



## Notice of Temporary Adoption

### Colorado Department of State Election Rules 8 CCR 1505-1

May 9, 2024

#### I. Adopted Rule Amendments

As authorized by Colorado Elections Law<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Department of State gives notice that the following amendments to the Election Rules<sup>3</sup> are adopted on a temporary basis and effective immediately. (SMALL CAPS indicate proposed additions to the current rules. ~~Stricken type~~ indicates proposed deletions from current rules. *Annotations* may be included):

*Amendments to 8 CCR 1505-1, temporarily adopted on January 10, 2024, expire on May 9, 2024 (under SOS Tracking Number 2024-00018). New Rule 7.2.17 is readopted on a temporary basis and effective immediately until the permanent rule (under SOS Tracking Number 2024-00131) is permanently effective. The amendments are as follows:*

*New Rule 7.2.17 concerning holes in ballot return envelopes and target areas on a voter's ballot:*

#### 7.2.17 HOLE IN RETURN ENVELOPES

- (A) NO COUNTY CLERK MAY USE A BALLOT RETURN ENVELOPE WITH A HOLE OR ANY OTHER OPENING OF ANY SIZE WHERE THE TARGET AREA FOR ANY CONTEST ON A BALLOT CAN BE SEEN IN ANY WAY.
- (B) IF A COUNTY INTENDS TO USE BALLOT RETURN ENVELOPES WITH A HOLE PUNCH OR OTHER OPENING, THE COUNTY MUST PROVIDE WRITTEN CERTIFICATION TO THE SECRETARY OF STATE THAT:
  - (1) THE LOCATION OF THE HOLE PUNCHES OR OTHER OPENINGS HAVE BEEN MANUALLY INSPECTED AND TESTED BY THE COUNTY CLERK; AND
  - (2) NO TARGET AREAS ARE VISIBLE THROUGH THE HOLE PUNCHES OR OTHER OPENINGS IN THE ENVELOPE CONSIDERING ALL THE WAYS A BALLOT COULD BE REASONABLY FOLDED AND INSERTED INTO THE ENVELOPE.

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

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2023)

<sup>2</sup> Section 24-4-103, C.R.S. (2023)

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

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

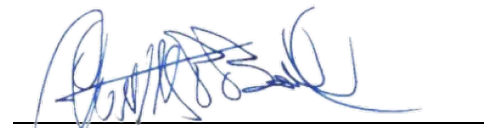
### **III. Statement of Justification and Reasons for Adoption of Temporary Rules**

A statement of the Department 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>4</sup>

### **IV. Effective Date of Adopted Rules**

These rule amendments are effective immediately.

Temporarily adopted on May 9, 2024



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Christopher P. Beall  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

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<sup>4</sup> Section 24-4-103(6), C.R.S. (2023)



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

### Colorado Department of State Election Rules 8 CCR 1505-1

May 9, 2024

#### I. Basis and Purpose

This statement explains amendments to the Colorado Department 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> improve elections administration in Colorado, and increase the transparency and security of the election process. This statement includes the temporary re-adoption of new Rule 7.2.17, initially adopted on a temporary basis on January 10, 2024 (under SOS Tracking #2024-00018). Extension of the temporary rule is necessary to allow the rule to remain in effect until and through the June Primary and Congressional Vacancy Election, as well as until the rules are adopted on a permanent basis (under SOS Tracking #2024-00131).

Specific changes include:

- New Rule 7.2.17 bars a county from using a ballot-return envelope that has a hole or any other opening in which the target area<sup>2</sup> for any contest on the ballot may be seen through the hole or other opening. A county clerk who uses a hole or other opening in a ballot-return envelope must provide a written certification to the Department that any envelope with a hole or other opening has been inspected and tested to verify that no target area can be seen through that hole or opening.

#### II. Rulemaking Authority

The statutory authority is as follows:

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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.

<sup>2</sup> “Target area” means the square or oval corresponding to the candidate’s name or ballot response (examples: “Yes”, “No”, “For” or “Against”) on a paper ballot. 8 CCR 1505-1, Election Rule 1.1.56.

- Section 1-1-107(2)(a), C.R.S., (2023), 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.”
- Section 1-1-110(1), C.R.S., (2023), which requires county clerks to, “follow the rules and order promulgated by the secretary of state pursuant to this code.”
- Section 1-1.5-104(1)(e), C.R.S., (2023), which gives the Secretary of State the power to “[p]romulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of [Article 1.5].”
- Section 1-7.5-104, C.R.S., (2023), which requires the county clerk and recorder to conduct a mail ballot election “under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state.”
- Section 1-7.5-105(3), C.R.S., (2023), which requires the county clerk and recorder to "supervise the distribution, handling, and counting of ballots and the survey of returns in accordance with rules promulgated by the secretary of state..."
- Section 1-7.5-106, C.R.S., (2023), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting “rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]”
- Section 1-7.5-106(2), C.R.S., (2023), which allows the Secretary of State to adopt rules “governing procedures and forms necessary to implement” mail ballot elections.
- Section 1-7.5-107(1), C.R.S. (2023), which requires ballots to be prepared, “by law or rules promulgated by the secretary of state.”
- Section 1-7.5-107.3(5.5), C.R.S. (2023), which requires the secretary of state to adopt rules regarding ballot return envelopes, “to ensure the privacy of each elector’s vote.”



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

### Colorado Department of State Election Rules 8 CCR 1505-1

May 9, 2024

New Rule: 7.2.17

In accordance with Colorado law,<sup>1</sup> the Department of State finds that certain amendments to the existing election rules are imperatively necessary and, as a result, must be adopted and effective immediately to ensure compliance with the uniform and proper administration and enforcement of Colorado and federal election laws.

The Department adopted temporary rules on January 10, 2024 (under SOS Tracking #2024-00018). Additionally, the Department issued a notice of proposed rulemaking on March 15, 2024 (under SOS Tracking #2024-00131). A public rulemaking hearing was conducted in accordance with the State Administrative Procedure Act<sup>2</sup> on April 15, 2024, to receive comments, evidence, and testimony on the proposed rules with the written comment period extended to April 22, 2024. Re-adoption of Rule 7.2.17 on a temporary basis is necessary given the quickly approaching June Primary and Congressional Vacancy elections on June 25, 2024. Re-adopting this rule with immediate effect will provide interested parties, including, but not limited to, county clerks and the general public, with the rule necessary to ensure that ballot return envelopes used in the June Primary and Congressional Vacancy election will keep a voter's choices in that election private, as required by Colorado law.<sup>3</sup>

Failure to re-adopt these rules would be contrary to the public interest given the public's right to secure elections guaranteed by the Colorado Constitution. The close proximity of the June 25, 2024, Primary and Congressional Vacancy elections, which will require the use of ballot return envelopes, also requires the Department to re-adopt this rule immediately. It would be contrary to the public interest to allow these rules to expire while county clerks are actively running a statewide primary and vacancy elections.

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<sup>1</sup> Sections 1-7.5-107.3(5.5) and 24-4-103(6)(a), C.R.S. (2023)

<sup>2</sup> Section 24-4-103, C.R.S. (2023)

<sup>3</sup> Section 1-7.5-107.3(5.5), C.R.S. (2023)

For these reasons, and in accordance with the State Administrative Procedure Act, the Department of State finds that temporary adoption of the amendments to the existing election rules is imperatively necessary to comply with state and federal law, and failure to adopt these rules immediately would be contrary to the public interest.<sup>4</sup>

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<sup>4</sup> Section 24-4-103(6), C.R.S. (2023)