



## Notice of Temporary Adoption

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

July 15 2020

#### I. Adopted Rule Amendments

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

*Current 8 CCR 1505-1 is amended as follows:*

*Rule 15.9, temporarily adopted on May 30, 2020 and concerning circulation of petitions via mail or email, is amended and temporarily readopted in its entirety as follows:*

#### 15.9 Circulation of petitions via mail or email

15.9.1 For the purposes of this Rule 15.9, the following definitions apply:

- (a) ~~“Audio visual communication” means communication by which an individual is able to see, hear, and communicate with a remotely located individual in real time using electronic means.~~
- (b)-(A) “Collector” means an individual designated by a proponent to collect signer forms returned by eligible electors. Each collector must be:
- (1) At least 18 years old; and
  - (2) A citizen of the United States.
- (c)-(B) “Proponent” means the designated representatives of ~~a ballot issue or the AN~~ unaffiliated or independent candidate circulating petitions in accordance with this rule.
- (d) ~~“Real time” or “in real time” means, with respect to an interaction between individuals by means of audio video communication, that the individuals can see~~

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2019).

<sup>2</sup> Section 24-4-103, C.R.S. (2019).

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

~~and hear each other substantially simultaneously and without interruption or disconnection. Delays of a few seconds that are inherent in the method of communication do not prevent the interaction from being considered to have occurred in real time.~~

- ~~(e)~~(c) "Signer form" means the form that will be sent by a proponent to an eligible elector via mail or email which may be signed by an elector and returned to the proponent.
- ~~(f)~~(d) "Transcriber" means an individual designated by a proponent to transcribe the information found on a signer form onto a petition section. Each transcriber must be:
  - (1) At least 18 years old; and
  - (2) A citizen of the United States.

~~15.9.2 Rule 15.9 applies only to unaffiliated or independent candidates or ballot initiatives whose initial period of circulation has not expired.~~

~~15.9.3~~15.9.2 In the event that this Rule 15.9 conflicts with any other rule, the provisions of this rule apply.

~~15.9.4~~15.9.3 Proponents may continue to circulate petitions in-person following the procedures otherwise outlined in Rule 15.

~~15.9.5~~15.9.4 Proponents who wish to circulate petitions following the procedures set in this Rule 15.9 may do so while also circulating petitions in person.

~~15.9.6~~15.9.5 Application to circulate by email or mail

- (a) Proponents who wish to circulate via mail or email must notify the Secretary of State by sending an email to [ballot.access@sos.state.co.us](mailto:ballot.access@sos.state.co.us) that they intend to do so.
- (b) Petition template for state petitions circulated via mail or email
  - (1) Upon receipt of a request to circulate via mail or email the Secretary of State will create a separate fillable .pdf petition template for use when circulating under this rule.
  - (2) Petition proponents must use the Secretary of State's fillable .pdf petition template to create their petition format.
  - (3) After approval of the petition format as to form, proponents must print all petition sections in accordance with the Secretary of State's petition-printing guidelines.
  - (4) Any information appearing on a petition section that does not conform to the requirements of this Rule ~~15.9.6~~ 15.9.5 is not valid.
- (c) Signer form template for state petitions circulated via mail or email
  - (1) Proponents who intend to circulate via mail or email must submit their proposed signer form to the Secretary of State for review. The signer form must include space for:

- (A) The signer's name;
- (B) The signer's residence address;
- (C) The signer's signature;
- (D) The date of signature; and
- (E) For signer forms for candidates:
  - (i) The name of the candidate;
  - (ii) The office the candidate seeks;
  - (iii) The candidate's affiliation or party name, if applicable; and
  - (iv) A statement that the signer acknowledges, under penalty of perjury, that by signing this form they:
    - (I) Will be 18 years of age by the date of the next general election;
    - (II) Are registered or preregistered to vote in the State of Colorado;
    - (III) Want the candidate to appear on the 2020 general election ballot; and
    - (IV) Have not signed any other petition for any other candidate for the same office.

