; and~~
  - ~~(vii) Approval or disapproval by the Secretary of State; if denied, reason for the denial.~~~~
- ~~(e) Confirmation e-mail from the designated election official to Secretary of State upon receipt of approval or disapproval. REPEALED.~~

42.11.6 ~~The Secretary of State shall respond in writing to the designated election official as soon as possible, but no later than eight business hours after receipt of the request. REPEALED.~~

42.11.7 ~~The Secretary of State shall have the ability to issue a blanket approval by electronic transfer.~~ REPEALED.

**II. Basis, Purpose, and Specific Statutory Authority**

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

**III. Statement of Justification and Reasons for Adoption of Temporary Rules**

A statement of the Secretary of State's findings to justify the immediate adoption of these new and amended rules on a temporary basis follows this notice and is incorporated by reference.<sup>5</sup>

**IV. Effective Date of Adopted Rules**

These new and amended rules are immediately effective on a temporary basis and will become permanently effective twenty days after publication in the Colorado Register.<sup>6</sup>

Dated this 15<sup>th</sup> day of August, 2012,



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Suzanne Staiert  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State

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<sup>5</sup> Section 24-4-103(6), C.R.S. (2011).

<sup>6</sup> Section 24-4-103(5), C.R.S. (2011).



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

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

**August 15, 2012**

#### **I. Basis and Purpose**

This statement is about amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.<sup>1</sup> The revisions are also intended to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under State election laws as follows:

- Rule 2.7.4 is repealed in accordance with changes made by section 3 of House Bill 12-1292, which amended section 1-2-204(2)(d), C.R.S., to make gender an optional response for a person registering to vote.
- New Rule 2.7.5 is adopted to implement changes made by section 6 of House Bill 12-1292. In accordance with amendments to section 1-2-509, C.R.S., if a county notifies an applicant that his or her voter registration application is incomplete, and the applicant does not provide the additional information necessary to complete the application within 24 months after notification is sent, the applicant must reapply.
- Amendments to Rule 2.11 clarify that an elector may apply through the online voter registration portal to update his or her inactive voter registration record to active status.
- Amendments to Rule 2.19.1 implement changes made by section 7 of House Bill 12-1292. Amendments to section 1-2-605(6)(b), C.R.S., provide that a confirmation card only needs to include information necessary to update registration rather than a complete voter registration application.
- Rule 8.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the role and limitations of watchers. Additional revisions to Rule 8 require watchers to affirm that they will not attempt to obtain or disclose results before official results are released, or confidential voter information at any time.
- Rule 9.1 is amended to implement changes made by section 26 of House Bill 12-1292. Amendments to section 1-7-111, C.R.S., provide that an elector may receive assistance

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<sup>1</sup> Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

from an election judge or any other person the elector selects. Additionally, any person, other than an election judge, who assists an elector must first complete a voter assistance/disabled voter self-affirmation form. Amendments to the rule heading implement the people first language requirements of House Bill 10-1137.

- New Rule 10.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the rule applies when a major political party nominates more than one candidate for any office.
- New Rule 10.7 establishes procedures for voiding the first and generating a new ballot when an elector submits a timely address or affiliation change after the county either sends the voter file to a print vendor, prints, or mails ballots. The rule also clarifies which ballot to count when the county processes the change to the elector's record after it mails ballots.
- Rules 12.4.1(a), 12.4.1(b)(2), and 12.4.2(a) are amended to implement changes made by section 32 of House Bill 12-1292 and section 10 of House Bill 12-1293. These changes harmonize mail ballot plan deadlines for elections conducted by the county clerk. The changes also adjust the deadline for a designated election official to submit a mail ballot plan for a nonpartisan recall election and for the Secretary of State to approve or disapprove the plan.
- New Rule 12.4.1(d), amendments to Rule 12.11, and new Rules 13.19 and 13.20 are adopted to clarify when a designated election official may mail ballots to an elector whose record is marked inactive – failed to vote. Specifically, the changes to Rules 12.4.1(d) and Rule 12.11 clarify that a county clerk may not mail a ballot in a coordinated mail ballot election to an inactive – failed to vote elector. New Rule 13.19 clarifies that, in order to receive a mail-in ballot in a polling place or vote center election, an inactive – failed to vote elector must make a timely ballot request and update his or her record to active. The rule changes further provide that a military or overseas elector whose record is inactive or whose ballot request has expired may make obtain an application and ballot using the statewide electronic ballot delivery system. Every county must use the approved system to make these applications and ballots available to military and overseas electors unless the county requests and receives a waiver.

