Colorado Secretary of State 8/3/2021 Election Rulemaking

These proposed edits to the SOS draft are contributed by

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approved by Frank Atwood, Chair of the Approval Voting Party

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Only portions of the recent draft rule text are included here with inline edits and comments highlighted as follows:

Comments are highlighted in yellow.

INSERTS ARE IN GREEN AND LARGE FONT

deletions are in red and include strikeout

Other indications of ~~strikeout~~ are from the original tabulation process

2.13.2   In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a General Election, the ~~county clerk in each county must~~ SECRETARY OF STATE WILL PROPOSE cancelLATION OF the registrations of electors TO EACH COUNTY CLERK:

[Comment: SOS taking responsibility from counties will lead to less verification and less resilience. The SOS office has not been subject to watcher access but will be as various steps of the conduct of election are taken over.]

(a)   Whose records have been marked "Inactive – returned mail", "Inactive – undeliverable ballot", or "Inactive – NCOA"; AND

(b)   Who have been mailed a confirmation card; and

(c)   Who have ~~since~~ THEREAFTER failed to vote in two consecutive general elections.

New Rule 2.13.3, amendments to current Rule 2.13.3, repeal of 2.13.5, and necessary renumbering: ~~VOTERS WHO REQUEST AN EMERGENCY BALLOT BE SENT TO THEM ELECTRONICALLY MUST BE DIRECTED BY THE COUNTY CLERK TO THE ONLINE BALLOT DELIVERY SYSTEM MAINTAINED BY THE SECRETARY OF STATE TO RECEIVE THEIR BALLOT ELECTRONICALLY.~~

2.13.3   THE SECRETARY OF STATE WILL NOTIFY EACH COUNTY OF THE PROPOSED RECORDS CANCELLATION IN THAT COUNTY UNDER SECTION 1-2-605(7), C.R.S. ~~ONCE THE CANCELLATION IS COMPLETE.~~

2.13.3 2.13.4   The county must process all records designated for ~~cancelation~~ CANCELLATION by the Secretary of State TO DETERMINE WHICH ARE APPROPRIATE TO COMPLETE:

    (A)   ~~within~~ WITHIN 21 days of receipt; AND

    (B)   BEFORE THE COUNTY MAILS BALLOTS THROUGHOUT THE ELECTION

2.15.7   IF A COUNTY RECEIVES INFORMATION ~~FROM A JURISDICTION OUTSIDE OF COLORADO~~ INDICATING THAT A COLORADO VOTER MAY HAVE VOTED IN MORE THAN ONE STATE IN THE SAME ELECTION, THE COUNTY MUST SEND THAT INFORMATION TO THE SECRETARY OF STATE'S OFFICE FOR POTENTIAL INVESTIGATION AND PROSECUTION.

[COMMENT: WHY ONLY FROM A JURISDICTION OUTSIDE COLORADO?]

New Rule 7.3.2 and subsequent renumbering:

7.3.2   -THE SECRETARY OF STATE WILL MAINTAIN AND PROVIDE PUBLIC ACCESS TO USAGE INFORMATION REGARDING EMERGENCY BALLOTS ACCESSED USING THE ONLINE BALLOT DELIVERY SYSTEM.

[COMMENT: SOS HAS AN INSUFFICIENT TRACK RECORD OF RECORDKEEPING FOR ELECTRONIC BALLOTS (ONLINE VOTE SUBMISSION) USED BY UOCAVA, EMERGENCY AND VOTERS WITH DISABILITIES. THE CURRENT METHOD OF CENTRALIZATION OF THIS PROCESS AS PROPOSED BY THE SECRETARY OF STATE RELIES UPON AN IMPLIED EXPECTATION THAT ANY REQUEST WILL BE FULFILLED REGARDLESS OF REASON OR MEANINGFUL VERIFICATION. DECENTRALIZATION OF ELECTION PROCESSES OFTEN INCREASES SECURITY OF ELECTIONS. THE PROPOSED RULE CHANGE BY THE SOS TO CENTRALIZE THIS PROCESS WITHOUT PROPER VERIFICATION PROCEDURES FOSTERS DISTRUST, CONFUSION, AND IS AN UNNECESSARY CHANGE IN COLORADO ELECTIONS. WE REQUEST AN ADJUSTMENT IN THE RULE CHANGE TO SUPPORT DECENTRALIZATION OF THE VERIFICATION OF THE PROCESSING OF THESE ELECTRONIC VOTES. SOS MUST MAINTAIN INFORMATION AND PROVIDE IT TO THE PUBLIC. THE COUNTIES MUST MAKE THE DETERMINATION OF ELIGIBILITY OF THESE BALLOTS. FURTHERMORE OUR COUNTY CLERKS OUGHT TO BE EQUIPPED AND ALLOWED TO PROVIDE THEIR OWN WAY TO FULFILL EMERGENCY VOTING NEEDS.]

