

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil No. 08-CV-2321-JLK

COMMON CAUSE OF COLORADO, on behalf of itself and its members;
MI FAMILIA VOTA EDUCATION FUND; and
SERVICE EMPLOYEES INTERNATIONAL UNION, on behalf of itself and its
members,

Plaintiffs,

vs.

BERNIE BUESCHER, in his official capacity as Secretary of State for the State of
Colorado,

Defendant.

MOTION FOR STAY

In light of newly-enacted and newly-proposed administrative rules that the Defendant filed on December 8, 2009, Plaintiffs believe that they are now in a position to negotiate a full settlement of Counts II and III of the Amended Complaint, and that (barring any substantial changes to the newly-proposed rules) they soon will be in a position to negotiate a full settlement of Count IV of the Amended Complaint.

Accordingly, Plaintiffs hereby move for a partial stay of this case (including a stay of any dispositive motions deadlines) with respect to Counts II, III, and IV of the Complaint, to allow the parties an opportunity to negotiate a full settlement with respect to those claims following the conclusion of the rulemaking proceedings announced by Defendant on December 8, 2009. Plaintiffs anticipate that the rulemaking proceedings will conclude in early February 2010.

By their signatures below, Plaintiffs' counsel hereby certify that they sought the consent of Defendants' counsel with respect to this motion, but that Defendants stated that they were not willing to give consent and that they would respond separately to the motion. (*See* Letter from S. Brannon to M. Knaizer et al. Dated December 9, 2009, attached as Exhibit 1.) In further support of their motion, Plaintiffs state as follows:

On December 8, 2009, the Defendant published a Notice of Adoption of Final Rules, and a Notice of Proposed Rulemaking relevant to the claims in this litigation. Specifically, the Notice of Adoption includes modifications and additions to existing Election Rules 2.19, 2.21, 2.22 and 2.23 that are relevant to Counts II and III of the Amended Complaint. A copy of that Notice of Adoption is attached hereto as Exhibit 2. The Notice of Proposed Rulemaking proposes modifications and additions to Election Rules 2.18 and 2.20 that are relevant to Count IV of the Amended Complaint. A copy of the Notice of Proposed Rulemaking is attached hereto as Exhibit 3. Plaintiffs participated actively in the rulemaking process that produced these rules in the hopes that they would likely facilitate the settlement of Counts II, III, and IV.

In light of the newly-released final rules and the proposed rules, Plaintiffs believe that they are now in a position to negotiate settlement of Counts II and Counts III of the Amended Complaint. In addition, if the proposed rules are adopted in substantial form as currently proposed, Plaintiffs would also be in a position to negotiate settlement of Count IV of the Amended Complaint. However, there are a number of items remaining to be discussed and resolved by way of settlement relating to these claims, including the nature and form of any declaratory and injunctive relief, the extent to which remedial relief may be necessary, and the extent to which attorneys' fees and costs should be awarded to

Plaintiffs as prevailing parties. Given that the Secretary gave notice of these new and proposed rules only days ago and that the parties have been in the midst of preparing for the filing of dispositive motions relating (at a minimum) to the 20-day claim (Count I of the Amended Complaint), the parties have not had sufficient time to discuss and resolve all the issues that would be necessary for a settlement. Nonetheless, all parties have reaffirmed their willingness to do so in good faith as soon as possible.

Given that the newly-adopted and currently-proposed rules would likely be sufficient to enable the parties to fully settle Counts II, III, and IV, Plaintiffs believe it would be counterproductive and contrary to the principles of judicial and litigation economy to have the parties submit lengthy briefs in support of and/or in opposition to dispositive motions relating to these claims. In the highly unlikely event that the parties cannot reach full settlement relating to these claims, Plaintiffs will be in a position to submit any dispositive motions related to these claims within a reasonable time following the lifting of the stay.¹

At this time, there does not appear to be any possibility of settlement as Count I of the Amended Complaint, related to the twenty-day rule. Plaintiffs, therefore, believe that it is appropriate to proceed with Summary Judgment briefing and deliberation as to this claim. Plaintiffs do not seek a stay as to Count I of the Amended Complaint and plan to submit a Motion for Partial Summary Judgment addressing this Count today.

Plaintiffs do not believe that the stay requested herein would adversely impact the 2010 election cycle or impair Defendant's ability to prepare for these elections. Plaintiffs are not planning to seek any relief with respect to Counts II, III, and IV that would

¹ Plaintiffs understand that Defendant is planning to submit his dispositive briefs on all claims today. However, in the event Defendant wishes to supplement his briefing on claims II, III, and IV after the stay is lifted, Plaintiffs would not oppose such supplementation.

unduly interfere with Defendant's ability to prepare for or conduct the 2010 elections.

While it is possible that the parties will have disputes as to ancillary issues related to the settlement of these claims that would require further deliberation from the Court,

Plaintiffs do not anticipate any further disputes as to the substance of the new rules.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for a stay of any further proceedings relating to Counts II, III and IV of the Amended Complaint, including staying the Summary Judgment Motion deadline as to these Counts.

Dated: December 10, 2009

Respectfully submitted by:

/s/ Bradley E. Heard

Penda D. Hair

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*Attorneys for Plaintiffs Common Cause
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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2009, I electronically filed the within and foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/ Bradley E. Heard _____
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FAIR • ELECTIONS • LEGAL • NETWORK

December 9, 2009

Maurie G. Knaizer
Monica Marquez
Melody Mirbaba
Office of the Colorado Attorney General
State Services Building
1525 Sherman Street
Denver, CO 80203

VIA E-mail

Re: Common Cause of Colorado v. Beuscher (Civil No. 08-CV-2321-JLK)

Dear Counsel:

We are writing to follow-up on the Notice of Adoption and Notice of Proposed Rulemaking that the Defendant issued yesterday, December 8, 2009.

The Notice of Adoption includes modifications and additions to existing Election Rules relevant to the claims in this litigation at Rules 2.19, 2.21, 2.22 and 2.23. With the modifications and additions adopted as final rules under yesterday's notice, we believe that we are now in a position to settle Counts II and Counts III of the Amended Complaint.

Additionally, Defendant also issued a Notice of Proposed Rulemaking that proposes modifications and additions to Election Rules 2.18 and 2.20. If the proposal as currently drafted is adopted in substantial form, we would also be in a position to settle Count IV of the Amended Complaint.

We would ask that the Defendant agree to seek a stay from the Court as to Counts II, III and IV of the Amended Complaint so that the parties can draft and execute a settlement agreement. If the Defendant is unwilling to agree, we plan to file a unilateral motion to that effect.

We would like this settlement agreement to be executed and approved by the Court as soon as possible.

Sincerely,

-S-

Sarah Brannon

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher
Secretary of State

William A. Hobbs
Deputy Secretary of State

NOTICE OF ADOPTION

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

December 8, 2009

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 permanent rule adoption this 8th day of December, 2009, of the Secretary of State Election Rules (8 CCR 1505-1) as follows (additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations may be included*):

[Note: any changes to Rules 2.18 and 2.20 will be addressed in a separate rulemaking proceeding]

Rule 2.19 is amended as follows:

2.19 Confirmation ~~CARD~~-CARD

2.19.1 "Confirmation card" means a mailing 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.

2.19.2 IN ACCORDANCE WITH SECTION 1-1-109(1), C.R.S., THE SECRETARY OF STATE SHALL CONSIDER BEST PRACTICES AND USABILITY IN THE DESIGN OF THE CONFIRMATION CARD IN ORDER TO MINIMIZE VOTER CONFUSION.

New Rules 2.21, 2.22, and 2.23 are adopted as follows:

2.21 MINIMUM MATCHING CRITERIA

2.21.1 A RECORD MAY NOT BE TRANSFERRED, CONSOLIDATED, OR CANCELLED UNLESS THE MINIMUM MATCHING CRITERIA AS SET FORTH IN SECTIONS 1-2-603 AND 1-2-604, C.R.S., ARE MET. IF THE MINIMUM MATCHING CRITERIA ARE NOT MET THE COUNTY MAY SEND A LETTER TO THE VOTER REQUESTING CONFIRMATION OF THE MISSING OR NON-MATCHING INFORMATION IN ORDER TO TRANSFER, CONSOLIDATE, OR CANCEL THE RECORD.

2.21.2 FOR THE PURPOSE OF SECTIONS 1-2-603 AND 1-2-604, C.R.S., AND THIS RULE A MATCH OF THE NAME SHALL MEAN A MATCH OF THE FULL NAME, EXCEPT THAT THE FOLLOWING SHALL BE SUFFICIENT TO ESTABLISH A MATCH:

- (A) COMMON VARIATIONS AND NICKNAMES IN THE FIRST OR MIDDLE NAME, I.E. MICHAEL AND MIKE;
- (B) EXPLAINABLE AND DOCUMENTED CHANGE OF NAME, INCLUDING LAST NAME, I.E. MAIDEN NAME AND MARRIED NAME; AND
- (C) EXPLAINABLE AND DOCUMENTED VARIATIONS IN SUFFIX, EXCEPT THAT THE ABSENCE OF A SUFFIX IN ONE OF THE RECORDS SHALL NOT BE CONSIDERED A VARIATION. EXAMPLES OF SUFFIX VARIATIONS THAT MUST BE EXPLAINED INCLUDE JUNIOR IN ONE RECORD AND III IN ANOTHER.

2.21.3 FOR THE PURPOSE OF SECTIONS 1-2-603 AND 1-2-604, C.R.S., AND THIS RULE A MATCH OF THE PRIOR ADDRESS SHALL MEAN A MATCH OF THE RESIDENTIAL STREET ADDRESS.

2.21.4 THE COUNTY CLERK AND RECORDER MAY USE THE DMV MOTOR VOTER DATABASE TO VERIFY PRIOR NAME OR RESIDENCE ADDRESS HISTORY FOR THE PURPOSE OF MEETING THE MINIMUM MATCHING CRITERIA. THE INFORMATION GATHERED MUST BE SCANNED AND RETAINED IN THE ELECTOR'S RECORD IN ORDER TO DOCUMENT HOW THE CRITERIA WAS MET.

2.22 EFFECTIVE JANUARY 1, 2012, NO COUNTY MAY CONSOLIDATE OR CANCEL DUPLICATE RECORDS IN ACCORDANCE WITH SECTION 1-2-604, C.R.S., WITHIN THE PERIOD BEGINNING 90 DAYS PRIOR TO A PRIMARY OR GENERAL ELECTION.

2.23 UNTIL JANUARY 1, 2012, THE COUNTY CLERK AND RECORDER SHALL MAIL A LETTER TO ANY ELECTORS WHOSE RECORDS ARE CONSOLIDATED OR WHOSE DUPLICATE RECORD IS CANCELLED IN ACCORDANCE WITH SECTION 1-2-604, C.R.S., WITHIN THE PERIOD BEGINNING 90 DAYS PRIOR TO A PRIMARY OR GENERAL ELECTION. THE LETTER SHALL BE SENT TO THE ADDRESS OF THE RECORD CANCELLED OR CONSOLIDATED, IT SHALL ADVISE THE ELECTOR OF THE CONSOLIDATION OR CANCELLATION, AND IT SHALL INFORM THE ELECTOR HOW HE OR SHE MAY CORRECT ANY ERRORS. THIS RULE IS REPEALED EFFECTIVE JANUARY 1, 2012.

