

STATE OF COLORADO

Department of State

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NOTICE OF TEMPORARY & PERMANENT ADOPTION

Office of the Secretary of State

Election Rules

8 CCR 1505-1

June 23, 2010

Pursuant to sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2009) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103 C.R.S. (2009), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the temporary and permanent rule adoption this 23rd day of June, 2010, of the following amended rules of the Colorado Secretary of State Election Rules (8 CCR 1505-1). Such rule amendments are effective immediately. (Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations may be included*):

Rule 2.8 is amended as follows:

- 2.8 Submission of voter registration forms. A properly executed voter registration form may be submitted to the county clerk and recorder in person, by mail, by fax, BY ONLINE VOTER REGISTRATION, or as a PDF-SCANNED attachment to an email.

[Subsequent provisions of this Rule 2.8 are retained unaltered]

New Rule 2.8.3 is adopted as follows:

- 2.8.3 FOR THE PURPOSE OF SUBMITTING VOTER REGISTRATION APPLICATIONS BY FAX, EMAIL OR ONLINE VOTER REGISTRATION, CLOSE OF BUSINESS SHALL BE 11:59PM MT.

Rule 5.4.6 is amended as follows:

- 5.4.6 The form and procedures for filing candidate nomination forms and call for nominations of persons desiring to be a candidate for the office to be voted upon at the Court-ordered election described in ~~paragraph a of~~ Rule 5.4.5, shall be in conformance with the form and procedures required for special districts under Article 1, Title 32, C.R.S., unless otherwise ordered by the Court.

Rule 6.5.2(a-c) is amended as follows:

- 6.5.2 Each political subdivision shall determine the order of the ballot issues for their political subdivision in accordance with the requirements of Colorado Constitution Article X, Section 20 and Title 1.

- (a) REFERRED MEASURES SHALL BE DESIGNATED BY A LETTER OR BY A NUMBER AND A LETTER; INITIATIVES SHALL BE DESIGNATED BY A NUMBER. ~~Initiatives shall be~~

~~designated by a number; referred measures shall be designated by a letter or by a number and a letter.~~

(b) For each grouping of ballot issues and ballot questions by a political subdivision, all REFERRED MEASURES-initiatives shall precede all INITIATIVES. ~~referred measures.~~

(c) For each grouping of ballot issues and ballot questions, the order shall be as follows:

- ~~1. ——— Initiatives to increase taxes;~~
- ~~2. ——— Initiatives to retain excess revenues;~~
- ~~3. ——— Initiatives to increase debt;~~
- ~~4. ——— Other citizen petitions;~~
- ~~5. ——— Referred measures to increase taxes;~~
- ~~6. ——— Referred measures to retain excess revenues;~~
- ~~7. ——— Referred measures to increase debt;~~
- ~~8. ——— Other referred measures.~~

1. REFERRED MEASURES TO INCREASE TAXES;
2. REFERRED MEASURES TO RETAIN EXCESS REVENUES;
3. REFERRED MEASURES TO INCREASE DEBT;
4. OTHER REFERRED MEASURES;
5. INITIATIVES TO INCREASE TAXES;
6. INITIATIVES TO RETAIN EXCESS REVENUES;
7. INITIATIVES TO INCREASE DEBT;
8. OTHER CITIZEN PETITIONS.

[Subsequent provisions of this Rule 6.5.2 are retained unaltered]

Rule 6.5.2(f)(1) is amended as follows:

- (f) Ballot issues from the various political subdivisions shall be ordered on the ballot as provided in section 1-5-407-(5), C.R.S:
1. Each category of REFERRED AND initiated ~~and referred~~ state amendments and propositions shall be numbered and listed on the ballot in the following series:

A-Z	State	Referred	Constitutional
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	Amendments
01-99	State Initiated Constitutional Amendments
AA-ZZ	State Referred Statutory Propositions
101-199	State Initiated Statutory Propositions

01-99	State Initiated Constitutional Amendments
A-Z	State Referred Constitutional Amendments
101-199	State Initiated Statutory Propositions
AA-ZZ	State Referred Statutory Propositions

[Subsequent provisions of this Rule 6.5.2(f) are retained unaltered]

[Revisions in accordance with amendments made by SB 10-216]

New Rule 7.7 is adopted as follows:

7.7 POLLING PLACE ACCESSIBILITY

7.7.1 APPLICABILITY: FOR THE PURPOSES OF THIS RULE, "POLLING PLACE LOCATION" SHALL INCLUDE ALL POLLING PLACES, VOTE CENTERS, EARLY VOTING LOCATIONS, SERVICE CENTERS, BALLOT DROP OFF LOCATIONS, AND EACH OFFICE OF THE DESIGNATED ELECTION OFFICIAL WHERE BALLOTS ARE ISSUED OR REPLACED.