The Colorado General Assembly passed the Mail Ballot Act in 1990, which provided for counties choosing to conduct a coordinated election to send ballots only to active registered electors. More recently, in 2008, the General Assembly passed House Bill 08-1329, which amended section 1-7.5-108.5(2)(b), C.R.S. The changes in House Bill 08-1329 were adopted to address concerns stemming from the 2006 general election. Election day 2006 saw unusually long lines throughout the day, leading to concerns that voters had simply given up, and become inactive – failed to vote as a result. The bill created a one-time exception requiring designated election officials to send mail ballots to all inactive – failed to vote electors for mail ballot elections conducted in November 2009. The bill also added section 1-7.5-108.5(2)(b), C.R.S., which stated that on July 1, 2011, this one-time exception was repealed.

Where the General Assembly intends for counties to mail ballots to inactive – failed to vote electors, the General Assembly specifically states that intent in the language of the statute. For example, section 1-7.5-107(3)(a)(II), C.R.S., requires mailing ballots to

inactive – failed to vote electors who are affiliated with a participating party in a primary mail ballot election. In the repealed section 1-7.5-108.5(2)(b), C.R.S., the General Assembly specifically stated that counties were to mail ballots to inactive – failed to vote electors in a coordinated election. But because the requirement was for a specific period of time and has expired, county clerks may now send ballots only to active electors in a coordinated election.

In 2011, the City and County of Denver determined that it would mail ballots to inactive – failed to vote electors in the coordinated election. The Secretary of State advised Denver that the statute contemplated mailing only to active electors in a coordinated election. Denver refused to comply, and the Secretary filed a complaint in Denver district court to enjoin Denver from mailing to inactive – failed to vote electors. Denver responded and asserted several defenses, including an allegation that the Secretary failed to comply with the rulemaking requirements of the Administrative Procedure Act (APA). The changes to Rules 12.4.1(d) and Rule 12.11 address Denver’s concern that the Secretary failed to comply with the APA.

- Amendments to Rule 26 clarify the procedures for processing provisional ballots in the statewide voter registration system to ensure uniformity and consistency in statewide elections. Specifically, the revisions to Rule 26.10 state that the county clerk must make updates to the appropriate voter registration records before coding the ballots and linking to the voter record. New Rule 26.11 provides that the county clerk must completely enter and code all provisional ballots in the statewide voter registration system before closing the election, and new Rule 26.12 requires the county clerk to process all pollbooks before processing provisional ballots. Repealed Rule 26.1.6 is amended and relocated to new Rule 26.13.
- Amendments to Rule 29 clarify that the designated election official must use the signature affidavit and signature verification letters and forms prescribed by the Secretary of State. These changes also clarify that if a clerk calls any elector regarding an unsigned affidavit, the clerk must call all electors whose affidavits are not signed.
- Rule 30.1.6(a) is amended to implement changes made by Senate Bill 12-062 and House Bill 12-1292. Specifically, amendments to the definition of identification in section 1-1-104(19.5)(a), C.R.S., list two additional forms of identification: (1) a valid veteran identification card issued by the United States department of veterans affairs veterans’ health administration with a photograph of the eligible elector; and (2) a valid identification card issued by a federally recognized tribal government certifying tribal membership.
- Rules 32.1, 32.2, 32.3, and 32.4 are repealed. House Bill 12-1293 re-codified Part 1 of Article 12 with respect to recall elections. As a result, the Rules are no longer necessary.
- Amendments to Rule 41 clarify the role and duties of canvass boards to ensure uniform appointment and operation of canvass boards in state and federal elections. Specifically, the amendments:
  - Clarify the makeup of and appointment to the canvass board. This rule clarifies that the board is a committee composed of the county clerk and recorder and the registered electors appointed by the major parties in accordance with section

1-10-101, C.R.S. Colorado presently has more than two major political parties. This rule affords each major party an equal number of representatives on the canvass board, provided that each party submits representatives. For purposes of efficient elections administration and fairness, this rule also limits the number of representatives from each major party to two and requires the canvass board to consist of an odd number of members. Additionally, the rule clarifies that a candidate for office and members of the candidate's immediate family may not serve on the canvass board.