Rules 12.3 through 12.9 are amended as follows:

12.3 Notice of elections.

12.3.1 Call and notice.

(a) Notice of the election is to be sent to the clerk and recorder of the county in which the election is to be held. The notice is to include the date by which the list of registered electors is to be submitted to the political subdivision.

(b) For multi-county political subdivisions, the notice sent to each clerk and recorder shall also include the names of all other counties in which the election will be held.

~~12.3.2 As soon as possible, but no later than sixty five (65) days prior to a regular special district election and no later than fifty five (55) days prior to any other election, a written plan must be submitted to the Secretary of State which includes the following:~~

~~(a) Date of the election;~~

~~(b) Type and name of jurisdiction involved in the election;~~

- ~~(c) Description of the type of election to be conducted;~~
- ~~(d) Citation of the statute or home rule charter provisions authorizing the election;~~
- ~~(e) Estimated number of eligible electors;~~
- ~~(f) Name of the designated election official who will be responsible for all aspects of the election;~~
- ~~(g) Indication of whether the county clerk and recorder will assist in the election for the entity other than by providing a list of registered electors and other information required by statute;~~
- ~~(h) Total number of "places of deposit". For security reasons, unmonitored freestanding places of deposit located outside will not be allowed;~~
- ~~(i) For elections coordinated by the county clerk and recorder, the total number of walk-in voting locations;~~
- ~~(j) Number of accessible voting machines anticipated being used for walk-in voting locations in elections coordinated by the county clerk and recorder;~~
- ~~(k) Length of time accessible voting machines will be available for walk-in voting in elections coordinated by the county clerk and recorder;~~
- ~~(l) Written timetable for the conduct of the election in accordance with the statute;~~
- ~~(m) Indication of how postage will be handled for ballot packets returned as undeliverable (e.g. "return postage guaranteed");~~
- ~~(n) Indication of procedures to be followed to ensure compliance with statutes and rules, including persons responsible for each stage;~~
- ~~(o) Description of procedures to be used to ensure ballot security at all stages of the process;~~
- ~~(p) Description of procedures for maintaining privacy and security of accessible voting machines to be used in an election coordinated by the county clerk and recorder;~~
- ~~(q) Description of procedures to be used for signature verification;~~
- ~~(r) Description of procedures to ensure privacy by use of a secrecy sleeve or secrecy envelope so receiving judges cannot tell how the elector voted;~~
- ~~(s) Description of procedures to be used to reconcile ballots issued, ballots received, defective ballots and substitute ballots; and~~
- ~~(t) An actual sample of the secrecy sleeve or secrecy envelope to be used in the mail ballot election.~~

~~12.3.2.1~~ In addition to the foregoing, any home rule municipality shall include in its plan a declaration, as follows:

~~“Nothing in this plan reflects locally adopted mail ballot election procedures different from those set forth in the Colorado Mail Ballot Election Act, section 1-7.5-101-11, C.R.S., as from time to time amended, and any regulations adopted pursuant thereto.”~~

~~The Secretary of State shall not review the mail ballot plan of any home rule municipality that fails to include the above declaration. REPEALED.~~

[Note: This rule relocated to new rule 12.4.1(a)(22) to consolidate rules regarding mail ballot plans and re-worded for clarity.]

- 12.3.3 For elections coordinated by the county clerk and recorder, a security plan shall be submitted in accordance with Rule 43 in addition to the mail ballot plan submitted in accordance with this Rule.
- 12.3.4 PRIOR TO MAKING A DETERMINATION TO CONDUCT A PRIMARY ELECTION AS A MAIL BALLOT ELECTION, A COUNTY CLERK AND RECORDER SHALL GIVE PUBLIC NOTICE AND SEEK PUBLIC COMMENT ON SUCH DETERMINATION FOR A PERIOD OF NOT LESS THAN TEN BUSINESS DAYS IN ACCORDANCE WITH SECTION 1-7.5-105(1.5)(B), C.R.S. SUCH PUBLIC COMMENT SHALL BE IN THE FORM OF ACCEPTING WRITTEN COMMENT OR CONDUCTING A PUBLIC HEARING OR BOTH. ALL WRITTEN COMMENTS RECEIVED AND AUDIO RECORDINGS, WHERE APPLICABLE, SHALL BE RETAINED AS ELECTION RECORDS.

~~—Written timetable specifications:~~

- ~~(a) The designated election official shall prepare a written timetable for conducting the mail ballot election with specific dates or range of dates when each activity is to be completed;~~
- ~~(b) The timetable shall include the following dates:~~
- ~~(1) — Copy of written plan to governing body;~~
 - ~~(2) — Anticipated date of approval of election by governing body;~~
 - ~~(3) — Date of submission of written plan to Secretary of State’s office;~~
 - ~~(4) — Anticipated date of approval by Secretary of State;~~
 - ~~(5) — Date of publication of notice of election;~~
 - ~~(6) — Date of notice of election to the county clerk;~~
 - ~~(7) — Date of notice of election to the county assessor, if property owners are eligible to vote in the election;~~
 - ~~(8) — Date of close of registration;~~
 - ~~(9) — Date by which the county clerk and recorder must submit the list of eligible electors to the political subdivision and, if property owners are eligible to vote in the election, the date by which the county assessor must submit the list of property owners;~~

- ~~(10) For elections coordinated by the county clerk and recorder, date notice will be given to voters of walk-in voting and accessible voting options;~~
- ~~(11) Date ballots will be mailed;~~
- ~~(12) Date verification and counting of ballots will begin; and~~
- ~~(13) Date of the election.~~

[Note: Original rule relocated to new rule 12.4.1(c) to consolidate rules regarding mail ballot plans and re-worded for clarity.]

- 12.3.5 ~~A special district required to submit a mail ballot plan in accordance with section 1-7.5-105, C.R.S. and this Rule, may request a seven (7) day filing extension if the plan is being submitted for a regular special district election that may be cancelled.~~
- ~~(a) A request for such extension shall be submitted to the Secretary of State no later than two (2) business days prior to the deadline for submitting the mail ballot plan.~~
 - ~~(b) The request shall contain a brief statement of the reasons for such request.~~
 - ~~(c) The Secretary of State shall notify the special district of the approval/disapproval of the request within one (1) business day. REPEALED.~~

[Note: This rule relocated to new rule 12.4.1(b)(1) to consolidate rules regarding mail ballot plans.]

12.4 MAIL BALLOT PLANS

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:
 - (1) DATE OF THE ELECTION;
 - (2) TYPE AND NAME OF JURISDICTION INVOLVED IN THE ELECTION;
 - (3) DESCRIPTION OF THE TYPE OF ELECTION TO BE CONDUCTED;
 - (4) CITATION OF THE STATUTE(S) OR HOME RULE CHARTER PROVISIONS AUTHORIZING THE ELECTION;
 - (5) ESTIMATED NUMBER OF ELIGIBLE ELECTORS;
 - (6) NAME OF THE DESIGNATED ELECTION OFFICIAL WHO WILL BE RESPONSIBLE FOR ALL ASPECTS OF THE ELECTION;
 - (7) INDICATION OF WHETHER THE COUNTY CLERK AND RECORDER WILL ASSIST IN THE ELECTION FOR THE ENTITY OTHER THAN BY PROVIDING A LIST OF REGISTERED ELECTORS AND OTHER INFORMATION REQUIRED BY STATUTE;

- (8) THE ADDRESS AND HOURS OF OPERATION FOR ALL DROP-OFF LOCATIONS. FOR SECURITY REASONS, UNMONITORED FREESTANDING DROP-OFF LOCATIONS LOCATED OUTSIDE WILL NOT BE ALLOWED;
- (9) FOR ELECTIONS COORDINATED BY THE COUNTY CLERK AND RECORDER, THE TOTAL NUMBER OF WALK-IN VOTING LOCATIONS;
- (10) NUMBER OF ACCESSIBLE VOTING MACHINES ANTICIPATED BEING USED FOR WALK-IN VOTING LOCATIONS IN ELECTIONS COORDINATED BY THE COUNTY CLERK AND RECORDER;
- (11) LENGTH OF TIME ACCESSIBLE VOTING MACHINES WILL BE AVAILABLE FOR WALK-IN VOTING IN ELECTIONS COORDINATED BY THE COUNTY CLERK AND RECORDER;
- (12) WRITTEN TIMETABLE FOR THE CONDUCT OF THE ELECTION IN ACCORDANCE WITH THE STATUTE;
- (13) INDICATION OF HOW POSTAGE WILL BE HANDLED FOR BALLOT PACKETS RETURNED AS UNDELIVERABLE (E.G. "RETURN POSTAGE GUARANTEED");
- (14) INDICATION OF PROCEDURES TO BE FOLLOWED TO ENSURE COMPLIANCE WITH STATUTES AND RULES, INCLUDING PERSONS RESPONSIBLE FOR EACH STAGE;
- (15) DESCRIPTION OF PROCEDURES TO BE USED TO ENSURE BALLOT SECURITY AT ALL STAGES OF THE PROCESS;
- (16) DESCRIPTION OF PROCEDURES FOR MAINTAINING PRIVACY AND SECURITY OF ACCESSIBLE VOTING MACHINES TO BE USED IN AN ELECTION COORDINATED BY THE COUNTY CLERK AND RECORDER;
- (17) DESCRIPTION OF PROCEDURES TO BE USED FOR SIGNATURE VERIFICATION;
- (18) 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;
- (19) DESCRIPTION OF PROCEDURES TO ENSURE PRIVACY BY USE OF A SECRECY SLEEVE OR SECRECY ENVELOPE SO RECEIVING JUDGES CANNOT TELL HOW THE ELECTOR VOTED;
- (20) DESCRIPTION OF PROCEDURES TO BE USED TO RECONCILE BALLOTS ISSUED, BALLOTS RECEIVED, DEFECTIVE BALLOTS AND SUBSTITUTE BALLOTS; AND
- (21) AN ACTUAL SAMPLE OF THE SECRECY SLEEVE OR SECRECY ENVELOPE TO BE USED IN THE MAIL BALLOT ELECTION.
- (22) IF THE GOVERNING BODY IS A HOME RULE MUNICIPALITY, THE WRITTEN PLAN SHALL ALSO INCLUDE THE FOLLOWING DECLARATION:

"NOTHING IN THIS PLAN REFLECTS LOCALLY ADOPTED MAIL BALLOT ELECTION PROCEDURES DIFFERENT FROM THOSE SET FORTH IN THE

COLORADO MAIL BALLOT ELECTION ACT, SECTION 1-7.5-101, C.R.S., *ET. SEQ.*, AS FROM TIME TO TIME AMENDED, AND ANY REGULATIONS ADOPTED PURSUANT THERETO.”

THE SECRETARY OF STATE SHALL NOT REVIEW THE MAIL BALLOT PLAN OF ANY HOME RULE MUNICIPALITY THAT FAILS TO INCLUDE THE ABOVE DECLARATION.