7.7.2 ASSESSING ACCESSIBILITY

- A. NEW POLLING PLACE LOCATIONS: IN ACCORDANCE WITH SECTION 1-5-703(4), C.R.S., THE DESIGNATED ELECTION OFFICIAL SHALL ASSESS A LOCATION USING THE CURRENT ADA CHECKLIST FOR POLLING PLACES SURVEY BEFORE DESIGNATING THE LOCATION AN OFFICIAL POLLING PLACE. THE DESIGNATED ELECTION OFFICIAL SHALL INDICATE ON THE SURVEY ANY ACCESSIBILITY BARRIERS AND DESCRIBE BARRIER REMOVAL PLANS TO BRING THE LOCATION INTO COMPLIANCE.
- B. ANNUAL ASSESSMENTS: EFFECTIVE JANUARY 1, 2011, THE DESIGNATED ELECTION OFFICIAL SHALL REASSESS ALL POLLING PLACE LOCATIONS TO BE USED DURING THAT CALENDAR YEAR PRIOR TO DESIGNATING EACH LOCATION AS A POLLING PLACE. ANNUAL ASSESSMENTS SHALL BE COMPLETED USING THE SECRETARY OF STATE APPROVED ANNUAL POLLING PLACE ACCESSIBILITY SURVEY FORM. THE DESIGNATED ELECTION OFFICIAL MUST INDICATE ON THE SURVEY WHETHER THE LOCATION REMAINS OR MAY BE MADE ACCESSIBLE AND DESCRIBE ANY CONTINUED OR NEW BARRIER REMOVAL PLANS.
- C. EFFECTIVE JANUARY 1, 2011, COMPLETED NEW LOCATION AND ANNUAL ASSESSMENT SURVEYS MUST BE FILED WITH THE SECRETARY OF STATE NO LATER THAN 90 DAYS PRIOR TO A PARTISAN ELECTION AND NO LATER THAN 25 DAYS PRIOR TO A NONPARTISAN ELECTION. [SECTIONS 1-5-102, 1-5-102.5, C.R.S., AND RULE 7.3]

D. SITE VISITS: THE SECRETARY OF STATE'S OFFICE MAY CONDUCT ANNOUNCED LOCATION VISITS TO HELP IDENTIFY ACCESSIBILITY BARRIERS AND PROMOTE ACCESSIBILITY COMPLIANCE.

7.7.3 BARRIER REMOVAL: IF, UPON ASSESSMENT, A LOCATION FAILS TO MEET THE MINIMUM ACCESSIBILITY REQUIREMENTS OUTLINED IN THE ADA CHECKLIST FOR POLLING PLACES, THE DESIGNATED ELECTION OFFICIAL MUST DEVELOP A BARRIER REMOVAL PLAN OUTLINING THE PERMANENT AND OR TEMPORARY MODIFICATIONS THAT WILL BE IMPLEMENTED TO BRING THE SITE INTO COMPLIANCE IN ORDER FOR THE LOCATION TO BE DESIGNATED AN OFFICIAL POLLING PLACE LOCATION.

7.7.4 NONCOMPLIANCE: IN ACCORDANCE WITH SECTION 1-1-107(2)(D), C.R.S., THE SECRETARY OF STATE MAY SEEK INJUNCTIVE ACTION OR OTHER PENALTIES AS A REMEDY TO VIOLATIONS OF THIS RULE. FAILURE TO ASSESS LOCATIONS AND TIMELY FILE COMPLETE ACCESSIBILITY SURVEYS, OR DEVELOP AND IMPLEMENT NECESSARY BARRIER REMOVAL PLANS IN ACCORDANCE WITH THIS RULE MAY RESULT IN DENIAL OF APPLICATIONS FOR ACCESSIBILITY GRANT FUNDS.