7.3.6 7.3.3   Upon receipt of the ballot, election judges must verify the signature on the affidavit under Rule ~~7.8~~ 7.7. After the signature on the affidavit has been verified, a bipartisan team of election judges must duplicate the ballot following the procedures outlined in Rule 18. Duplicating judges must avoid access to and not reveal voter intent in conjunction with voter identity. ~~how the elector has cast his or her ballot.~~

[Comment: This rule can and should be phrased better as shown above. The implication of the original is that a link between voter and ballot exists, but this link is unconstitutional.]

~~7.7~~ 7.6 Mail ballot cure procedures

~~7.7.1~~ 7.6.1   ~~If a mail or provisional ballot return envelope lacks a signature, or a ballot from a voter with a disability covered under section 1-5-706, C.R.S. is returned without an application, or is returned with an application that is not signed, the county clerk must~~

~~follow the procedures for discrepant signatures outlined in section 1-7.5-107.3(2)(a), C.R.S., except~~ EXCEPT as provided in Rule ~~7.7.4~~ 7.6.4, THE COUNTY CLERK MUST FOLLOW THE PROCEDURES FOR DISCREPANT SIGNATURES OUTLINED IN SECTION 1-7.5-107.3(2)(A), C.R.S., IF:

(A)   A MAIL BALLOT RETURN ENVELOPE LACKS A SIGNATURE;

(B)   A PROVISIONAL BALLOT RETURN ENVELOPE LACKS A SIGNATURE;

(C)   A BALLOT ~~FROM~~ RETURNED BY A VOTER ~~WITH A DISABILITY COVERED~~ UNDER SECTION 1-5-706, C.R.S., ~~IS RETURNED WITHOUT~~ DOES NOT INCLUDE AN APPLICATION; OR

(D)   A BALLOT RETURNED BY A VOTER ~~FROM A VOTER WITH A DISABILITY COVERED~~ UNDER SECTION 1-5-706, C.R.S., ~~IS RETURNED WITH~~ INCLUDES AN APPLICATION THAT IS NOT SIGNED ~~AND~~ OR DOES NOT INCLUDE A COPY OF AN ACCEPTABLE FORM OF IDENTIFICATION AS DEFINED BY SECTION 1-1-104(19.5), C.R.S.

[AS PROPOSED BY THE SECRETARY OF STATE, THIS IS AN ADDITION OF A LOOPHOLE THAT DEFEATS ANY EFFORT AT REMOTE ELIGIBILITY DETERMINATION BASED UPON APPLICABILITY CRITERIA. WHILE THIS LOOPHOLE WAS CREATED BY RECENT STATUTORY CHANGES, OUR REQUESTED ADJUSTMENTS IN THE PROPOSED RULES WOULD SPECIFY A WAY TO DETERMINE IF THE VOTER HAS FOLLOWED THE CRITERIA TO BE DEEMED AN ELIGIBLE VOTER (WHEN POSSIBLE.)]

(E)   BIPARTISAN ELECTION JUDGES MUST INTERACT WITH AND PROVIDE VERBAL OR WRITTEN ASSISTANCE TO THE VOTER WHO RETURNS A BALLOT UNDER SECTION 1-5-706 WHENEVER POSSIBLE.

~~7.8~~ 7.7 Signature verification procedures

~~7.8.1~~ 7.7.1   IF A single election judge ~~may~~ ~~MUST~~ conductS the first HUMAN level of signature verification THE DECISIONS MADE MUST BE SUBJECT TO REVIEW BY A NONPARTISAN TEAM AS PART OF A RANDOM AUDIT PRIOR TO OPENING THE ENVELOPE. ALL SIGNATURE VERIFICATION DECISIONS BEYOND THE FIRST HUMAN LEVEL MUST BE MADE BY A TEAM OF BIPARTISAN ELECTION JUDGES.

7.8.4(RENUMBER?) If an election judge must conduct further research on an elector's signature, he or she must check SCORE for additional documents signed by the voter, if available. THE SECRETARY OF STATE MUST MAINTAIN ACCURATE, TIMELY AND UNIQUE INSTANCES OF ELECTOR SIGNATURES IN SCORE.