[Note: This rule relocated from Rule 12.3.2 to consolidate rules regarding mail ballot plans and re-worded for clarity.]

(B) DEADLINES AND EXCEPTIONS.

(1) EXTENSION. A SPECIAL DISTRICT REQUIRED TO SUBMIT A MAIL BALLOT PLAN IN ACCORDANCE WITH SECTION 1-7.5-105, C.R.S., AND THIS RULE, MAY REQUEST A SEVEN DAY FILING EXTENSION IF THE PLAN IS BEING SUBMITTED FOR A REGULAR SPECIAL DISTRICT ELECTION THAT MAY BE CANCELLED.

(I) A REQUEST FOR SUCH EXTENSION SHALL BE SUBMITTED TO THE SECRETARY OF STATE NO LATER THAN TWO BUSINESS DAYS PRIOR TO THE DEADLINE FOR SUBMITTING THE MAIL BALLOT PLAN.

(II) THE REQUEST SHALL CONTAIN A BRIEF STATEMENT OF THE REASONS FOR SUCH REQUEST.

(III) THE SECRETARY OF STATE SHALL NOTIFY THE SPECIAL DISTRICT OF THE APPROVAL OR DISAPPROVAL OF THE REQUEST WITHIN ONE BUSINESS DAY.

[Note: This rule relocated from Rule 12.3.5 to consolidate rules regarding mail ballot plans.]

(2) RECALL ELECTION. IF A NON-PARTISAN RECALL ELECTION IS TO BE HELD AS A MAIL BALLOT ELECTION, THE GOVERNING BODY SHALL SUBMIT A WRITTEN PLAN TO THE SECRETARY OF STATE WITHIN THREE BUSINESS DAYS OF CALLING THE ELECTION. THE SECRETARY OF STATE SHALL NOTIFY THE GOVERNING BODY OF THE APPROVAL/DISAPPROVAL OF THE PLAN WITHIN TWO BUSINESS DAYS.

(C) TIMETABLE. THE DESIGNATED ELECTION OFFICIAL SHALL PREPARE A WRITTEN TIMETABLE FOR CONDUCTING THE MAIL BALLOT ELECTION FOR A COORDINATED OR NON-PARTISAN ELECTION WITH THE FOLLOWING SPECIFIC DATES OR RANGE OF DATES REGARDING EACH EVENT LISTED BELOW:

(1) DATE THAT A COPY OF THE WRITTEN PLAN WAS PRESENTED TO THE GOVERNING BODY;

(2) ANTICIPATED DATE OF APPROVAL OF ELECTION BY THE GOVERNING BODY;

(3) DATE OF NOTICE OF ELECTION TO THE COUNTY CLERK;

(4) DATE OF NOTICE OF ELECTION TO THE COUNTY ASSESSOR, IF PROPERTY OWNERS ARE ELIGIBLE TO VOTE IN THE ELECTION;

- (5) DATE BY WHICH THE COUNTY CLERK AND RECORDER MUST SUBMIT THE LIST OF ELIGIBLE ELECTORS TO THE POLITICAL SUBDIVISION AND, IF PROPERTY OWNERS ARE ELIGIBLE TO VOTE IN THE ELECTION, THE DATE BY WHICH THE COUNTY ASSESSOR MUST SUBMIT THE LIST OF PROPERTY OWNERS;
- (6) DATE OF CLOSE OF REGISTRATION;
- (7) DATE BALLOTS WILL BE MAILED;
- (8) DATE OF PUBLICATION OF NOTICE OF ELECTION, INCLUDING INFORMATION REGARDING WALK-IN VOTING AND ACCESSIBLE VOTING OPTIONS FOR ELECTIONS CONDUCTED BY THE COUNTY CLERK AND RECORDER;
- (9) DATE THAT BALLOTS WILL BE MADE AVAILABLE AT THE DESIGNATED ELECTION OFFICIAL'S OFFICE;
- (10) DATE VERIFICATION AND COUNTING OF BALLOTS WILL BEGIN; AND
- (11) DATE OF THE ELECTION.

[Note: This rule relocated from Rule 12.3.4 to consolidate rules regarding mail ballot plans and re-worded for clarity.]

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 BALLOTS RETURNED BY ELECTORS WHO HAVE NOT PREVIOUSLY VOTED IN COLORADO AND HAVE FAILED TO INCLUDE PROPER PROOF OF IDENTIFICATION;
 - (14) DESCRIPTION OF PROCEDURES TO ENSURE PRIVACY BY USE OF A SECRECY SLEEVE OR SECRECY ENVELOPE SO RECEIVING JUDGES CANNOT TELL HOW THE ELECTOR VOTED;
 - (15) DESCRIPTION OF PROCEDURES TO BE USED TO RECONCILE BALLOTS ISSUED, BALLOTS RECEIVED, DEFECTIVE BALLOTS AND SUBSTITUTE BALLOTS; AND
 - (16) AN ACTUAL SAMPLE OF THE SECRECY SLEEVE OR SECRECY ENVELOPE TO BE USED IN THE MAIL BALLOT ELECTION.
- (B) TIMETABLE. THE TIMETABLE FOR A PRIMARY ELECTION HELD AS A MAIL BALLOT ELECTION SHALL INCLUDE THE FOLLOWING DATES:
- (1) DATE THAT THE COUNTY GAVE PUBLIC NOTICE AND BEGAN RECEIVING PUBLIC COMMENTS;
 - (2) ANTICIPATED DATE OF APPROVAL OF ELECTION BY THE GOVERNING BODY;
 - (3) DATE THAT THE COUNTY CLERK AND RECORDER WILL MAIL A VOTER INFORMATION CARD TO ALL REGISTERED ELECTORS WHOSE REGISTRATION RECORDS HAVE BEEN MARKED "INACTIVE – FAILED TO VOTE" IN ACCORDANCE WITH SECTION 1-7.5-108.5(1), C.R.S.;
 - (4) DATE BY WHICH A COUNTY CLERK AND RECORDER MUST PROVIDE NOTICE TO THE SECRETARY OF STATE IN ORDER TO CANCEL THE ELECTION;
 - (5) DATE THAT THE COUNTY CLERK AND RECORDER WILL MAIL A NOTICE BY FORWARDABLE MAIL TO EACH UNAFFILIATED ACTIVE REGISTERED ELIGIBLE ELECTOR AND TO EACH UNAFFILIATED REGISTERED ELIGIBLE ELECTOR WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE – FAILED TO VOTE;" IN ACCORDANCE WITH SECTION 1-7.5-107(2.3)(A), C.R.S.;

- (6) DATE THAT THE BALLOTS WILL BE IN THE POSSESSION OF THE COUNTY CLERK AND RECORDER;
 - (7) DATE OF THE CLOSE OF VOTER REGISTRATION;
 - (8) DATE BALLOTS WILL BE MAILED;
 - (9) DATE THAT BALLOTS WILL BE MADE AVAILABLE AT THE COUNTY CLERK AND RECORDER'S OFFICE;
 - (10) DATE OF PUBLICATION OF NOTICE OF ELECTION, INCLUDING INFORMATION REGARDING ACCESSIBLE VOTING OPTIONS FOR ELECTIONS CONDUCTED BY THE COUNTY CLERK AND RECORDER;
 - (11) DATES THE DROP-OFF LOCATIONS WILL ACCEPT MAIL BALLOTS DELIVERED BY ELECTORS;
 - (12) DATES SERVICE CENTERS WILL BE OPEN;
 - (13) DATE VERIFICATION AND COUNTING OF BALLOTS WILL BEGIN;
 - (14) DATE OF THE PRIMARY ELECTION.
- (C) CANCELLATION OF THE ELECTION. IF, PURSUANT TO SECTION 1-4-104.5, C.R.S., THE COUNTY CLERK AND RECORDER CANCELS A PRIMARY ELECTION PRIOR TO THE CLOSE OF BUSINESS ON THE 60TH DAY BEFORE THE PRIMARY ELECTION, THE COUNTY CLERK AND RECORDER SHALL COMPLETE THE CANCELLATION OF PRIMARY ELECTION FORM ON THE SECRETARY OF STATE'S WEBSITE AND RETURN SUCH FORM TO THE SECRETARY OF STATE WITHIN TWO BUSINESS DAYS.

12.4.3 APPROVAL OF MAIL BALLOT PLANS AND SUBMISSION OF AMENDMENTS

- (A) IF THE SECRETARY OF STATE REQUESTS MODIFICATIONS TO A PLAN PRIOR TO APPROVAL, THE DESIGNATED ELECTION OFFICIAL SHALL SUBMIT THE MODIFIED PLAN WITHIN TEN DAYS FROM THE REQUEST. THE SECRETARY OF STATE WILL APPROVE OR DISAPPROVE THE MODIFIED PLAN WITHIN 15 DAYS FROM THE DATE IT IS RECEIVED.
- (B) A DESIGNATED ELECTION OFFICIAL MAY AMEND A TIMELY SUBMITTED MAIL BALLOT PLAN BY SUBMITTING A WRITTEN STATEMENT OUTLINING THE AMENDMENT(S) TO THE PLAN. THE AMENDMENT MUST STATE THE SPECIFIC SECTION OF THE PLAN AMENDED AND THE REASON(S) FOR THE AMENDMENT. THE SECRETARY OF STATE WILL APPROVE OR DISAPPROVE THE AMENDMENT WITHIN 15 DAYS FROM THE DATE IT IS RECEIVED. IF THE AMENDMENT IS RECEIVED WITHIN 30 DAYS BEFORE THE ELECTION, THE SECRETARY OF STATE WILL APPROVE OR DISAPPROVE THE AMENDMENT WITHIN TWO BUSINESS DAYS.

~~12.4~~ 12.5 Ballots:

- ~~12.4.1~~ 12.5.1 In any election where a multiple page printed ballot is used, a voter must vote and return all pages of the ballot at the same time. Any voter who has returned at least one page of a multiple page printed ballot will be considered to have voted.

~~12.4.2~~-12.5.2 For NON-PARTISAN elections where multiple ballots will be included in the same packet or will be sent in separate packets, the ballots and return envelopes shall include distinctive markings or colors to identify political subdivisions when the colors or distinctive markings will aid in the distribution and tabulation of the ballots.

~~12.4.3~~-12.5.3 The designated election official for each political subdivision for whom one or more county clerk and recorders are conducting the election shall assure that a complete list of eligible electors in their political subdivision is sent to each appropriate county clerk and recorder, unless otherwise provided in the intergovernmental agreement. The political subdivision shall list each elector only once to assure that each elector receives one and only one ballot unless otherwise authorized.

~~12.4.4~~-12.5.4 For coordinated mail ballot elections, each county clerk and recorder may compare the lists submitted by the various political subdivisions to assure that each elector receives the appropriate ballot or ballots for the election.

~~12.4.5~~-12.5.5 For all coordinated elections where more than one mail ballot is being mailed or polling place elections are being held as well as the mail ballot election, the outgoing envelope as well as the instructions or other notice shall have the following notice: "This may not be your only ballot. Other elections may be held by other political subdivisions by mail or by polling place."

~~12.4.6~~-12.5.6 If the ballot is returned to the election official as undeliverable, the official shall not be required to re-mail the ballot packet.

