ESRC Comments re: SOS Proposed Rules 10/29/09

RULE NO.	COMMENT / QUESTION
2.18.2	If a voter changes their address from a street address to a Post Office Box, will NCOA reflect that as a non-matching address? Will updating voter records from NCOA data be handled in an automated fashion? Why not combine (B) and (C) and simply have one NCOA moved? What is the value of having one NCOA for in county and one for out of county? If the voter moved to another county, does the voter receive instructions to return the card to the new county? (This rule reads as if the card will be returned to the old county, which makes no sense.) Why require us to enter the forwarding address in the FWD field when the card we are required to send (confirmation card) is sent by forwardable mail? Some clerks have questioned why there needs to be separate designations for Inactive, NCOA In County and Inactive, NCOA Out of County. There may be legitimate reasons for the different designations but further explanations as to why separate designations are needed would be helpful. This is an unfunded mandate. The confirmation cards should encourage voters to update their records via the online voter registration system. When we use a forwarding address, that address is printed on the confirmation card. The voter may believe that the residence we have on file is correct and neglect to make any changes to his/her record. If this rule is approved, then there should be a different confirmation card to indicate that we have not changed the voter's record or that contains the voter's residence address. Maintenance of the voter status is an internal, administrative process that the voter does not understand and that we only somewhat understand. Telling the voter that they must respond in order to update their status to active invites confusion. Forwarding a "list" to the clerk has little to no value if the clerk has nothing to verify the address to except the NCOA data. This should be an automated process. NCOA data does not provide reliable information about a voter's county residence. We believe the process we have in place is enough until the technology and reliability is available. The new address will always be provided by NCOA. NCOA is the result of people who file their change of address with the Postal Service. The Postal Service compiles the information into lists for NCOA vendors. Remove "if provided by NCOA". Many counties must send all correspondence in English and Spanish and

	SCORE does not have Spanish correspondence available. The rule would be a significant burden on Denver (30,000 NCOA responses) and all Colorado counties to implement unless there is a process that would allow for automated input of new addresses from the NCOA file into SCORE. If this is not possible in the near future, references to SCORE should be removed and a county should have the option of conducting this process outside of SCORE. The rule, although unclear seems to imply that the county that the voter moved from should send the card. If a card must be sent, the card should be sent by the new county as they will be updating the voter's record and would possibly wish to send them additional information.
2.18.3	What about duplicates? If we know there's a duplicate record, can we merge without "canceling"? If we're not going to cancel I-FTVs and we're going to mail them ballots for mail ballot elections why not just leave them as A-FTV? Send them one continuation mailing after they fail to vote, but stop switching their status back and forth if they don't respond. If their continuation card comes back undeliverable then make them I-UND, or I-NCOA.
2.19.1	Confirmation cards should encourage voters to use the online registration thus saving return postage (using Business Reply mail).
2.19.2	This rule should require the SOS to use best practices and usability in the design rather than "consider" the same.
2.20.1	Include a definition of the "Purge Process" that incorporates a clear diagram.
2.20.2	(E) - Why would we include these voters on the poll book when the NCOA indicates they have left the county? Are their ballots treated as provisionals? (C) Rule cites C.R.S. 1-7.5-108.5(b) – which does not exist. If attempting to cite (2)(b), perhaps it shouldn't since that paragraph will be repealed after the 2009 election. (F) & (G) These two rules seem duplicative of each other. They should be combined into one rule. Leave (F), and strike (G).
2.21.1	This permissive language might cause some equal protection issues if some counties send a letter and other counties do not send a letter.
2.21.2	(C) - Why wouldn't the absence of a suffix in one of the records be considered a variation? (Probably the most common variance in trying to distinguish between Junior and Senior.)
2.22	If a county has canceled its Primary Election pursuant to C.R.S. 1-4-104.5, may the county continue to consolidate or cancel duplicate records until 90 days prior to the General Election? What authority is the SOS calling upon to cease consolidating or canceling duplicate records prior to a non-federal election such as the Primary?