~~(F) For signer forms for ballot initiatives:~~

- ~~(i) The ballot title;~~
- ~~(ii) Directions for how the signer may view the full text of the measure and the fiscal impact statement. This may include:
 
  - ~~(I) For proponents circulating by email, by including a direct link to both the initiative and fiscal impact statement found on the Colorado Secretary of State's website;~~
  - ~~(II) For proponents circulating by mail, by including a direct link to both the initiative and fiscal impact statement found on the Colorado Secretary of State's website. Proponents including a direct link in a mailing must also provide a signer with the option to request a printed copy of the full text of the measure and fiscal and instructions about how to do so;~~
  - ~~(III) By including both as an attachment to an email; or~~~~

~~(IV) — By including both as a physical copy in a mailing.~~

~~(iii) — A witness name and signature; and~~

~~(iv) — A statement that the signer acknowledges, under penalty of perjury, that by signing this form they:~~

~~(I) — Are at least 18 years of age;~~

~~(II) — Are registered to vote in the State of Colorado; and~~

~~(III) — They want the measure to appear on the 2020 general election ballot.~~

(2) Upon receipt of the signer form, the Secretary of State will review to determine if the requirements of this rule have been met. Proponents may not begin circulation by email or mail until both the petition format and signer form have been approved by the Secretary of State.

(3) Any information appearing on a signer form that does not conform to the requirements of this Rule 15.9.6-15.9.5 is not valid.

#### 15.9.7-15.9.6 Circulation by mail or email

(a) In addition to circulating a petition format by hand, proponents who have had their petition format and signer form approved by the Secretary of State may send the signer form by mail or email to registered electors. Notwithstanding the prohibition of providing a thing of value to someone who signs a petition found in sections 1-13-401, and 1-40-111, C.R.S., a proponent may include a pre-paid return envelope in any mailing.

(b) Registered electors must complete all required fields in the form and include a wet signature. Forms returned lacking any required field or wet signature are not valid. Images of a form that include all required fields and a wet signature may be accepted by proponents.

(c) Any person, except a collector, may assist an elector in filling out a signer form by following the procedures set forth in section 1-4-904(4), C.R.S. ~~for candidate petitions or section 1-40-111(1), C.R.S. for ballot initiatives. A person who assists an elector under this rule may not also witness a signer form for a ballot initiative.~~

~~(d) — For ballot initiatives, a signer form must be witnessed by any registered elector in the State of Colorado either in person or remotely following the requirements of this rule.~~

~~(1) — A signer form may be witnessed by a registered elector who is not physically present with the signer if the witness uses a form of audio visual communication that allows the witness to view, in real time, the registered elector completing and signing the signer form.~~

~~(2) — If a signer form is being witnessed remotely, then the signer, upon completing the form and applying a wet signature, must transmit a legible copy of the form by fax, email, or other electronic means directly to the witness on the same date the signer signed the form. The witness must~~

~~print the form, apply a wet signature to the witness attestation, indicate on the form that the form was witnessed remotely, and transmit a legible copy of the form by fax, email, or other electronic means directly back to the signer. For collectors acting as witnesses, the collector must send a copy of the final signed form back to the signer, and may keep a signed copy for transcribing by the proponents.~~

~~(e) For ballot initiatives, a witness must attest that, under the penalty of perjury, to the best of the witness' knowledge and belief:~~

~~(1) The signature on the form is the signature of the person whose name it purports to be;~~

~~(2) The person signing the form was, at the time of signing, a registered elector; and~~

~~(3) If the witness viewed the signer completing the form using audio visual communication, the witness was able to view, in real time, the eligible elector completing and signing the signer form.~~

~~(f)(D) Once a signer form has been completely filled out, the registered elector must return the form to the proponent by mail or electronic delivery.~~

#### ~~15.9.8-15.9.7~~ Collection of signer forms

(a) Each proponent must designate at least one person to act as a collector for petitions circulated by mail or email.

(b) Upon receipt of a signer form, a collector must compile signer forms to be transcribed onto a single petition section.