~~12.4.7~~-12.5.7 The designated election official shall require that the eligible elector submit a copy of his or her identification as defined in Section 1-1-104(19.5), C.R.S., with the elector's ballot in the return envelope if the eligible elector registered to vote by mail pursuant to Part 5, Article 2, Title 1, C.R.S. and did not provide the required ID upon registration.

~~12.4.8~~-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)(D), C.R.S., ~~be identified in Rule 12.4.6~~, 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.

~~12.4.9~~-12.5.9 If the elector is required to provide his or her identification, the outside of the return envelope shall be marked to identify such envelope.

~~12.4.10~~ ~~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". For non-partisan elections, the provisional ballot shall be verified and counted in accordance with Rule 26.~~

[Note: This rule relocated to Rule 12.8.1 and re-worded for clarity.]

~~12.4.11~~~~12.5.11~~12.5.10 All return envelopes used in a mail ballot election coordinated by the county clerk and recorder may be formatted in such a manner that the voter's signature on the back of the envelope is concealed. [Sections 1-7.5-106 and 1-7.5-107, C.R.S.]

~~12.5~~12.6 Mail-in and Early Voting:

~~12.5.1~~12.6.1 In a mail ballot election, any elector with a mail-in ballot request shall be sent a mail ballot to the requested address in accordance with section 1-8-111(1), C.R.S. Mail-in ballots shall be treated as mail ballots for all other purposes.

~~12.5.2~~12.6.2 Establishment of A polling place for early voting shall not be required for a mail ballot election, however the location for walk-in balloting shall be maintained.

~~12.6~~12.7 Receipt of Ballots

~~12.6.1~~12.7.1 One or more judges shall be appointed for the site to which ballots are to be mailed to receive the ballots as mailed.

~~12.6.2~~12.7.2 Each day when ballots come in, a judge shall count the ballots, batch them and record the number of ballots received.

~~12.6.3~~12.7.3 The ballots shall be date-stamped when received. If any ballot is received after the time set for the closing of the elections, the ballot shall be date-stamped but the ballot shall not be counted.

~~12.6.4~~12.7.4 Records shall also be kept of the number of ballot packets returned as undeliverable.

~~12.6.5~~12.7.5 Ballot packets shall then be placed in a safe, secure place until the counting of the ballots.

~~12.7~~12.8 If a voter has been directed to return a document with his/her voted ballot, the election judge shall open the returned envelope to retrieve the required form. ~~12.7.1~~—If the required form cannot be found in the return envelope, the election judge shall open the secrecy envelope/sleeve to find the required form or document in an effort not to disenfranchise the voter.

12.8.1 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 BALLOT SHALL BE VERIFIED AND COUNTED AS FOLLOWS:

[Note: This rule relocated from Rule 12.4.10 and re-worded for clarity.]

~~12.7.2~~(A) ~~If the voter was directed to return a copy of identification with his/her voted ballot and failed to do so~~—IN ACCORDANCE WITH SECTION 1-7.5-107(3.5)(D), C.R.S., the voter shall be sent a letter EXPLAINING THAT HE/SHE HAS NOT PROVIDED IDENTIFICATION ~~in accordance with section 1-7.5-107(3.5)(d), C.R.S.~~ 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.

~~12.7.3~~(B) If the elector provides a copy of his/her identification within eight (8) days after election day, then the ballot shall be verified and counted in the same manner as other mail ballots in accordance with sections 1-7.5-107 and 1-7.5-107.3, C.R.S.

~~12.8~~12.9 For any ~~non-matching or~~ missing signatures Rule 29.1 concerning procedures for ~~the verification of~~ 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.

~~12.9~~12.10 Ballots Delivered in Person:

~~12.9.10~~12.10.1 All “~~places of deposit~~ DROP-OFF LOCATIONS” shall be accessible to disabled electors.

~~12.9.2~~12.10.2 All “~~places of deposit~~ DROP-OFF LOCATIONS” and any walk-in voting locations shall be located within the political subdivision where feasible. If a political subdivision desires to establish a “~~place of deposit~~” DROP-OFF LOCATION or a site for walk-in voting outside of the county, municipality or district, permission must be obtained from the Secretary of State.

(a) The designated election official shall state the reasons ———for requesting such exception in the mail ballot plan submitted to the Secretary of State for approval.

(b) The alternate location proposed by the designated election official shall be within reasonable proximity to the political subdivision or the majority of the electors of the political subdivision.

~~12.9.3~~12.10.3 Any eligible elector may deliver in person to the designated or coordinated election official’s office no more than ten (10) voted mail ballots.

~~12.40~~11 Replacement Ballots for Purpose of Mail Ballot Elections.

~~12.40~~11.1 Requests for replacement ballots may be made in writing, by mail, by fax, by email, or by telephone. An elector who wishes to receive the replacement ballot by mail must make such request no later than the close of business on the seventh day before the election. However, in accordance with section 1-7.5-107(3)(d), C.R.S, an elector may request a replacement ballot in person at the county clerk and recorder’s office until 7:00 p.m. on election day.

~~12.40~~11.2 An elector requesting a replacement ballot shall complete a sworn statement, as required by section 1-7.5-107(3)(d)(I), C.R.S., on a form provided by the designated election official. If the elector requests that the replacement ballot be mailed, the form may be included in the ballot packet mailed to the eligible elector, and must be received on or before election day by the election official.

~~12.40~~11.3 The election judge issuing a replacement ballot shall indicate on the outside of the return envelope whether a sworn statement must be returned with the voted ballot. No replacement ballot shall be counted until it has been determined that an affidavit has been completed by the voter and has been received on or before election day by the election official.

~~12.44~~12 Surrender of Mail Ballot

~~12.44~~12.1 In an election coordinated by the county clerk and recorder, any voter may surrender a

mail ballot to the designated election official and vote in-person on the accessible device provided for the election as required by section 1-5-705 C.R.S.

~~12.4~~12.2 The election judge receiving the surrendered ballot shall indicate on the outside envelope that the ballot is cancelled. The voter's record shall be updated to give the voter credit for voting in a manner that maintains the secrecy of the ballot.

~~12.4~~12.3 Any accessible device used in accordance with this rule shall be subject to the privacy, security and accuracy standards set forth in the Election Rules and Title 1, C.R.S.

~~12.4~~13 Judges Duties.

~~12.4~~13.1 The judges shall record the results of the election on the judges' certificate and statement.

~~12.4~~13.2 The judges shall deliver the results of the election to the designated election official along with all election materials.

~~12.4~~13.3 The judges shall deliver all election materials bound separately as follows:

- (a) Ballots which were counted;
- (b) Ballots which were defective, as defined in 1-7-309(4), C.R.S.;
- (c) Additional ballot pages returned after the voter cast his/her ballot that were appropriately marked and not counted in accordance with ~~Rule 12.4.1~~12.5.1;
- (d) Ballots/ return envelopes which may be challenged;
- (e) Return envelopes with ballots removed;
- (f) Defective return envelopes with ballots inside;
- (g) Ballot packets which were returned as undeliverable.

~~12.4~~14 Canvass of votes/certificates of election.

~~12.4~~14.1 Elections can be challenged as provided in the enabling statute of the entity calling the election.

~~12.4~~14.2 The failure of an elector to receive a ballot will not by itself be sufficient grounds for the challenge of an election, so long as the designated election official acted in substantial compliance with Title 1, Article 7.5, C.R.S. or the rules promulgated thereunder by the Secretary of State.

Rule 26.1.2 is repealed as follows:

~~26.1.2 If the provisional ballot envelope is used as a voter registration form, it is subject to the same requirements as any other voter registration form. REPEALED.~~

[Note: This rule relocated to rule 26.10 as it deals with the treatment of the affidavit as an application for registration or an update.]

Rules 26.3, 26.4, and 26.5 are amended as follows:

26.3 Provisional Voting in the Polling Place

~~26.3.1 If the elector does not provide a date in the "Previous Residence Information" section of the provisional ballot envelope stating when the elector moved to the address he or she listed as his or her legal residence on the provisional ballot envelope, the designated election official shall attempt to verify the provisional ballot. If the provisional ballot can be verified, it shall be counted. If it cannot be verified, it shall not be counted.~~

[Note: This rule relocated to Rule 26.4.8 as it deals with verification rather than polling place procedures.]

26.3.1 IF AN ELECTOR WHOSE NAME DOES NOT APPEAR ON THE POLLBOOK STATES THAT HE OR SHE HAS TIMELY REGISTERED THROUGH AN AGENCY PURSUANT TO SECTION 1-2-504, C.R.S., THE ELECTION JUDGE SHALL:

- (A) OFFER THE ELECTOR A PROVISIONAL BALLOT;
- (B) CHECK THE BOX ON THE PROVISIONAL BALLOT AFFIDAVIT INDICATING THAT THE ELECTOR WAS AN AGENCY APPLICANT;
- (C) ASK THE ELECTOR TO PROVIDE THE NAME AND LOCATION OF THE AGENCY AND THE APPROXIMATE DATE HE OR SHE COMPLETED THE APPLICATION, OR PROVIDE THE APPLICATION RECEIPT, OR BOTH; AND
- (D) NOTE THE AGENCY REGISTRATION INFORMATION ON THE AFFIDAVIT AND ATTACH THE RECEIPT, IF PROVIDED, TO THE OUTSIDE OF THE PROVISIONAL BALLOT ENVELOPE.

26.3.2 If the elector whose name does not appear on the pollbook states that he or she applied to register to vote prior to the close of registration with a VOTER REGISTRATION DRIVE (VRD) or agency pursuant to Section 1-2-504, C.R.S., the election judge shall:

- (A) Offer the elector a provisional ballot;
- ~~Ask the elector to surrender the application receipt;~~
- (B) Check the box on the provisional ballot ~~envelope~~-AFFIDAVIT indicating that the ~~voter~~-ELECTOR is a VRD or agency applicant, and
- (C) ASK THE ELECTOR TO PROVIDE THE LOCATION AND THE APPROXIMATE DATE HE OR SHE COMPLETED THE APPLICATION, OR PROVIDE THE APPLICATION RECEIPT, OR BOTH; AND
- (D) NOTE THE VRD REGISTRATION INFORMATION ON THE AFFIDAVIT AND ATTACH •
—Attach the receipt, IF PROVIDED, to the outside of the provisional ballot envelope.

26.3.3 The word "provisional" shall be marked on the provisional ballot and on the pollbook or signature card next to the elector's name.

26.4 Verification of Provisional Ballots

26.4.1 When the designated election official has concluded that all voted provisional ballots have been delivered to and received by the election office, the designated election official shall determine the time that provisional verification and processing begins in accordance with the deadlines set forth in ~~title one~~ TITLE 1, C.R.S., and these rules. The designated election official or designee shall complete preliminary verification without opening the provisional ballot envelopes.