	If an error is made and a voter is added twice to the system, it is important that we appropriately maintain the list so that one person does not receive two ballots. In the unlikely event an error is made in the opposite (a person canceled or combined in error), there are reinstatement procedures and provisional ballots in place to timely and accurately rectify the situation. By extending the cancellation "blackout" to 90 days prior to the Primary Election, the risk of incorrect records residing on the voter rolls increases. Along with this risk comes the additional county expense of mailing ballots to voters who are no longer present at the address on file.
2.23	Why should clerks be required to send a letter to a consolidated voter as they are remaining on the rolls and not canceled? The rule is unclear as to who would send the letter. Is it the county that has the most recent record or the county that had the record that was merged? Why this rule when 2.22 prohibits canceling within 90 days of a federal election? Which address is the letter sent to; the one from the canceled or the consolidated record, or both? This is confusing at best since 2.22 forbids the consolidation or cancellation of duplicate records with the 90 days prior to a Primary or General, and then 2.23 requires a mailing to consolidated or canceled voters who were canceled within 90 days of a federal election. If it is meant to vary the wording from Rule 2.22 to allow cancellation or consolidation within the 90 day period, it is confusing as to when it would be allowed. The mailing of the letters is already required for any record that does not fit the minimum matching criteria. When a record is consolidated or one of the duplicate records is "canceled – duplicate", there remains a registered record for the person. If this rule means to require a letter to every canceled/consolidated elector, the information we provide in the letter may confuse the issue by making them believe they are no longer registered. This is an unfunded mandate by the state. In proposed rule 2.18.3, there is a change in language ("federal" elections to "general" elections). In proposed rule 2.22, the designation was changed from "Federal" to "Primary or General." However, in Rule 2.23, the reference to a federal election is retained. This reference should be changed to general election to maintain consistency. Proposed rule 2.23 does not contain a deadline setting forth when the notices to voters must be completed prior to a general election. Confusion arises about the interplay between the provisions of proposed rule 2.22 and proposed rule 2.23. Rule 2.22 suggests that a county may not cancel a duplicate record and 2.23 suggests procedures to be performed if a duplicate record is cancelled. While there may be a reasonable explanation for this

	apparent discrepancy, it is not obvious to the reader.
12.3.4	(B) – Is public comment to be submitted in writing? Not specific in proposed rule.
12.4.1	Following proposed rule 12.4.1 is a statement that reads "Note: This rule relocated from Rule 12.3.2 to consolidate rules regarding mail ballot plans and re-worded for clarity." However, upon further inspection it appears that there may be substantive changes that are not readily apparent when that section was relocated to 12.4.1. The existing Rule 12.3.2(d), which Rule 12.4.1(D) seeks to replace, states "(d) Citation of the statute or home rule charter provisions authorizing the election;" The proposed Rule 12.4.1(D) provides "Citation of the statute(s) authorizing the election;". Thus, the phrase "…or home rule charter provisions…" was deleted. Why this provision was deleted? The Secretary's office should consider whether the note provided immediately following 12.4.1 provides the reader with proper notice to a potentially substantive change in rules. If this rule applies to recall elections, as it appears to do, if an entity calls for a recall election in 45 days, the deadline for submitting a mail ballot plan required in this proposed rule (55 days) is unachievable.
12.4.1.1	The note following proposed Rule 12.4.1.1 states that this provision was relocated from Rule 12.2.1. However, Rule 12.2.1 addresses election judges and the language stated is not related to the language of 12.4.1.1. The correct reference in the note should be to Rule 12.3.2.1.
12.4.4	The mail ballot plans for coordinated and non-partisan elections are required to set forth a "[D]escription of procedures to be used for signature verification". (Proposed Rule 12.4.1(Q)). This requirement is absent from the requirements for a mail ballot plan for primary elections in proposed Rule 12.4.4. The Secretary should consider whether this requirement should be required in Rule 12.4.4 for primary election mail ballot plans for the sake of consistency. The home rule provision that previously existed in Rule 12.3.2 has once again been omitted in proposed rule 12.4.4(c) which applies to primary elections conducted by mail ballot. As above, we are curious as to why this "home rule" language was omitted.
12.4.4	Proposed Rule 12.4.4 sets a deadline for plan submission of 120 days prior to the election. Circumstances may change in this length of time. There needs to be an accompanying rule describing how amendments to a county plan may be made.
12.4.5	(B) This is not required by statute; why is it required in this rule? Because the plan is required so early, allow for a range of dates rather than a specific date for such things as voter information card mailings, notice mailing, etc. Specific dates may change over a 4-month period. (D) This rule should be worded in future tense, since the mailing isn't required