(c) Before the signer forms are given to a transcriber to be transcribed onto a petition section, a collector must sign and notarize the collector affidavit for that section.

(d) The collector affidavit may be notarized in the physical presence of a notary public or remotely from a notary public.

(1) Notwithstanding Rule 5.2.2(a) of the remote notary rule found at 8 CCR 1505-11, temporarily adopted on March 30, 2020, A collector affidavit notarized remotely must follow the procedures outlined in those rules except:

(i) The original affidavit must be physically sent to the remote notary for notarization and the original returned to the collector following notarization; and

(ii) Upon receipt, the notary must affix the date on which the notary witnessed the collector signing the affidavit.

(2) In the event that remote notarization is no longer allowed either through executive order or under the law, a collector affidavit may only be notarized in the physical presence of a notary public.

#### ~~15.9.9-15.9.8~~ Transcribing signer forms onto petition sections

- (a) Each proponent must designate at least one person to act as a transcriber for petitions circulated by mail or email. A person may be designated to serve as both a transcriber and a collector.
- (b) Once a collector affidavit that is attached to a petition section has been signed and notarized by a collector, a transcriber may begin transcribing the information found on a signer form onto the petition section assigned by the collector.
  - (1) A transcriber must not change, correct, or add information when copying the signer information onto the petition section.
  - (2) A transcriber must write down all legible characters from the signer card into the appropriate fields on the petition. If an entire field on the signer card is illegible, the transcriber should write "ILLEGIBLE" in the corresponding petition field.
  - (3) If, upon review of the signer form, the transcriber finds that the voter ~~or witness~~ failed to sign the signer form, the transcriber must not transcribe the signer's information onto the petition.
  - (4) If, while transcribing, a transcriber makes an error, the transcriber must make a line through the signature line and record the information on the next blank signer line.
  - (5) A transcriber must not fill in the signature on the petition section.
  - (6) A transcriber must transcribe onto a petition section any written information included on a signer form indicating that an elector has been given assistance when filling out the signer form.
  - (7) A transcriber must write on the signer form the petition section number and line that the signer form information has been transcribed onto.
- (c) Once all the signer forms have been transcribed on a petition section, the transcriber must bundle the signer forms and label the bundle with the corresponding section number. Transcribers must set aside for later submission to the Secretary of State any signer forms that were not transcribed because they were not signed by the elector ~~or witness~~.
- (d) Once a transcriber has completed transcription of any section, the transcriber must sign the transcriber affidavit for that petition section. Any section submitted without a signed transcriber affidavit will not be accepted by the Secretary of State.

~~15.9.10~~ 15.9.9 Submission to the Secretary of State

- (a) Unless otherwise specified in this rule, the Secretary of State will receive petitions submitted in accordance with Election Rule 15.
- (b) Upon submission, proponent must indicate and separate those sections that were circulated in person and those sections that were circulated by mail or email.
- (c) At the time of submission, proponents must also submit to the Secretary of State each signer form received from a voter. The signer forms must be bundled and labeled with the corresponding section number on which they were transcribed.

Signer forms that were received by the proponents but not transcribed should be separately bundled and labeled "NOT TRANSCRIBED".

- (d) When submitting information required under section 1-4-905(5), C.R.S. for candidates and sections 1-40-111(4) and 1-40-121(2), C.R.S. for ballot initiatives, proponents must include the names and address of any collectors and transcribers and the sections they collected or transcribed.
- (e) Proponents of a ballot initiative circulating under this rule must submit their original petitions and any cure under Section 1-40-117(3)(b), C.R.S. no later than August 3, 2020.
- (f) Proponents of an unaffiliated or independent candidate circulating under this rule must submit their petitions no later than July 27, 2020.
- (g) Proponents of a ballot initiative who enter a cure period as defined by section 1-40-117 (3)(b), C.R.S. must submit their cure no later than 15 days after the statement of insufficiency has been issued.