~~26.4.2 When verifying provisional ballots, the designated election official must check the State of Colorado Statewide voter registration database to see whether the elector has already voted in the election.~~

[Note: This rule relocated to new Rule 26.4.3]

~~26.4.3 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 voter's signature on file with the county clerk and recorder, 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.~~

[Note: This rule relocated to new Rule 26.4.6]

26.4.426.4.2 Verification of an elector's eligibility to have his or her provisional ballot counted shall be limited to the following sources ~~to determine proof of voter registration:~~

- (a) Sources provided by the Secretary of State or law enforcement agencies regarding felons who are serving a sentence of detention or confinement or on parole;
- (b) The State of Colorado Statewide Voter Registration Database;
- (c) The DMV Motor Voter database (Note: Possession of a driver's license is not conclusive proof of voter registration; elector must have registered to vote through the DMV-); AND
- (D) THE INFORMATION PROVIDED ON THE PROVISIONAL BALLOT ENVELOPE, INCLUDING THE AFFIDAVIT.

26.4.3 WHEN VERIFYING PROVISIONAL BALLOTS, THE DESIGNATED ELECTION OFFICIAL SHALL CHECK THE STATE OF COLORADO STATEWIDE VOTER REGISTRATION DATABASE TO DETERMINE WHETHER THE ELECTOR HAS ALREADY VOTED IN THE ELECTION.

26.4.4 IF DURING VERIFICATION IT APPEARS THAT THE ELECTOR ATTEMPTED TO REGISTER BUT WAS DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE BALLOT SHALL BE VERIFIED AND COUNTED AS FOLLOWS:

- (A) IF THE ELECTOR SUBSTANTIALLY CONFIRMS THE STREET ADDRESS AT WHICH HE OR SHE ATTEMPTED TO REGISTER TO VOTE ANYWHERE ON THE PROVISIONAL BALLOT AFFIDAVIT, THE AFFIDAVIT IS COMPLETE, AND THE ELECTOR IS OTHERWISE ELIGIBLE, THE BALLOT SHALL BE COUNTED. THE ELECTOR SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.
- (B) IF THE ELECTOR DOES NOT SUBSTANTIALLY CONFIRM THE STREET ADDRESS AT WHICH HE OR SHE ATTEMPTED TO REGISTER TO VOTE ANYWHERE ON THE

PROVISIONAL BALLOT AFFIDAVIT, THE BALLOT SHALL NOT BE COUNTED. THE PROVISIONAL BALLOT AFFIDAVIT SHALL BE TREATED AS AN APPLICATION FOR FUTURE REGISTRATION.

26.4.5 IF DURING VERIFICATION IT APPEARS THAT THE ELECTOR'S RECORD WAS CANCELLED OR CONSOLIDATED AS A DUPLICATE IN ERROR, THE BALLOT SHALL BE COUNTED SO LONG AS THE ELECTOR HAS NOT CAST A BALLOT IN THE ELECTION, THE AFFIDAVIT IS COMPLETE, AND THE ELECTOR IS OTHERWISE ELIGIBLE. THE ELECTOR'S RECORD SHALL BE REINSTATED OR UNCONSOLIDATED.

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, 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.

[Note: This rule relocated from existing Rule 26.4.3]

26.4.7 IF DURING VERIFICATION IT APPEARS THAT THE ELECTOR TIMELY APPLIED FOR REGISTRATION, BUT HIS OR HER APPLICATION WAS INCOMPLETE, THE BALLOT SHALL BE VERIFIED AND COUNTED AS FOLLOWS:

(A) IF THE ELECTOR PROVIDED THE REQUIRED INFORMATION ON THE PROVISIONAL BALLOT AFFIDAVIT AT THE TIME OF VOTING, THE BALLOT SHALL BE COUNTED SO LONG AS THE ELECTOR IS OTHERWISE ELIGIBLE, AND HAS NOT CAST A BALLOT IN THE ELECTION. THE ELECTOR SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.

(B) IF THE ELECTOR DID NOT PROVIDE THE REQUIRED INFORMATION ON THE PROVISIONAL BALLOT ENVELOPE AT THE TIME OF VOTING, THE BALLOT SHALL NOT BE COUNTED. HOWEVER, IF THE PROVISIONAL BALLOT ENVELOPE LACKS A SIGNATURE, THE DESIGNATED ELECTION OFFICIAL SHALL FOLLOW THE SIGNATURE VERIFICATION PROCEDURES IN ACCORDANCE WITH SECTION 1-8.5-105(3), C.R.S., AND RULE 29.

[Note: this rule relocated from Rule 26.5.2 and reworded for clarity]

26.4.8 IF THE ELECTOR MOVED WITHIN THE STATE, THE BALLOT SHALL BE VERIFIED AND COUNTED AS FOLLOWS:

(A) ALL RACES AND ISSUES SHALL BE COUNTED IF THE ELECTOR INDICATES THAT HE OR SHE MOVED TO THE NEW RESIDENCE ADDRESS IN THE NEW COUNTY OR PRECINCT AT LEAST 30 DAYS PRIOR TO THE ELECTION. IF THE ELECTOR DOES NOT INDICATE WHEN HE OR SHE MOVED TO THE NEW RESIDENCE ADDRESS, ALL RACES AND ISSUES SHALL BE COUNTED SO LONG AS THE AFFIRMATION IS SIGNED. [SECTION 1-8.5-107(2), C.R.S.]

(B) ONLY FEDERAL AND STATEWIDE RACES AND ISSUES SHALL BE COUNTED IF THE ELECTOR INDICATES THAT HE OR SHE MOVED TO THE NEW RESIDENCE ADDRESS IN THE NEW COUNTY OR PRECINCT AFTER THE CLOSE OF REGISTRATION. [SECTION 1-8.5-108(2), C.R.S.]

[Note: this rule relocated from Rule 26.3.1 and reworded for clarity]

26.5 Counting of Provisional Ballots

26.5.1 If the information contained in the provisional ballot envelope AND AFFIDAVIT provides adequate criteria so that the designated election official is able to confirm under election Rule 26 that the elector is registered-ELIGIBLE TO CAST A BALLOT, the provisional ballot shall count.

26.5.2 Pursuant to section 1-2-509(3), C.R.S., if the designated election official receives a provisional ballot from a voter who registered to vote but had an incomplete or deficient voter registration application, and did not supply the required information at the time of registration, at any time prior to voting, or on the provisional ballot envelope, the provisional ballot shall not be counted. If the voter does supply the required information prior to or at the time of voting, then the provisional ballot may be counted. REPEALED.

[Note: this rule relocated to Rule 26.4.7 as it deals with verification, and reworded for clarity]

New Rule 26.10 is adopted as follows:

26.10 TREATMENT OF THE PROVISIONAL BALLOT AFFIDAVIT AS AN APPLICATION FOR, OR A CHANGE TO REGISTRATION

26.10.1 IF A PROVISIONAL BALLOT AFFIDAVIT IS TREATED AS AN APPLICATION FOR REGISTRATION FOR FUTURE ELECTIONS IN ACCORDANCE WITH SECTION 1-8.5-103(2), C.R.S., SUCH APPLICATION SHALL BE SUBJECT TO THE REQUIREMENTS FOR ANY OTHER VOTER REGISTRATION APPLICATION.

[Note: This rule relocated from rule 26.1.2 and re-worded for clarity.]

26.10.2 IN THE CASE OF AN ELECTOR WHO IS REGISTERED, IF THE PROVISIONAL BALLOT AFFIDAVIT CONTAINS CHANGES TO THE ELECTOR'S REGISTRATION HIS OR HER RECORD SHALL BE UPDATED ACCORDINGLY.

26.10.3 IF A PROVISIONAL BALLOT IS COUNTED BECAUSE IT WAS DETERMINED THAT AN ELECTOR WAS CANCELLED OR CONSOLIDATED IN ERROR, THE ELECTOR'S RECORD SHALL BE REINSTATED OR UNCONSOLIDATED AND UPDATED ACCORDINGLY.

Rule 30.1.6 is amended as follows:

30.1.6 "ID" as used in these rules shall mean 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) A paycheck from a government institution or private company; or
 - (IV) 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.

New Rule 30.11.3 is adopted as follows:

30.11.3 IN ACCORDANCE WITH SECTION 1-1-104(19.5)(C), C.R.S., AN ELECTOR THAT DOES NOT PRESENT IDENTIFICATION AT THE TIME OF VOTING SHALL BE OFFERED A REGULAR BALLOT IF HE OR SHE PRESENTS A LETTER FROM THE DIRECTOR OR ADMINISTRATOR OF A GROUP RESIDENTIAL FACILITY THAT INDICATES THAT THE ELECTOR IS A RESIDENT OF THE FACILITY AND THAT HE OR SHE RESIDES AT THE STREET ADDRESS LISTED IN THE POLLBOOK. [SECTIONS 1-1-104(18.5), (19.5)(C), AND 1-7-110, C.R.S.]

Rule 40 is amended as follows:

Rule 40. Rules Concerning Certification and Education of Designated Election Officials

40.1 Purpose AND DEFINITIONS:

40.1.1 The Secretary of State RRecognizes that the oversight of elections is a profession that requires thorough knowledge of complex state and federal election law and election procedures. It is recognized that state and federal law, voting equipment and election procedures ARE COMPLEX, and therefore necessitates extensive training. The purpose of the certification program is to standardize election procedures and education so that Colorado voters have a greater confidence in their election officials and the election process.

40.1.2 "LOCAL ELECTION OFFICIAL" FOR THE PURPOSE OF SECTION 1-1-301(1), C.R.S., SHALL MEAN A COUNTY CLERK AND RECORDER.

40.1.3 "PERSONS REQUIRED TO COMPLETE CERTIFICATION" FOR THE PURPOSE OF SECTION 1-1-302, C.R.S., AND THIS RULE SHALL MEAN:

(A) THE COUNTY CLERK AND RECORDER; AND

(B) EMPLOYEES IN THE CLERK AND RECORDER'S OFFICE WHO ARE DIRECTLY RESPONSIBLE FOR OVERSEEING ELECTION ACTIVITIES, INCLUDING BUT NOT LIMITED TO VOTER REGISTRATION, CANDIDATE QUALIFICATIONS AND BALLOT CERTIFICATION, POLL WORKER TRAINING, BALLOT DESIGN AND SETUP, BALLOT COUNTING, AND CANVASSING.

40.2 Advisory Board created

40.2.1 The Secretary of State shall create an advisory board to oversee the certification program and curriculum. The advisory board shall meet at least twice each calendar year to approve the curriculum and make necessary changes. The advisory board shall also review evaluations and recommend changes to the certification program.

40.2.2 The advisory board shall review individual applications for certification and shall approve applications that are accurate and complete. The advisory board shall have the authority to take into account special circumstances in reviewing and approving applications.

40.2.3 The advisory board shall include the following members appointed by the Secretary of State:

(a) Four county clerks or designated staff members

(b) Two Secretary of State Office representatives

(c) Any individual(s) whom the Secretary of State believes could make a valuable contribution to the Board.

40.2.4 Board members shall be appointed by the Secretary of State to serve a two-year term. Board members may be terminated without cause. Failure to attend meetings or meaningfully contribute may result in termination.