	until after the plan is required to be filed. (G) It will not be known 120 days in advance of the election whether or not there will be minor party contests.
12.4.5 (d)	Need for clarification of the mailing referred to. Does it refer to the confirmation card mailing sent 90 days after a general election or does it refer to the mailing mentioned in proposed Rule 12.4.6 which requires a mailing to unaffiliated active and "inactive- failed to vote" voters not less than 30 days but no sooner than 45 days before a mail ballot primary election? If it is to the former, the language should be changed from "information card" to "confirmation card".
12.4.6	There is confusion over the mailings required for a mail-in ballot Primary Election. ▪ 1-7.5-107(2.3)(a) says not less than 30 days nor more than 45 days before a Mail Ballot Primary Election C&R shall mail notice by forwardable mail to each UNA active voter and to each UNA I-FTV. 1-7.5-107(2.3)(d) says this may be included in other mailing. Must include a returnable portion. ▪ But in 1-7.5-108.5(1) says not less than 90 days before a mail ballot election conducted pursuant to this article the C&R shall mail a VIC to I-FTV voters and shall be marked DO NOT FORWARD. This can be part of VIC mailed under 1-5-206(1). ▪ General Election mailer: No later than 25 days prior to the election 1-5-206 (1)(a) by forwardable mail to active voters, and by nonforwaradble to inactive except undeliverable mail reason. This has become overly complex and is in dire need of simplification. (A) - Proposed Rule 12.4.6(A) states that a mailing shall be sent, not less than 30 days and no more than 45 days, prior to a mail ballot primary election to unaffiliated active and inactive-failed to vote electors indicating they have "the ability to and must affiliate with a political party in order to vote in a primary election." Add language that states that an elector must affiliate with a political party "in order to vote **for a partisan candidate** in a primary election". Failure to clarify this issue could result in confusion for voters who do not wish to affiliate with a political party but want to vote an issue only ballot.
12.6.3	Why is this provision proposed as a rule when it is already addressed in statute (CRS 1-7.5107(4.5))?
12.8.1	Strike the phrase "and counted" in the last sentence. Add 12.8.1 (C) that states that if the voter does not return proper ID within 8 days, the ballot is NOT counted.
26.3.1	The existing rule relating to the provision of "Previous Residence Information" section on the provisional ballot envelope has been deleted with the notation that it has been moved to Rule 26.4.6. Proposed Rule 26.4.6 does not contain

	this language.
26.3.2	This proposed rule negates the purpose and use of a VRD application receipt; is that the intent of the SOS?
26.4.2	(C) - Determination of elector eligibility is limited to four sources including the DMV Motor Voter database. Yet, proposed rule 2.21.4 states that a county clerk may use the "Department of Revenue database" to meet the minimum matching criteria for voter registration. Consistent language should be used when referring to DMV or DOR databases if in fact the rules are referring to the same databases.
26.4.3	How does this rule ensure that counties not using electronic pollbooks have had sufficient time to update voter history in order to determine whether a voter has also voted in that county?
26.4.4	(A) & (B) Determination of elector eligibility is limited to four sources including the DMV Motor Voter database. Yet, proposed rule 2.21.4 states that a county clerk may use the "Department of Revenue database" to meet the minimum matching criteria for voter registration. Consistent language should be used when referring to DMV or DOR databases if in fact the rules are referring to the same databases. Define "substantially confirm."
26.4.5	This proposed Rule is in dire need of clarification.
26.5.1	What is the purpose of changing "registered" to "eligible"?
30.1.6	(G) (V) – Will the Secretary of State provide a complete listing of federally recognized tribes?
30.11.3	This proposed Rule exempts residents of group residential facilities (not necessarily seniors) from ID requirements; what statutory authority supports this exemption?
40.5.3	Is one elective credit hour adequate for a person who has taken eight hours of SCORE training?
40.5.4	Requiring staff members to complete a training assessment alone is a new and potentially controversial subject by itself. It seems that requiring a minimum score of 85% on such an assessment may be unreasonable and should be open to discussion.
40.6.4	The allowance for training by entities other than the SOS should be more expansive, e.g. vendor training.
40.7.1	The Advisory Board has discussed extending the requirement to re-up certification to two years, not every year. Should be reflected in this rule if approved by the Board.
40.7.3	Instead of counties tracking and informing the SOS on an approved form and having the SOS verify the information, the SOS should simply notify each

	county quarterly of the status of participants (by email preferably).
40.9.2	This requirement should be extended to two year, not every year.
44.2.5	Requiring voter registration drive organizers to pass a mandatory test with a 100% passage rate may be an unreasonable burden on VRD organizers. Requiring a 100% score may be interpreted as intimidating and as a voter registration suppression effort on the part of election officials.