Rule 12.1.1.1(b) is repealed as follows:

(b) ~~"Failure to provide ID will result in your ballot being treated as a provisional ballot. Provisional ballots are counted when registration is verified." See section 1-7.5-107(3.5)(d), C.R.S. REPEALED.~~

[Revision in accordance with amendments made to Section 1-7.5-107, C.R.S., by HB 10-1116]

Rule 12.4.1(a) is amended as follows:

12.4.1 Coordinated and non-partisan elections.

(a) Written plan. As soon as possible, but ~~no later than 65 days prior to a regular special district election and~~ no later than 55 days prior to any other election, not including a Primary Election, a written plan must be submitted to the Secretary of State which includes the following:

[Revision in accordance with amendments made to Section 1-7.5-105(1), C.R.S., by HB 10-1116. Subsequent provisions of this Rule 12.4.1(a) are retained unaltered]

Rule 12.4.2(a) is amended as follows:

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 the county clerk and recorder must submit a written plan to the Secretary of State that includes the following:

- (1) Date of the election;
- (2) Type and name of the jurisdiction involved in the election;
- (3) Citation of the statute(s) or home rule charter provisions authorizing the

election;

- (4) Estimated number of eligible electors;
- (5) The address and hours of operation for all drop-off locations;
- (6) The address and hours of operation for all service centers;
- (7) Description of the procedures that will be taken to ensure that each service center complies with the requirements set forth in section 1-7.5-107, C.R.S. including the number of accessible voting machines anticipated being used at each service center For security reasons, unmonitored freestanding drop-off locations located outside will not be allowed;§
- (8) Written timetable for the conduct of the election in accordance with statute;
- (9) Indication of how postage will be handled for ballot packets returned as undeliverable (e.g. "return postage guaranteed");
- (10) Indication of procedures to be followed to ensure compliance with statutes and rules, including persons responsible for each stage;
- (11) Description of procedures to be used to ensure ballot security at all stages of the process;
- (12) Description of procedures for maintaining privacy and security of accessible voting machines to be used;
- (13) DESCRIPTION OF PROCEDURES TO BE USED FOR SIGNATURE VERIFICATION;
- (14) Description of procedures to be used for ballots returned by electors who have not previously voted in Colorado and have failed to include proper proof of identification;
- (1514) Ddescription of procedures to ensure privacy by use of a secrecy sleeve or secrecy envelope so receiving judges cannot tell how the elector voted;
- (1615) Ddescription of procedures to be used to reconcile ballots issued, ballots received, defective ballots and substitute ballots; and
- (1716) Aan actual sample of the secrecy sleeve or secrecy envelope to be used in the mail ballot election.

[Revision in accordance with amendments made to Sections 1-7.5-107.3 and 1-8-114.5, C.R.S., by HB 10-1116]

Rule 12.5.8 is amended as follows:

- 12.5.8 The county clerk and recorder shall indicate on the list of registered voters requested by the designated election official those registered voters required to provide ID pursuant to section 1-7.5-107(3.5)(dB), C.R.S, unless such registered voter either:

- (a) Submitted as part of the registration by mail a copy of the elector's identification as defined in Section 1-1-104(19.5), C.R.S.; or
- (b) Votes pursuant to Section 1-7-111(2), C.R.S.; or
- (c) Is otherwise entitled to vote under any federal law.

Rule 12.9 is amended as follows:

- 12.9 For any missing signatures Rule 29.1 concerning procedures for missing signatures shall be followed. In accordance with section 1-7.5-107.3, C.R.S., the procedures in Rule 29 shall be followed for any non-matching signature on a mail ballot return envelope that is received in a ~~November coordinated election~~ AN ELECTION COORDINATED WITH OR CONDUCTED BY THE COUNTY CLERK AND RECORDER.

[Revisions in accordance with amendments made to Sections 1-7.5-107.3 and 1-8-114.5, C.R.S., by HB 10-1116]

Rule 12.10.1 is amended as follows:

- 12.10.1 All "drop-off locations" shall be accessible to ~~disabled~~ electors WITH DISABILITIES.