- Clarify the canvass board's duties under section 1-10-101.5, C.R.S. In particular, the board is tasked with reviewing the election judges' reconciliation to account and balance the election returns. The rule clarifies that where the board identifies a discrepancy in the judges' reconciliation, it may review the ballots at issue only for the purpose of correcting and accounting for the error. Clarifies the process for the Secretary of State to provide assistance and guidance to the county clerk and canvass boards. Specifically, the rule outlines the Secretary's role in the event that the board fails to certify or certifies imperfect returns. The rule provides that where imperfect returns have a reasonable potential to affect the outcome of any race or ballot measure, the Secretary will investigate and assist the county clerk and board in resolving the imperfection before the state or county certifies the election results.
- Clarifies that watchers appointed under section 1-10.5-101(1)(a), C.R.S., may observe the board while it performs its duties, subject to Rule 8.
- Revisions to Rule 42 include technical corrections and conforms the rule to changes made by section 38 of House Bill 12-1292. Changes to Rule 42.2 clarify the definition of electronic transfer for emergency ballots. Additionally, Rules 42.11.3 through 42.11.7 are repealed in accordance with amendments to section 1-8-115, C.R.S., that eliminate the requirement that the designated election official seek authority from the Secretary of State before faxing an emergency mail-in ballot to an elector.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), 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., (2011), 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 necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."
3. Section 1-7.5-106(2), C.R.S., (2011), which authorizes the Secretary of State to "adopt rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]."



4. Section 1-8-115(5)(d), C.R.S., (2011), which authorize the Secretary of State to “prescribe by rule any procedure or requirements as may be necessary to implement the provisions of [the emergency electronic transfer statute].”
5. Section 1-8.5-112, C.R.S., (2011), which requires the Secretary of State to promulgate all appropriate rules...for the purpose of ensuring the uniform application of [Article 8.5 of Title 1, C.R.S.].”
6. Section 1-10-104.5, C.R.S. (2011), which authorizes the Secretary of State to “promulgate rules...for the purpose of establishing equitable uniformity in the appointment and operation of canvass boards.”



## **Statement of Justification and Reasons for Adoption of Temporary Rules**

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

**August 15, 2012**

Amended Rules: 2.7.4, 2.11, 2.19.1, 8.6, 8.7, 8.8, 8.15, 9.1, 10.6, 12.4.1(a), 12.4.1(b)(2), 12.4.2(a), 12.11, 26.10, 29.1.1, 29.1.3, 29.1.4, 29.8, 30.1.6(a), 41, 42.2, 42.6, and 42.11.2

New Rules: 2.7.5, 10.7, 12.4.1(d), 13.19, 13.20, 26.11, 26.12, and 26.13

Repealed Rules: 26.1.6 (relocated to new rule 26.13), 32.1, 32.2, 32.3, 32.4, 42.11.3, 42.11.4, 42.11.5, 42.11.6, and 42.11.7

In accordance with Colorado election law,<sup>1</sup> the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws during the 2012 general election. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

A public Rulemaking hearing was conducted in accordance with the State Administrative Procedure Act<sup>2</sup> on July 23, 2012, to receive comment and testimony on the proposed rules. These rules implement the enactment of recommendations made by the Secretary of State, Elections Division staff, County Clerk and Recorders, and interested parties throughout the State of Colorado. Adoption of the rules on a temporary basis is necessary to provide clear guidance to county clerks given the close proximity of the September 10, 2012 ballot certification deadline and the November 2012 General Election.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.<sup>3</sup>

<sup>1</sup> Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2011). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “[...]the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

<sup>2</sup> Section 24-4-103(3)(a), C.R.S. (2011).

<sup>3</sup> Section 24-4-103(3)(6), C.R.S. (2011).