40.3 Core Curriculum

40.3.1 The certification program shall include core requirements. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification

shall complete at least eight core classes. The core classes shall generally include but are not limited to:

- (a) ~~The basic conduct of elections~~-NAVIGATING ELECTION LAWS AND PROCEDURES
- (b) Testing and maintenance of voting equipment
- (c) Canvass procedures
- (d) Mail-in voting
- (e) Pollworker training and recruiting
- (f) ~~SCORE training~~-OVERSEAS AND MILITARY VOTING
- (g) Ethics
- (H) MAIL BALLOT ELECTIONS
- (hI) Accessibility for people with disabilities
- (iJ) Provisional ~~V~~-voting
- (K) ISSUES IN VOTER REGISTRATION

40.3.2 The classes may be offered as a whole or in sections.

40.4 Elective Curriculum

40.4.1 The certification program shall include electives as part of the certification program. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification shall select and complete at least six ~~(6)~~ elective courses. The elective courses shall generally include but are not limited to:

- (a) Voter ~~O~~-outreach
- (b) Media ~~R~~-relations AND THE COLORADO OPEN RECORDS ACT (CORA)
- (c) Elections refresher course
- (d) Petitions
- ~~(e) Overseas and military voters~~
- (fE) ~~Campaign finance~~-RECALL ELECTIONS
- (gF) Security planning
- (hG) ~~Issues in voter registration~~-SCORE FUNCTIONAL TRAINING
- (iH) Polling place set up/management
- (jI) Vote Center training

~~(k)~~ Mail ballot training

(H) Budgeting

~~(mK)~~ Recounts and election contests

~~(nL)~~ Other timely, relevant topics as determined by the Secretary of State

40.4.2 THE CLASSES MAY BE OFFERED AS A WHOLE OR IN SECTIONS.

40.5 CREDIT FOR TRAINING OFFERED BY THE SECRETARY OF STATE.

40.5.1 INDIVIDUALS APPLYING FOR CERTIFICATION SHALL HAVE RECEIVED AT LEAST EIGHT UNIQUE CORE CREDITS AND SIX UNIQUE ELECTIVE CREDITS. The advisory board may reject applications for certification if any of the ~~eight (8)~~ core and OR ~~six (6)~~ elective credit requirements have been achieved through a duplication of course credits.

40.5.2 THE ADVISORY BOARD SHALL NOT ACCEPT APPLICATIONS FOR CERTIFICATION IF MORE THAN TWO SCORE FUNCTIONAL TRAINING ELECTIVE CREDITS ARE SUBMITTED TO ACHIEVE THE SIX ELECTIVE CREDIT REQUIREMENT.

40.5.3 ONE CREDIT SHALL BE AWARDED AFTER SUCCESSFUL COMPLETION OF ANY COURSE SCHEDULED FOR TWO HOURS OR LESS. TWO CREDITS SHALL BE AWARDED FOR SUCCESSFUL COMPLETION OF ANY COURSE SCHEDULED FOR MORE THAN TWO HOURS. HOWEVER, ONLY ONE ELECTIVE CREDIT SHALL BE AWARDED FOR EACH FOUR HOURS OF SCORE FUNCTIONAL TRAINING.

40.5.4 TRAINING ASSESSMENT

(A) TO RECEIVE CERTIFICATION CREDIT FOR ANY COURSE PRESENTED BY THE SECRETARY OF STATE IN ACCORDANCE WITH THIS RULE, PARTICIPANTS SHALL SUCCESSFULLY COMPLETE A TRAINING ASSESSMENT WITH A MINIMUM SCORE OF 85%.

(B) PARTICIPANTS FAILING TO ACHIEVE A SCORE OF AT LEAST 85% MAY RETAKE THE ASSESSMENT.

(C) ASSESSMENTS MAY BE ADMINISTERED BY THE SECRETARY OF STATE DURING OR AFTER PRESENTATION OF THE COURSE, EITHER BY A PAPER ASSESSMENT OR BY UTILIZING ELECTRONIC ASSESSMENT SOFTWARE.

40.6 ~~Credit for Other Trainings~~-TRAINING OFFERED BY OTHER AGENCIES OR ORGANIZATIONS

40.6.1 Persons may apply to the advisory board to request credit towards Colorado certification for training provided by other agencies or organizations.

40.6.2 The Board ~~may~~ SHALL grant core or elective hours for ~~such trainings~~ IF SUCH TRAININGS ARE ELECTIONS RELATED AND PROVIDE AN APPROPRIATE LEVEL OF SPECIFICITY AND APPLICABILITY AS SIMILAR COURSES PROVIDED BY THE SECRETARY OF STATE.

40.6.3 THE BOARD MAY REVIEW AGENDAS, MATERIALS, AND OTHER DOCUMENTATION FOR TRAINING NOT PROVIDED BY THE SECRETARY OF STATE PRIOR TO GRANTING CORE OR ELECTIVE CREDIT.

40.6.4 FOR INITIAL CERTIFICATION, THE BOARD MAY GRANT UP TO ONE CORE AND TWO ELECTIVE CREDITS TO ANY PARTICIPANT FOR TRAINING PROVIDED BY OTHER AGENCIES OR ORGANIZATIONS.

40.6.5 SUCCESSFUL COMPLETION OF AN ASSESSMENT SHALL NOT BE REQUIRED FOR TRAINING PROVIDED BY OTHER AGENCIES OR ORGANIZATIONS.

40.7 Continuing Elections Education (CEE):

40.7.1 In order to maintain certification, a person shall attend and complete at least two electives or one core class every calendar year.

40.7.2 CREDIT RECEIVED FOR DUPLICATE CLASSES WITHIN THE SAME CALENDAR YEAR MAY BE APPLIED ONLY ONCE TOWARD MAINTAINING CERTIFICATION. NO MORE THAN TWO SCORE FUNCTIONAL TRAINING ELECTIVE CREDITS MAY BE SUBMITTED WITHIN THE SAME CALENDAR YEAR TOWARDS MAINTAINING CERTIFICATION.

40.7.3 AFTER A PERSON HAS COMPLETED THE REQUIREMENTS FOR MAINTAINING CERTIFICATION, HE OR SHE SHALL SUBMIT AN APPLICATION FOR CONTINUING CERTIFICATION TO THE SECRETARY OF STATE'S OFFICE ON THE FORM APPROVED BY THE SECRETARY OF STATE.

40.8 Completing Colorado certification

40.8.1 After a person has completed the requirements for certification, the person shall submit an application for Colorado certification to the Secretary of State's office ON THE FORM APPROVED BY THE SECRETARY OF STATE.

40.8.2 ~~The Secretary of State shall create an application form to be used by applicants for certification following completion of coursework. The applicants shall provide the following information:~~

~~(a) the applicant's name, name of county jurisdiction, address, telephone and e-mail;~~

~~(b) the applicant title(s) and date(s) of the classes the applicant attended;~~

~~(c) the applicant's signature and date signed; and~~

~~(d) the supervisor's signature (if applicable)~~

~~40.8.2.1 The form shall also include a section for Secretary of State office use only. REPEALED.~~

40.8.3 The Secretary of State shall review the application with reference to the Secretary of State records. If the application is complete and accurate, the Secretary of State shall forward it to the advisory board for its review and approval. Upon approval by the advisory board, the Secretary of State shall issue a certificate that the person is a Certified Colorado Election Official.

40.8.4 The Secretary of State shall track attendance at all classes and keep records of attendance, continuing elections education, and records of those persons who are certified and persons who are in the certification process.

40.9 De-certification

40.9.1 ~~The Secretary of State has the authority to de-certify any person who does not fulfill the continuing elections education requirements. REPEALED~~

40.9.2 If a certified election official fails to satisfy continuing elections education requirements in one ~~(1)~~ calendar year, then the election official shall have a maximum of 12 ~~twelve~~ (12) months to complete continuing education requirements for the previous calendar year and the current calendar year.

40.9.3 Failure to satisfy continuing education requirements for two ~~(2)~~ consecutive years shall result in de-certification.

40.10 Credit for Teaching Classes

40.10.1 ANY person who teaches a ~~class and/or persons who~~ OR substantially assists with preparation for the ~~OF~~ A class as part of the ~~OFFERED FOR~~ certification shall ~~MAY~~ receive the equivalent of two core ~~credits~~; or three elective credits.

40.10.2 The participant shall submit a written request to the SECRETARY OF STATE'S ~~secretary of state's~~ office requesting ~~credit for~~ either two core ~~credits~~ or three elective credits.

40.10.3 The SECRETARY OF STATE SHALL FORWARD THE APPLICATION TO THE ~~The~~ advisory board, WHICH shall determine ~~which persons are eligible for these~~ WHETHER THE APPLICANT IS ELIGIBLE TO RECEIVE THE REQUESTED credits.

40.11 ~~Future regional and w~~ Web-based training

40.11.1 ~~It is the intent of this rule that the Secretary of State and the advisory board develop regional trainings to make certification and training more accessible. It is the intent that the Secretary of State explore virtual and web based training for use as part of the certification and education process. THE SECRETARY OF STATE MAY UTILIZE WEB-BASED TECHNOLOGY TO MAKE CERTIFICATION AND TRAINING MORE ACCESSIBLE. VIRTUAL AND WEB-BASED TRAINING MAY BE PROVIDED FOR ANY COURSE THE SECRETARY OF STATE DEEMS APPROPRIATE.~~

40.11.2 WEB-BASED TRAINING MAY BE CONDUCTED LIVE OR BY REVIEWING MATERIAL PREVIOUSLY PRESENTED BY THE SECRETARY OF STATE. IN EITHER CASE, PARTICIPANTS MUST ACHIEVE A SATISFACTORY SCORE ON ASSESSMENTS PRIOR TO RECEIVING CREDIT FOR THE COURSE.

Rules 44.1, 44.2, and 44.3 are amended as follows:

44.1 Statement of Intent

44.1.1 In accordance with section 1-2-701, C.R.S., *et seq.*, the organizer of a Voter Registration Drive ("VRD") shall file a Statement of Intent with the Secretary of State to conduct a voter registration drive on a form prescribed by the Secretary of State. The Statement of Intent shall include the following information:

(a) The name of the ~~organization~~ GROUP CONDUCTING THE VRD, and the name AND CONTACT INFORMATION of the INDIVIDUAL ORGANIZING THE VRD ~~parent organization, if applicable~~;

~~(b) The contact information for the organization~~

- (B) The name of the agent (who is required to be a Colorado resident) and the contact information for that agent, IF DIFFERENT FROM THE PERSON ORGANIZING THE VRD;
- (C) A statement specifying THAT ~~the counties in which~~ the VRD intends to operate WITHIN THE STATE OF COLORADO;
- (D) A notice that the ~~voter registration drive~~ VRD number expires at the end of the calendar year; and
- (E) A signature line requiring the organizer's signature.

44.1.2 Any amendments to the Statement of Intent shall be filed in writing with the Secretary of State NO LATER THAN THREE BUSINESS DAYS AFTER THE CHANGE(S) OCCURS. Amendments may be made by fax, email, mail or in person.

~~(a) Any amendments to the Statement of Intent concerning the county in which the VRD will conduct a drive shall be filed a minimum of three (3) business days prior to commencing voter registration activity in a given county.~~

44.1.3 The Secretary of State shall immediately attempt to verify the information provided in the Statement of Intent prior to issuing a number to the VRD organizer. The Secretary of State may deny a number to the voter registration drive organizer if the information provided on the Statement of Intent cannot be verified.