[Revisions in accordance with the people first language requirements of HB 10-1137]

Rule 13.8 is amended as follows:

- 13.8 If the marked return envelope does not contain proper identification, the ballot shall be ~~treated as a provisional ballot. The outside of the return envelope shall be marked "provisional". The provisional ballot shall be~~ verified and counted as follows:

[Subsequent provisions of this Rule 13.8 are retained unaltered]

New rule 13.18 is adopted as follows:

- 13.18 A PROPERLY EXECUTED MAIL-IN BALLOT APPLICATION MAY BE SUBMITTED TO THE COUNTY CLERK AND RECORDER IN PERSON, BY MAIL, BY FAX, BY ONLINE VOTER REGISTRATION, OR AS A SCANNED ATTACHMENT TO AN EMAIL. FOR THE PURPOSE OF SUBMITTING MAIL-IN BALLOT APPLICATIONS BY FAX, EMAIL, OR ONLINE VOTER REGISTRATION, CLOSE OF BUSINESS SHALL BE 11:59PM MT.

Rule 14.4.4 is amended as follows:

- 14.4.4 The recount board-, candidates, watchers, members of the media, and official observers will take an oath.

Rule 14.6.9 is amended as follows:

- 14.6.9 Ballots shall be reviewed for voter intent IN ACCORDANCE WITH THIS RULE 14 AND RULE 27.

Rule 14.7.1 is amended as follows:

- 14.7.1 In the case of a recount, the designated election official shall identify all precincts with the contest(s) designated for a recount using the following procedures:

- (a) Using the Ballot Now Scanned Ballots by Precinct report from the original election database, locate the batches containing any ballot type (Election, Mail-in, and Provisional) for the recount.
- (b) Remove RECOUNT ballots, OR BATCHES THAT INCLUDE RECOUNT BALLOTS, FROM SECURED STORAGE. AS EACH BATCH IS RESCANNED THE BATCH SHALL BE PLACED IN A SEALABLE CONTAINER MARKED AS "RECOUNT" AND SEALED. ~~from each batch and label them as "Recount".~~

Rule 14.7.3 is amended as follows:

14.7.3 Ballots for the recount shall be processed following the State of Colorado Procedures for the use of the Ballot Now Voting System in conjunction with the following procedures:

- (a) Open Ballot Now with an unused MBB (Mobile Ballot Box) from the election and create a Ballot Now recount database.
- (b) Scan and resolve all recount ballots following original election procedures, ~~including the examination of ballots (Rule 14.3; section 1-8-10.5-102, C.R.S.) Use the Audit Trail Report and original Scan Batch Reports with notes to ensure resolution action follows original resolution.~~
- (c) USE THE AUDIT TRAIL REPORT AND ORIGINAL SCAN BATCH REPORTS WITH NOTES TO ENSURE THAT RESOLUTION ACTION FOLLOWS THE ORIGINAL RESOLUTION.
- (d) Save all recount CVRs (Cast Vote Records) to the MBB (Mobile Ballot Box) after verifying that the number of ballots processed matches the number of ballots cast in the recount contest(s).
- (e) Open a new recount election in "Tally" and process the recount MBB following the tabulation procedures above.
- (f) Compare recount results to original results and document any differences.
- (g) Backup the test database and the official recount database following the "Archive" procedures.

New Rule 25.3.11 is adopted as follows:

25.3.11 A MAIL-IN BALLOT APPLICATION SUBMITTED BY A UOCAVA ELECTOR SHALL BE EFFECTIVE THROUGH THE NEXT REGULARLY SCHEDULED GENERAL ELECTION, UNLESS THE ELECTOR MAKES AN ELECTION-SPECIFIC OR PERMANENT MAIL-IN REQUEST.

Rule 26.4.6 is amended as follows:

26.4.6 When the designated election official has received both a mail-in ballot and a provisional ballot from an elector, but there is a discrepancy between the signature on the returned mail-in ballot envelope and the elector's signature ~~on file with the county clerk and recorder~~ STORED IN THE STATEWIDE VOTER REGISTRATION SYSTEM, the discrepancy must be resolved. Before the provisional ballot may be counted, the elector must affirm that the signature on the mail-in ballot envelope is not his or her signature. Section 1-8.5-105(4) and (5), C.R.S.