#### ~~15.9.11~~ 15.9.10 Processing of petitions by the Secretary of State

- (a) Unless otherwise specified in this rule, the Secretary of State will process petitions submitted in accordance with Election Rule 15.
- (b) Circulator and transcriber affidavit
  - (1) If a petition section circulated by mail or email does not have a completed collector affidavit and transcriber affidavit, the Secretary of State will reject the entire section.
  - (2) If a petition section circulated by mail or email does not have a completed notary clause accompanying the collector affidavit, or if the date of the notary clause differs from the date the collector signed the affidavit, the Secretary of State will reject the entire section.
  - (3) A collector or transcriber affidavit for a candidate petition that is deficient under this rule may be cured in accordance with section 1-4-912(2), C.R.S.
- (c) No line on a petition section that is circulated by mail or email will be rejected because a signature is not present on the petition. Signer forms that do not contain an elector signature or witness signature are invalid, should not be transcribed, and may not be counted.
- (d) The Secretary of State will compare signatures found on an unaffiliated or independent candidate signer form or petition section to signatures found in the statewide voter registration database following the procedures listed in section 1-4-908(1.5), C.R.S.
- (e) The Secretary of State will provide notification of sufficiency or insufficiency to an unaffiliated or independent candidate no later than the deadline to certify ballot content for the 2020 general election.
- (F) THE SECRETARY OF STATE WILL ONLY ACCEPT INITIATIVE PETITIONS CIRCULATED IN PERSON IF THAT INITIATIVE PETITION'S PERIOD OF CIRCULATION HAD NOT EXPIRED AS OF THE ISSUANCE OF EXECUTIVE ORDER D 2020 065.

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

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

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

A statement of the Secretary of State’s findings to justify the immediate adoption of this new rule on a temporary basis follows this notice and is incorporated by reference.<sup>4</sup>

**IV. Effective Date of Adopted Rules**

These rule amendments are effective immediately.

Dated this 15th day of July, 2020,

Ian Rayder  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

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<sup>4</sup> Section 24-4-103(6), C.R.S. (2019).



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

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

**July 15, 2020**

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

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws,<sup>1</sup> improve elections administration in Colorado, and increase the transparency and security of the election process.

On March 10, 2020, the Colorado Governor declared a disaster emergency due to the COVID-19 contagion. On May 15, 2020, the Colorado Governor issued Executive Orders D 2020 064 and D 2020 065 authorizing the Secretary of State to establish temporary rules for registered electors to receive and return candidate and issue petitions over mail and email due to the presence of COVID-19. On July 1, 2020, the Colorado Supreme Court determined that several provisions of Executive Order D 2020 065 were unconstitutional. As a result, on July 10, 2020, the Colorado Governor issued Executive Order D 2020 128 repealing most of Executive Order D 2020 065. Accordingly, amended Rule 15.9 is immediately effective as is necessary to provide clear guidance to interested parties, including, but not limited to: petition proponents and designated agents, unaffiliated and independent candidates, designated petition circulators, and the general public:

- Amended Rule 15.9 establishes rules concerning candidate and issue petitions circulated via mail and email. The amended rule removes the procedures by which an initiative petition can circulate using mail or email because this method of circulation for initiative petitions has been found unconstitutional.

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<sup>1</sup> Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2019), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”
- Section 1-4-908(1), C.R.S. (2019), which authorizes the Secretary of State, “to establish guidelines for verifying petition entries,” for candidate petitions.
- Section 1-4-908(1.5)(b)(III), C.R.S., (2019), which authorizes the Secretary of State to promulgate rules regarding the verification of candidate petition signatures.
- Section 1-4-912(3), C.R.S., (2019), which authorizes the Secretary of State to promulgate rules regarding the cure of candidate petition affidavits.
- Executive Order D 2020 064 ordering the temporary Suspension of certain regulatory statutes concerning signature collection for unaffiliated and independent candidates and authorizing the Secretary of State to create temporary rules for registered electors to receive and return candidate petitions over mail and mail due to the presence of COVID19.
- Executive Order D 2020 128 rescinding the provisions of Executive Order D 2020 065.