44.1.4 The last day for a VRD to file a Statement of Intent with the Secretary of State shall be 30 ~~thirty~~ (30) days before the GENERAL ELECTION ~~general election~~ in a given calendar year.

44.2 Training

44.2.1 IN ORDER TO BE ISSUED A VRD NUMBER, ~~The~~ THE organizer of the VRD shall ~~, before commencing the distribution or circulation of voter registration applications,~~ SUCCESSFULLY complete a THE ONLINE training AND TEST provided by the Secretary of State, AND SUBMIT A STATEMENT OF INTENT ALONG WITH A TRAINING ACKNOWLEDGMENT FORM TO THE SECRETARY OF STATE.

44.2.2 In addition to training for the organizer, the Secretary of State shall make available information for the organizer to train individual circulators. Organizers shall provide training to all circulators. Organizers shall obtain and maintain on file signed attestations from each circulator that he or she will adhere to all the requirements of the Secretary of State election rules and the Colorado Revised Statutes pertaining to elections, and that they are aware of the penalties associated with the mishandling of voter registration application forms. The organizers shall furnish the circulator attestations to the secretary of state upon request.

44.2.3 The mandatory training provided by the Secretary of State shall include, but not be limited to:

(a) The use of the ~~standard Colorado Voter Registration Application Form VOTER REGISTRATION DRIVE VRD APPLICATION;~~

(b) Information on where to obtain the ~~standard Voter Registration DRIVE VRD Application;~~

- (c) Information on how to ensure that a VRD ~~Form~~-APPLICATION is filled out completely; including which fields are optional and which are required, and how to fill out the ~~receipt~~-CIRCULATOR portion of the ~~Form~~-APPLICATION;
- (d) Notice of statutory deadlines relating to Voter Registration Applications ~~Forms~~ and ~~voter registration drives~~-VRDs;
- (e) The requirements for when and where the Voter Registration Applications ~~Forms~~ must be turned in;
- (f) Penalties for violating statutory prohibitions including fraud, intimidation, mishandling ~~forms~~-APPLICATIONS, failing to turn in ~~forms~~-APPLICATIONS and other penalties relevant to ~~voter registration drives~~-VRDs;
- (g) The handling and treatment of confidential information on the Voter Registration Applications ~~Forms~~; and
- (h) Notice that circulators shall not be paid per ~~voter registration drive~~ Application, but if compensated, shall be paid by the hour or day.

44.2.4 THE TRAINING SHALL BE PROVIDED ONLINE. IF A VRD ORGANIZER PREFERS, HE OR SHE MAY SCHEDULE A TIME TO VIEW THE TRAINING AT THE OFFICE OF THE SECRETARY OF STATE.

44.2.5 AFTER COMPLETING THE TRAINING, THE VRD ORGANIZER MUST COMPLETE THE TRAINING TEST AND ANSWER THE QUESTIONS 100% CORRECTLY BEFORE A VRD NUMBER WILL BE ISSUED.

~~44.2.4~~ 44.2.6 After completing the training AND TEST, the VRD organizer shall sign ~~an~~ A TRAINING Acknowledgement CONFIRMING that the training AND TEST ~~has~~-have been completed and that he or she has been duly informed of rules, laws and penalties relating to voter registration drives.

44.2.7 A VOTER REGISTRATION DRIVE ORGANIZER MUST COMPLETE THE TRAINING AND TEST EVERY CALENDAR YEAR IN WHICH HE OR SHE INTENDS TO CONDUCT A VRD.

44.3 Number Assigned:

44.3.1 After ~~the organizer completes~~-SUCCESSFUL COMPLETION OF the required training AND TEST, AND SUBMISSION OF THE REQUIRED FORMS, the Secretary of State shall assign a unique number to the VRD ~~that meets the requirements of section 1-2-701, C.R.S., and this Rule.~~ After issuing a unique number to the ~~voter registration drive~~-VRD, the Secretary of State shall:

- (a) Advise the VRD organizer of ~~the~~-THEIR unique number;
- (b) Notify the county clerks within 24 hours ~~of~~-AFTER each ~~registered voter registration drive~~-VRD NUMBER HAS BEEN ISSUED ~~registered with~~ BY the Secretary of State; and
- (c) Post the AGENT AND THE ~~organization's~~-name OF THE GROUP CONDUCTING THE DRIVE ~~and agent~~ on the ~~SOS~~-SECRETARY OF STATE website.

44.3.2 ALL ASSIGNED VRD NUMBERS ARE VALID THROUGH DECEMBER 31 OF THE YEAR THAT THE NUMBER IS ASSIGNED.

Rule 44.5 is repealed as follows:

44.5 ~~Renewal Procedures~~

~~44.5.1 Prior to conducting a VRD in the next calendar year, a VRD organizer that completed training and was assigned a unique VRD number in the prior year must apply for renewal and receive a new VRD number.~~

~~44.5.2 To receive a VRD number for the next calendar year, the VRD organizer may complete an online renewal within sixty (60) days after expiration of the VRD number, or attend training offered by the Secretary of State in accordance with Rule 44.2.~~

~~44.5.3 For online renewal, the VRD organizer shall complete the renewal exercise provided on the Secretary of State website. The VRD organizer shall then submit to the Secretary of State a completed statement of intent in accordance with section 1-2-701, C.R.S., and Rule 44.1.~~

~~a. A VRD organizer who correctly answers one hundred percent (100%) of the renewal exercise questions shall be issued a VRD number for the next calendar year.~~

~~b. A VRD organizer who does not correctly answer one hundred percent (100%) of the renewal exercise questions shall not be issued a VRD number for the next calendar year until he or she attends a training offered by the Secretary of State.~~

~~44.5.4 A VRD organizer that attended training in person or via conference call in the previous year is eligible to complete the online renewal in the current year. REPEALED.~~

New Rule 51 is adopted as follows:

RULE 51. USE OF APPROVED AND RECOMMENDED ELECTION FORMS

51.1 WHERE THE SECRETARY OF STATE HAS ISSUED AN APPROVED ELECTION FORM, NOTICE, APPLICATION, OR CORRESPONDENCE PROVIDED FOR BY THE "UNIFORM ELECTION CODE OF 1992", ALL DESIGNATED ELECTION OFFICIALS AND REGISTRATION OFFICES SHALL USE THE APPROVED FORM.

51.1.1 A DESIGNATED ELECTION OFFICIAL OR REGISTRATION OFFICE THAT WISHES TO MODIFY THE CONTENT OF ANY FORM APPROVED OR RECOMMENDED BY THE SECRETARY OF STATE SHALL SUBMIT A WRITTEN REQUEST VIA EMAIL TO THE SECRETARY OF STATE'S OFFICE STATING THE REQUESTED MODIFICATION AND THE REASONS IT IS NEEDED.

(A) THE SECRETARY OF STATE SHALL HAVE FIVE BUSINESS DAYS IN WHICH TO APPROVE OR DENY THE MODIFICATION REQUEST. FAILURE OF THE SECRETARY OF STATE TO ISSUE A DECISION WITHIN FIVE BUSINESS DAYS SHALL NOT CONSTITUTE AN APPROVAL OF THE REQUEST. IF THE MODIFICATION REQUEST IS DENIED, THE SECRETARY OF STATE WILL PROVIDE AN EXPLANATION STATING THE BASIS FOR DENYING THE REQUEST.


(B) A NON-SUBSTANTIVE CUSTOMIZATION, SUCH AS PLACING THE FORM ON COUNTY LETTERHEAD OR LANGUAGE TRANSLATION, SHALL NOT REQUIRE APPROVAL.

- 51.2 THE SECRETARY OF STATE SHALL APPROVE STANDARD VOTER REGISTRATION AND BALLOT APPLICATION FORMS RECOMMENDED FOR USE BY POLITICAL PARTIES AND ORGANIZATIONS THAT PROVIDE SUCH FORMS TO THE PUBLIC. THE SECRETARY OF STATE WILL ENSURE THAT THE CURRENT APPROVED FORMS FOR REGISTRATION AND BALLOT REQUEST ARE PUBLICLY AVAILABLE ON ITS WEBSITE.
- 51.2.1 POLITICAL PARTIES AND ORGANIZATIONS MAY ALSO USE THE NATIONAL MAIL VOTER REGISTRATION FORM. BECAUSE THE FORMS APPROVED BY THE SECRETARY OF STATE CONTAIN ALL OF THE INFORMATION SPECIFIC TO COLORADO LAW, THE APPLICANTS AND THE ORGANIZATION ARE AFFORDED GREATER PROTECTION WHEN THE STANDARD FORMS APPROVED BY THE SECRETARY OF STATE ARE USED.
- 51.2.2 ALL POLITICAL PARTIES AND ORGANIZATIONS THAT CONDUCT A MASS MAILING OF EITHER REGISTRATION OR BALLOT REQUEST FORMS TO THE PUBLIC SHALL IDENTIFY THE PARTY OR ORGANIZATION CONDUCTING THE MAILING BY PRINTING THE ORGANIZATION NAME AND CONTACT INFORMATION ON THE FORM.
- 51.2.3 ANY POLITICAL PARTY OR ORGANIZATION MAY CONTACT THE SECRETARY OF STATE PRIOR TO SENDING A MAILING TO REQUEST A REVIEW OF THE FORM AND INFORMATION TO BE MAILED.
- 51.3 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.

These new and amended rules shall take effect 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 8th day of December, 2009,


William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO
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Bernie Buescher
Secretary of State

William A. Hobbs
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Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules

December 8, 2009

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 necessary 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 and revisions 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, and to increase the transparency and security of the election process. The amendments are further necessary to implement changes to the election laws made during the 2009 regular session of the 67th General Assembly and answer questions arising under Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the adoption of specific amendments and revisions to the Election Rules is necessary as follows:

- Amendments to Rules 2.18 and 2.20 were proposed to address questions regarding the use of the National Change of Address (NCOA) database. Specifically, the proposed revisions would have required that where the information from NCOA indicates that an elector may have moved out of their current county, a confirmation card would be sent to the elector to provide the elector a notice that their record must be updated to reflect the current residential address. However, in the case of an elector who appears to have moved within the same county, the elector would not be subject to cancellation under Rule 2.18.3 and section 1-2-605, C.R.S., based upon the information from NCOA.

During the course of the rulemaking, the office received substantial comments from interested parties, including county election officials who would be tasked with implementing the process. After careful consideration of all comments, the Secretary of State has determined that the proposed revisions to Rules 2.18 and 2.20 should not be adopted. In addition, the Secretary determined that substantial additional revisions to Rule 2

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concerning the use of NCOA may be necessary. In order to ensure that all interested parties have an opportunity to review such revisions and submit comment, the Secretary of State will address further revisions to this rule in a future rulemaking proceeding, which is the subject of a notice of rulemaking contemporaneously issued.