New Rule 26.4.9 is adopted as follows:

26.4.9 IF AN ELECTOR WHOSE VOTER REGISTRATION RECORD IS TAGGED ID REQUIRED CASTS A PROVISIONAL BALLOT WITHOUT PROVIDING VALID IDENTIFICATION, THE BALLOT SHALL BE VERIFIED AND COUNTED AS FOLLOWS:

- (A) THE ELECTOR SHALL BE SENT A LETTER WITHIN THREE DAYS AFTER THE BALLOT IS CAST, AND NO LATER THAN THREE DAYS AFTER ELECTION DAY, EXPLAINING THAT HE/SHE HAS NOT PROVIDED THE REQUIRED IDENTIFICATION. NOTHING IN THIS RULE SHALL BE CONSTRUED TO PROHIBIT THE DESIGNATED ELECTION OFFICIAL FROM CALLING THE ELECTOR; HOWEVER, A PHONE CALL SHALL NOT SUBSTITUTE FOR NOTIFICATION TO THE ELECTOR IN WRITING.
- (B) IF THE ELECTOR PROVIDES A COPY OF VALID IDENTIFICATION WITHIN EIGHT DAYS AFTER ELECTION DAY, THE BALLOT SHALL BE COUNTED SO LONG AS THE ELECTOR HAS NOT CAST ANOTHER BALLOT IN THE ELECTION, THE AFFIDAVIT IS COMPLETE, AND THE ELECTOR IS OTHERWISE ELIGIBLE.

Rule 27.1.3 is amended as follows:

27.1.3 Damaged Ballot. A damaged ballot is one that has been torn, bent, or otherwise mutilated or rendered unreadable, so that it cannot be processed by the optical scanner ballot reader.

- (A) DAMAGED BALLOTS SHALL INCLUDE ALL BALLOTS THAT CONTAIN A FOREIGN SUBSTANCE THAT COULD POTENTIALLY INTERFERE WITH THE OPTICAL SCAN MACHINE (I.E. FOOD, DRINK, ETC.).
- (B) DAMAGED BALLOTS MAY INCLUDE BALLOTS THAT ARE MARKED IN A MEDIUM OTHER THAN THE MEDIUM INDICATED IN THE BALLOT INSTRUCTIONS.

Rules 27.1.7 and 27.1.8 are amended as follows:

27.1.7 Undervote. An undervote occurs when the voter does not vote for ~~a~~any candidate in a race, or for or against a ballot measure, or, when more than one person in a race is available, the voter does not vote for the maximum number of votes allowed.

27.1.8 Target area shall mean any of the following:

- ~~a.~~(A) The square or oval opposite the candidate's name or ballot response on a paper ballot; or
- ~~b.~~(B) The oval, incomplete line, or incomplete arrow opposite the candidate's name or ballot response (examples: "Yes", "No", "For" or "Against") on an optical scan ballot

Rule 27.3.2 is amended as follows:

27.3.2 If a ballot contains markings for more than the maximum votes allowed in a candidate race or for a ballot measure, no vote shall count for that race~~,~~or ballot measure.

Rule 27.4.2 is amended as follows:

27.4.2 Central Count Optical Scan Procedures

- (A) A VISUAL INSPECTION OF EVERY BALLOT SHOULD BE COMPLETED FOR THE LIMITED PURPOSE OF SEPARATING DAMAGED BALLOTS INTO A UNIQUE BATCH.
- (B) EVERY DAMAGED BALLOT AND ALL BALLOTS SORTED BY THE OPTICAL SCAN MACHINE SHALL BE RESOLVED, AND WHERE APPLICABLE DUPLICATED, IN ACCORDANCE WITH THIS RULE.
- (aC) A resolution board, consisting of a team(s) of one (1) Republican and one (1) Democrat for partisan elections or two (2) qualified election judges for nonpartisan elections, shall resolve all ballots sorted by the central count optical scan equipment.
 - (1) The board shall be observed by two (2) witnesses, who in any partisan election shall be representatives of each major political party, who may not handle or process ballots.
 - (2) All persons engaged in the counting and processing of ballots shall be deputized or take an oath to faithfully perform their duties.
 - (3) The resolution board shall maintain a log for each step of verification, duplication, and counting.
- (bD) Sequence of Resolution Procedures
 - (1) A zero tape, OR SIMILAR REPORT, shall be run indicating no votes cast or counted before the counting begins.
 - (2) Official ballots shall be processed through the optical scanner, with sorted overvotes, blank ballots, and write-in ballots viewed and resolved by the resolution board. ~~Only ballots~~ **BALLOTS** sorted by the optical scan equipment shall be subject to review by the resolution board. ~~A voter's intent shall not be reviewed or determined upon initial counting of ballots unless such ballot is sorted by the optical scan equipment.~~ If there are no legally qualified write-in candidates, the write-in sort option shall not be utilized. ~~The number of each duplicated ballot shall be entered on the resolution board log sheet.~~
 - (3) A VOTER'S INTENT SHALL BE REVIEWED FOR EVERY BALLOT THAT REQUIRES RESOLUTION.
 - (34) All ballots which are sorted by the optical scanner and resolved by the resolution board by duplication are to be indicated as such. ~~and kept separate from the standard run ballots for the precinct.~~
 - (5) THE RESOLUTION BOARD SHALL MAINTAIN AN OFFICIAL AUDIT LOG FOR ALL BALLOTS RESOLVED SETTING FORTH THE PRECINCT NUMBER, DUPLICATE BALLOT NUMBER (WHERE APPLICABLE), REASON (WITH SPECIFICITY) THAT THE BALLOT WAS RESOLVED, DATE OF RESOLUTION, AND THE INITIALS OF THE MEMBERS OF THE DUPLICATION BOARD RESPONSIBLE FOR RESOLVING THE BALLOT.

- (46) The precinct judge's ballot reconciliation form is compared to the number of scanned ballots for the precinct.
- (57) After the final precinct has been tallied, the total write-in votes shall be indicated on the final summary along with the seal numbers for each sealed box of scanned ballots.

(eE) Resolution of ~~optical scan~~-DAMAGED ballots

- (1) Damaged BALLOTS or defective ballots shall be duplicated utilizing the ballot duplication procedures as provided in Rule 27.6.
- (2) Blank ballots shall be examined by the resolution board to determine if the ballot is a true blank ballot or one that has been marked with a non-detectable mark. Resolution board members must make a duplicate copy of the ballot which has been marked with a non-detectable mark utilizing the ballot duplication procedures as set forth in Rule 27.6. If a ballot is truly blank it shall be sent back for the resolution pass through the scanner, and the ballot tabulated with no races or ballot measures voted.
- (3) Overvoted ballots shall be inspected by the resolution board and resolved in accordance with Rule 27.7.
- (4) Write-in votes sorted by the optical scan equipment on election day shall be delivered to the assigned write-in board for hand counting. During the initial ballot count, in order to be counted, the oval must be darkened or the arrow connected according to the appropriate voting instructions. Only votes for legally qualified write-in candidates shall be counted.
- (5) The resolution board shall duplicate ballots by clearly labeling the new duplicate ballot as a "DUPLICATE" and assign a serial number which shall be recorded on both the original and duplicate ballot. For example, the first ballot in Precinct # 1 to be duplicated could be labeled as #1/001 with the duplicate labeled D#1/001. Original ballots shall be separated from the duplicate ballots and placed in ~~an envelope~~-A SEALABLE CONTAINER clearly marked "ORIGINAL BALLOTS." The duplicate ballots shall be counted in lieu of the original ballots.
- (6) The resolution board shall maintain an official audit log setting forth the precinct number, duplicate ballot number, reason (with specificity) that the ballot was duplicated, date of duplication, and the initials of the members of the duplication board responsible for duplicating the ballot.

(dF) Recount Procedures for Optical Scan

- (1) Optical scan equipment must be set to consistent sensitivity standards for each system type, must be tested prior to the recount, and shall be programmed to sort undervotes for the individual race(s) or ballot measure(s) being recounted.
- (2) Recounts will include a visual inspection of all ballots cast for write-in candidates in the contested race(s) to determine voter intent.

