



## Notice of Temporary Adoption

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

October 16, 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 basis and immediately effective. (SMALL CAPS indicate proposed additions to the current rules. Stricken type indicates proposed deletions from current rules. *Annotations* may be included):

#### New Rule 26.3.4:

26.3.4 IF AN UNREGISTERED ELIGIBLE ELECTOR APPEARS AT THE POLLING PLACE AND STATES THAT HE OR SHE TIMELY SUBMITTED AN APPLICATION TO REGISTER TO VOTE ONLINE, THE ELECTION JUDGE MUST OFFER THE ELECTOR A PROVISIONAL BALLOT AND INSTRUCT THE ELECTOR TO COMPLETE THE AFFIRMATION THAT HE OR SHE APPLIED TO REGISTER TO VOTE ONLINE.

#### New Acceptance Code under Rule 26.5.3:

AOV VOTER SUBMITTED AN APPLICATION TO REGISTER TO VOTE ONLINE USING A MOBILE DEVICE OR TABLET ON OR BETWEEN SEPTEMBER 14, 2012 AND SEPTEMBER 24, 2012, OR THE VOTER SURRENDERED THE APPLICATION RECEIPT TO THE ELECTION JUDGE.

#### New Rejection Code under Rule 26.5.4:

ROV (REJECTION BASED UPON INSUFFICIENT AFFIRMATION FOR ONLINE REGISTRATION) VOTER DID NOT COMPLETE THE AFFIRMATION THAT HE OR SHE REGISTERED ONLINE USING A MOBILE DEVICE OR TABLET ON OR BETWEEN SEPTEMBER 14, 2012 AND SEPTEMBER 24, 2012, OR SURRENDER THE APPLICATION RECEIPT.

#### Amendments to Rule 26.8:

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2012).

<sup>2</sup> Section 24-4-103, C.R.S. (2012).

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

26.8 Pursuant to IN ACCORDANCE WITH section 1-8.5-1032(2), C.R.S., the provisional ballot affidavit shall contain the following language-MUST STATE:

~~I do solemnly affirm UNDER PENALTY OF PERJURY that THE INFORMATION PROVIDED ABOVE IS TRUE, AND I UNDERSTAND IT IS A CRIME TO FALSIFY ANY INFORMATION ON THIS AFFIDAVIT. I AFFIRM THAT I am a citizen of the United States, that I have attained the age of AM AT LEAST eighteen years OLD, and that I have resided in the State of Colorado and in my present precinct at least thirty days before the election, or at my current residence THE address PROVIDED ABOVE AT LEAST THIRTY DAYS BEFORE THE ELECTION since the date I moved as shown above. I further affirm that the address indicated in this affidavit is my sole legal residence and that I claim no other place as my legal residence. I affirm that if I applied for a Mail-in Ballot I have not and will not cast the Mail-in Ballot that I requested. I further affirm under penalty of law that I have not and will not cast any vote in this election except by the enclosed ballot, that I UNDERSTAND THAT IT IS A CRIME TO VOTE MORE THAN ONCE IN ANY ELECTION AND I AFFIRM THAT I will not CAST ANOTHER BALLOT IN THIS ELECTION vote in any other precinct, county or state, and that my ballot is enclosed in accordance with the provisions of the "Uniform Election Code of 1992", Article 1 to 13 of Title 1, C.R.S.~~

**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 this new rule on a temporary basis follows this notice and is incorporated by reference.<sup>4</sup>

**IV. Effective Date of Adopted Rules**

This new rule is immediately effective on a temporary basis.

Dated this 16<sup>th</sup> day of October, 2012,



Suzanne Staiert  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State

<sup>4</sup> Section 24-4-103(6), C.R.S. (2012).



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

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

**October 16, 2012**

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

This statement explains 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 elections administration in Colorado and to increase the transparency and security of the election process.

Changes to the programming of the Secretary of State's GoVoteColorado.com site created intermittent problems with the mobile site collecting the data and adding it to the state's voter registration system between September 14 and 24, 2012. As a result, individuals who submitted an application using a mobile device or tablet during that timeframe may not have successfully completed a registration.

These temporary rules are necessary given the close proximity of the 2012 General Election and the risk that some individuals who reasonable believed their registration was complete may be disenfranchised. These new temporary rules provide clear guidance to new voters and to county clerks concerning provisional ballot procedures for an elector whose name is not listed in the statewide voter registration database or pollbook because of an issue with the State's online voter registration system. Specifically, these rules clarify that an elector who submitted an application to register to vote through the mobile online voter registration site between September 14 and 24, 2012, must be offered a provisional ballot.

#### **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2012), 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."

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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.

2. Section 1-1.5-104(1)(e), C.R.S., (2012), 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 1-8.5-112, C.R.S., (2012), 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.]”



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

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

**October 16, 2012**

New Rules 26.3.4, New Accept Code under Rule 26.5.3, New Reject Code under 26.5.4, and Amended Rule 26.8

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 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

On September 26, 2012, the Secretary of State alerted new voters that they may not be registered if they used GoVoteColorado.com using a mobile device or tablet between September 14 and 24, 2012, when changes to the programming created intermittent problems with the mobile site collecting the data and adding it to the state's voter registration system. Given the close proximity of the 2012 General Election, adoption of the new rules on a temporary basis is necessary to: provide prompt and clear guidance to new voters and to county clerk and recorders concerning provisional ballot procedures for an elector whose name is not in the registration records and does not appear on the pollbook due to an issue with the State's online voter registration system.

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>2</sup>

<sup>1</sup> Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2012). 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)(6), C.R.S. (2012).