- New Rule 2.21 answers questions regarding the minimum matching criteria set forth in sections 1-2-603 and 1-2-604, C.R.S. The new rule clarifies the policy for resolving discrepancies in name, suffix, and address for the purpose of determining whether two records are a match under the criteria.
- New Rule 2.22 establishes a deadline for processing duplicate records for the same elector in advance of a federal election. The rule requires the processing to stop ninety days prior to a federal election. The rule does not take effect until 2012 in order to permit the counties to complete the current ongoing effort to consolidate voter records as a part of implementing the statewide voter registration database.
- New Rule 2.23, which is in effect until January 1, 2012 requires the county to mail a notification letter to any elector whose record is consolidated or cancelled as a duplicate within ninety days prior to a federal election. This requirement ensures that if any record is consolidated or cancelled based upon erroneous information, the elector will have an opportunity to request reinstatement prior to Election Day. This requirement will automatically repeal on January 1, 2012 as Rule 2.22 takes effect and will no longer permit such cancellations or consolidations within ninety days prior to a federal election.
- The revisions to Rule 12 implement changes to Article 7.5 of Title 1, C.R.S., made by House Bill 09-1015 regarding Primary Elections conducted by mail ballot, and answer other questions regarding the mail ballot plans.
- The revisions to Rules 26.3, 26.4, and 26.5 clarify the process for verifying provisional ballots. These amendments answer questions that arose in the 2008 general election and provide clear guidance well in advance of the 2010 general election.
- The amendments to Rule 26.1.2 and new Rule 26.10 clarify the treatment of the provisional ballot envelope and affidavit as an application for registration for future elections or as change to a voter registration record. These changes provide a clear process for updating voter registration records based upon the information provided on the affidavit.
- The revisions to Rule 30.1.6 clarify that a valid tribal identification card falls under a “government document” and is an acceptable form of identification under section 1-1-104(19.5)(VII), C.R.S. This amendment provides clarification for election workers and encourages voter participation by easing the burden on electors who may have no other form of identification.
- New Rule 30.11.3 implements changes made by House Bill 09-1336 regarding identification requirements for voting in-person by residents of a group residential facility. The rule establishes county procedures and clarifies what documentation is sufficient to

verify that an elector resides at a group residential facility as defined in section 1-1-104(18.5), C.R.S.

- Revisions to Rule 44 clarify the renewal and training requirements for voter registration drive (VRD) organizers. In particular, the amendments establish the same procedure for an initial VRD registration and VRD renewal, as well as provide for online training for all VRD organizers.
- New rule 51 clarifies the use of election forms approved and recommended by the Secretary of State in accordance with the “Uniform Election Code of 1992”. In particular the rule provides clarification for election officials and registration offices and to ensure uniformity in election forms. The rule also clarifies that while political parties and other organizations that provide election forms to the public for the purpose of registering or requesting a ballot may use the National Mail Voter Registration form, using the forms approved by the Secretary of State affords applicants and the organizations greater protection.

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.”

3. Section 1-1-109(3), C.R.S., which requires the Secretary of State to:

“promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as may be necessary. . . to specify what constitutes approved and acceptable forms certified for use. . . and any rules necessary to establish uniformity.”

4. Section 1-2-204(5), C.R.S., which requires the Secretary of State to:

“promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as may be necessary to determine the identity of a resident of a group residential facility, as defined in section 1-1-104(18.5), and any rules necessary to ensure the consistent application of such identification rules.”

5. Section 1-7.5-105(1.5)(b), C.R.S., which requires the Secretary of State to:

“adopt rules in accordance with the requirements of article 4 of title 24, C.R.S., as needed to implement [the requirements of this section].”

STATE OF COLORADO
Department of State
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Bernie Buescher
Secretary of State

William A. Hobbs
Deputy Secretary of State

NOTICE OF PROPOSED RULEMAKING

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

December 8, 2009

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2009), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **February 2, 2010 from 2:00pm to 4:00pm** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

Subject of the Proposed Rulemaking

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning registration and list maintenance, including the use of the National Change of Address database. The Secretary of State shall also consider rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

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 finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2009), 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]."

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 270, Denver, Colorado, 80290, or by calling (303) 894-2200,

Main Number (303) 894-2200
Administration (303) 860-6900
Fax (303) 869-4860


TDD (303) 869-4867
Web Site www.sos.state.co.us
E-mail administration@sos.state.co.us

extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **January 28, 2010** in accordance with section 24-4-103(4)(a), C.R.S., (2009), which states that “[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing.”

The rulemaking hearing on February 2, 2010 will be held in accordance with section 24-4-103, C.R.S. (2009). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on February 2, 2010 at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 8th Day of December, 2009.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO
Department of State
 1700 Broadway
 Suite 250
 Denver, CO 80290



Bernie Buescher
 Secretary of State

William A. Hobbs
 Deputy Secretary of State

Proposed Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules

December 8, 2009

1. Basis and Purpose

This proposed 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 proposed 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 proposed 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 proposed 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 proposed amendments and revisions to specific rules are necessary as follows:

- The proposed revisions to these rules would repeal the requirement that the Secretary of State utilize National Change of Address Database (NCOA), and would also preclude any county from utilizing the service to update the registration address of any registration record or change the status of an elector to "inactive." These amendments are proposed because Colorado election law provides for a comprehensive scheme of forwardable and non-forwardable mailings that effectively identify electors who may have moved and provide them with multiple opportunities to update their registration. These mailings serve the same purpose as use of NCOA information would, but in a more efficient and cost-effective manner. Further, any benefit that may be gained from also utilizing NCOA information is outweighed by the costs of its implementation and the risks associated with using the information. In particular, the Secretary has concerns regarding the accuracy of the NCOA information and the corresponding potential for errors that may result to electors' registration records based upon that the information.

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These revisions are proposed after consideration of comments received during the November 10, 2009 elections rulemaking hearing where clarifications to the NCOA process were considered. Those amendments would have required that where the information from NCOA indicates that an elector may have moved out of their current county, a confirmation card would be sent to the elector to provide the elector a notice that their record must be updated to reflect the current residential address. However, in the case of an elector who appears to have moved within the same county, the elector would not be subject to cancellation under Rule 2.18.3 and section 1-2-605, C.R.S., based upon the information from NCOA. During the course of that rulemaking, the office received a number of persuasive comments discussing the costs and risks associated with implementing such a process.

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.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

December 8, 2009

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

*A final copy of the proposed rule changes will be available to the public no later than **February 2, 2010**, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."*

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 2.18 would be amended as follows:

2 2.18 List Maintenance Pursuant to section 8 of the National Voter Registration Act of 1993.

3 2.18.1 When a voter information card or confirmation card is returned by the United
4 States Postal Service to the county clerk and recorder as undeliverable, the county
5 clerk and recorder shall mark the voter's record "Inactive – returned mail" and in
6 the case of a returned voter information card, shall mail a confirmation card.

7 2.18.2 National Change of Address (NCOA). COUNTIES MAY UTILIZE THE NCOA TO
8 SEND MAILINGS TO ELECTORS WHO MAY HAVE MOVED TO REQUEST THAT THE
9 ELECTORS UPDATE THEIR VOTER REGISTRATION RECORDS. HOWEVER, NO COUNTY
10 MAY UPDATE THE REGISTRATION ADDRESS OF ANY REGISTRATION RECORD OR
11 CHANGE THE STATUS OF AN ELECTOR TO "INACTIVE" BASED SOLELY UPON THE
12 INFORMATION PROVIDED BY NCOA. ~~No later than June 1 of every odd numbered~~
13 ~~year, the Secretary of State shall utilize the NCOA service to compare the records~~
14 ~~of all voters marked "Inactive – failed to vote" with the NCOA database.~~

1 a. ~~The Secretary of State shall forward a list to each county clerk and~~
2 ~~recorder of the records that appear to have a change of address based upon~~
3 ~~the NCOA comparison.~~

4 b. ~~The county clerk and recorder shall send a confirmation card to each voter~~
5 ~~who appears to have a change of address and shall mark the record~~
6 ~~“Inactive NCOA”.~~

7 2.18.3 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a
8 General Election, the county clerk and recorder in each county shall cancel only
9 the registrations of electors who have met the following requirements:

- 10 a. Whose records have been marked “Inactive – returned mail”, “inactive –
11 undeliverable”, ~~“Inactive NCOA”~~ or “Inactive – undeliverable ballot”;
- 12 b. Who have been mailed a confirmation card; and
- 13 c. Who have since failed to vote in two consecutive ~~federal~~ GENERAL
14 elections.

15 Rule 2.20 would be amended as follows:

16 2.20 Voter registration status designations.

17 2.20.1 Definitions

- 18 a. “Active status” or “active record” means that there are no conditions or
19 restrictions on the voter’s eligibility.
- 20 b. “Cancelled status” or “cancelled record” means that the voter’s
21 registration has been cancelled or revoked based upon a determination that
22 the voter is ineligible, or the applicant has been deemed not registered in
23 accordance with these rules and Title 1, C.R.S.; or the voter has withdrawn
24 their registration.
- 25 c. “Inactive – failed to vote status” means that the voter was active prior to a
26 ~~general election~~ GENERAL ELECTION, but subsequently failed to vote in
27 that ~~general election~~ GENERAL ELECTION.
- 28 d. ~~“Inactive NCOA status” means that the county clerk and recorder has~~
29 ~~received information from the United States Postal Service National~~
30 ~~Change of Address service.~~
- 31 eD. “Inactive – returned mail status” or “inactive – undeliverable status”
32 means that a voter information card or confirmation card was returned to
33 the county clerk and recorder by the United States Postal Service as
34 undeliverable.

1 fE. “Inactive – undeliverable ballot status” means that a voter was mailed a
2 ballot that was subsequently returned to the county clerk and recorder by
3 the United States Postal Service as undeliverable.

4 2.20.2. Effect of voter registration status designation

5 a. Active status or active record voters’ names will appear on the poll book,
6 they will be sent a ballot in a mail ballot election, and they will be sent
7 election notice mailings.

8 b. Cancelled status or cancelled record voters’ records will remain in the
9 statewide voter registration database; however, their names will not appear
10 on the poll book, they will not be sent a ballot in a mail ballot election, and
11 they will not be sent election notice mailings.

12 c. Inactive – failed to vote status voters are eligible voters; their names will
13 appear on the poll book and they will be sent election notice mailings.
14 Inactive – failed to vote voters will be sent a ballot in a mail ballot election
15 where specifically required by sections 1-7.5-107 and 1-7.5-108.5(b),
16 C.R.S.

17 ~~d. Inactive – NCOA status voters are eligible voters and their names will~~
18 ~~appear on the poll book. However, they will not be sent a ballot in a mail~~
19 ~~ballot election and they will not be sent election notice mailings.~~

20 eD. Inactive – returned mail status or inactive – undeliverable status voters are
21 eligible voters and their names will appear on the poll book. However,
22 they will not be sent ballots in a mail ballot election and they will not be
23 sent election notice mailings.

24 fE. Inactive – undeliverable ballot status voters are eligible voters and their
25 names will appear on the poll book. However, they will not be sent a
26 ballot in a mail ballot election and they will not be sent election notice
27 mailings.

28 [Sections 1-2-605(3) and (11), 1-5-206, 1-7-110, 1-7.5-107, and 1-7.5-108.5,
29 C.R.S.]