Rule 27.6 is amended as follows:

27.6 Duplication of Ballots.

- (a) Using the damaged ballot as the guide, a blank ballot shall be marked by a duplicating team, so that the votes recorded are identical to those indicated on the damaged ballot, and shall be proofed to ~~insure~~ ENSURE ~~that~~ IT is marked properly and accurately.
- (B) EVERY DUPLICATED BALLOT SHALL BE SUBJECT TO THE PROCESS FOR DETERMINING VOTER INTENT OUTLINED IN RULE 27.7.
- (bC) A unique number shall be assigned to both the original and duplicated ballot. This will reference the two ballots together and provide an audit trail. (Example: the ballots may be marked XX-NNN, where XX is the precinct number and NNN are consecutive numbers starting with the number one.)
- (eD) ~~The duplicate ballot shall be placed with all other ballots to be counted.~~ THE DUPLICATED BALLOTS SHALL BE COUNTED IN THE SAME MANNER AS ALL OTHER BALLOTS TO BE COUNTED.
- (dE) The damaged or unreadable original ballot shall be marked "DUPLICATED" to indicate that the ballot has been duplicated and the duplication is completed. All duplicated original ballots for a precinct along with any applicable printed material shall be placed in ~~an envelope~~ A SEALABLE CONTAINER and clearly marked ~~"BALLOTS THAT HAVE BEEN DUPLICATED."~~ "ORIGINAL BALLOTS."

Rule 27.7.1 is amended as follows:

- 27.7.1 If a voter uses a consistent alternate ballot marking method that deviates from the method specified by the voting instructions (such as circling or placing a check mark behind a candidate's name or ballot response) and does not place an "X", check or other appropriate mark in the target area(s), the voter will be considered to have voted for the appropriate candidates and or ballot responses and the ballot shall be duplicated; except that, ~~If~~ IF a voter marks any of his/her choices by placing an "X", check or other appropriate mark in any target area on the voter's ballot, only those choices where the target area has been marked shall be counted.

Rule 27.7.4.3 is amended as follows:

- 27.7.4.3 ~~During any recount of votes and during the initial count for hand counted paper ballots pursuant to section 1-7-305, C.R.S., the written name of a write-in candidate in the write-in space shall be counted whether or not the target area designating the selection of a write-in candidate has been marked, provided that the number of candidates chosen does not exceed the number permitted in that office.~~

Rule 27.8.2.1 is amended as follows:

- 27.8.2.1 The transfer logs shall at minimum contain: the date of the election; the precinct number; the seal numBers; and the names of the polling place judge(s), the transfer judge(s), and the counting judge(s) who carryout the ballot transfer.

Rule 29.2 is amended as follows:

29.2 In accordance with section 1-8-114.5, C.R.S., for mail-in ballots and section 1-7.5-107.3, C.R.S., for mail ballots, the election judges shall compare the signature on the self-affirmation on each respective "Return Envelope" with the signature ~~on file with the county clerk and recorder~~ STORED IN THE STATEWIDE VOTER REGISTRATION SYSTEM ~~or election official~~. Signatures shall require further research if any of the following discrepancies are discovered:

[Revision in accordance with amendments made to Sections 1-7.5-107.3 and 1-8-114.5, C.R.S., by HB 10-1116. Subsequent provisions of this Rule 29.2 are retained unaltered]

These new and amended rules shall take effect immediately as temporary rules in accordance with the Statement of Justification and Reasons for Adoption of Emergency Rules, and shall take effect as permanent rules twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 23rd day of June, 2010,



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO

Department of State

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Suite 250
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Bernie Buescher

Secretary of State

William A. Hobbs
Deputy Secretary of State

Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

June 23, 2010

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are adopted to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2009).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the amendments and revisions to specific rules are necessary as follows:

- Amendments to Rule 2.8 are necessary to clarify that an elector's registration may be submitted by online voter registration and that for the purpose of submitting voter registration applications by fax, email or online voter registration, the close of business shall be 11:59 MT.
- Amendments to Rules 5.4, 12.5.8, 14.4.4, 14.7.1, 14.7.3, 27.1.7, 27.1.8, 27.3.2, 27.7.1, and 27.8.2.1 are necessary to make technical corrections and clarifications. These clarifications include corrections of internal citations, spelling, and grammar.
- Amendments to Rule 6.5 conform the ordering of issues on the ballot to the changes made by SB 10-216. Specifically, SB 10-216 requires that referred issues shall be printed first, followed by initiated.
- New Rule 7.7 establishes polling place accessibility assessment procedures and associated deadlines.
- Repeal of Rule 12.1.1.1(b) removes language from secrecy sleeve or secrecy sleeve envelope voter instructions in accordance with amendments to Section 1-7.5-107, C.R.S., made by HB 10-1116. Specifically, HB 10-1116 removed language from statute that stated if the return envelope does not contain identification that the ballot shall be treated as a provisional ballot. Specific procedures for handling a ballot returned without identification were adopted in HB 09-1337.
- Amendments to Rule 12.4.1(a) implement changes to Section 1-7.5-105(1), C.R.S., by HB 10-1116. Specifically, HB 10-1116 harmonized the deadline for regular special district election plans with all other non-partisan plan deadlines.
- Amendments to Rules 12.4.2(a) and 12.9 implement changes to Sections 1-7.5-107.3 and 1-8-114.5, C.R.S., relating to signature verification made by HB 10-1116. Specifically, HB 10-1116 provides for signature verification in every election conducted by or coordinated with the county.

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- Amendments to Rule 12.10.1 implement the people first language requirements of HB 10-1137.
- Amendments to Rule 13.8 remove obsolete language regarding treatment of a mail-in ballot as a provisional ballot when it is returned without proper identification from an elector required to provide identification. Specific procedures for handling a ballot returned without identification were adopted in HB 09-1336.
- New Rule 13.18 is adopted to clarify that for the purpose of submitting mail-in ballot applications by fax, email or online voter registration, the close of business shall be 11:59 MT.
- Amendments to Rule 14.6.9 are necessary to clarify and correspond with amendments to Rule 27, which revise the process for review of voter intent.
- New Rule 25.3.11 is necessary to clarify the mail-in ballot application period for UOCAVA voters. Amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) made by the Military and Overseas Voting Empowerment (MOVE) Act of 2009 repealed the requirement that the ballot application be effective for two general elections. As a result, both state and federal law are silent regarding how long the ballot request is effective. The rule is necessary to establish that unless the elector requests either permanent mail-in status or a ballot for a specific election, the application will be effective through the next regularly scheduled General Election.
- Amendments to Rules 26.4.6 and Rule 29.2 implement changes to Sections 1-7.5-107.3 and 1-8-114.5, C.R.S., relating to signature verification made by HB 10-1116. Specifically, HB 10-1116 repealed obsolete provisions regarding signatures on file with the clerk, leaving the statewide voter registration system as sole source of the signature.
- New Rule 26.4.9 is adopted to clarify that if an elector whose voter registration record is tagged ID required casts a provisional ballot without providing valid identification, the elector will be sent a letter and will have an opportunity to provide a copy of ID by the eighth day after Election Day in order to have his or her ballot counted.
- Amendments to Rule 27.1.3 clarify the definition of a damaged ballot to include a ballot containing any foreign substance that may interfere with an optical scan machine and a ballot completed in a medium other than that specified in the ballot instructions. The rule is intended to be flexible in order to accommodate the different equipment and processes utilized by each county, understanding that some systems are more sensitive to the medium used than others.
- Amendments to Rule 27.4.2 revise central count optical scan procedures. Specifically, the amendments would require an initial review of every ballot to identify and separate damaged ballots. This change implements a best practice used in many counties.
- Amendments to Rule 27.6 establish that every duplicated ballot is subject to the process for determining voter intent and that such ballots shall be counted with all other ballots.
- Amendments to Rule 27.7.4.3 creates a consistent standard for interpreting voter intent of a write-in vote by clarifying that the requirement that the target area be marked in the appropriate space in order for the vote to be counted applies to all methods of counting in the initial count. This amendment ensures the same standard is applied in both hand count and scanned count.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2009), which authorizes the Secretary of State:
 “[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1), C.R.S. (2009), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”