New Rule 7.7.8:

7.7.8   THE SECRETARY OF STATE MUST ASSIST THE COUNTY CLERK ~~MUST~~ (VIA, E.G. SCORE) TO MAINTAIN AND PERIODICALLY PUBLISH RECORDS OF:

(A)   THE NUMBER AND RATE OF SIGNATURES ACCEPT ANCE ~~ED~~ AND REJECT ION ~~ED~~ BY EACH ELECTION JUDGE OR IF APPLICABLE, TEAM OR STATION PER RELEVANT AND ACCOUNTABLE SUBSET AND TIME PERIOD ~~BATCH.~~

(B)   ~~FOR ELECTION JUDGES CONDUCTING TIER 1 REVIEW,~~ AN ACCOUNTING OF SIGNATURES FIRST REJECTED ~~BY EACH ELECTION JUDGE AT THE FIRST LEVEL~~ WHICH WERE LATER ACCEPTED BY REASON OF ELECTION JUDGE DECISION, CURE OR OTHER REASON ~~AT THE SECOND LEVEL.~~

(C) THE NUMBER OF SIGNATURES MADE AVAILABLE TO REVIEW AND THE ONGOING STATUS OF EACH INCLUDING THE TIME AT WHICH THE STATUS HAS CHANGED,

(D) THE NUMBER OF LEVELS OF REVIEW OR TIMES EACH SIGNATURE HAS BEEN REVIEWED, AND

(E) THE NUMBER OF SIGNATURE PAIRS PROVIDED TO AUTOMATIC SIGNATURE VERIFICATION AND THE NUMBER APPROVED FOR COUNTING BY SOFTWARE PER APPLICABLE TIME PERIOD.

Amendments to Rule 7.8.8 including renumbering:

~~7.8.8~~ 7.7.9   ~~The~~ ~~FOR EVERY 150 BALLOTS REVIEWED BY EACH SIGNATURE VERIFICATION JUDGE,~~ THE county clerk must ~~periodically audit signature verification judges~~ MONITOR AND PERIODICALLY AUDIT ON AT MINIMUM A DAILY BASIS the information maintained by RULE 7.7.8. If a judge or team of judges has an unexplained, irregular acceptance, ~~or~~ rejection, OR OVERTURN rate, the county clerk MUST TAKE APPROPRIATE ACTION TO MAINTAIN ACCURACY AND EFFICIENCY AND NONPARTISAN OR BIPARTISAN INDEPENDENCE OF SIGNATURE VERIFICATION. THIS ACTION MAY INCLUDE ADDITIONAL TRAINING AND IF NECESSARY REASSIGNMENT OF THE ELECTION JUDGE IN CONSULTATION WITH THE APPOINTING PARTY IF APPLICABLE ~~MUST INFORM THE SECRETARY OF STATE'S OFFICE AND must retrain or remove that judge or team of judges from conducting signature verification~~. This information is to be made available for public inspection.

~~7.8.11~~ 7.7.13   Use of automated Signature Verification Devices under section 1-7.5-107.3(5)(b), C.R.S.

(a)   The county clerk must test Signature Verification Devices ~~before use in an election~~. before, during, and after an election.

(1)   The testing must verify the accuracy of the device and ensure that the device will not accept a signature that a reasonably trained election judge would reject.

(2)   The county must pull and test ~~a minimum of~~ AT LEAST ~~THE FIRST~~ A RANDOMLY CHOSEN 150 ballot envelopes OUT OF EACH 2000 received in the election and conduct an audit of the machine-verifICATION OF~~ied~~ signatures.

(A)   A team of bipartisan election ~~officials~~ JUDGES must manually review the signatures identified on the Automated Signature Recognition report following the procedures in section 1-7.5-107.3, C.R.S., and this Rule.

(B)   IF BOTH ELECTION JUDGES AGREE THAT A SIGNATURE ACCEPTED BY THE DEVICE ~~w~~SHOULD NOT HAVE BEEN ACCEPTED ~~IF REVIEWED BY ELECTION JUDGES,~~ THE COUNTY MUST IMMEDIATELY CEASE USE OF AUTOMATED SIGNATURE VERIFICATION AND NOTIFY THE SECRETARY OF STATE. THE COUNTY CLERK MUST NOT RESUME USE UNTIL THE SECRETARY OF STATE AND THE COUNTY HAVE WORKED IN COORDINATION TO IDENTIFY THE ISSUE AND MPLEMENT A SOLUTION FOLLOWING WHICH THE EQUIPMENT MUST BE RETESTED.

        ~~(B)~~ (C)   The election judges conducting the audit must sign and date the Automated Signature Recognition Report and the report must be maintained with all other election records under section 1-7-802, C.R.S.

(b)   The county must conduct a regular audit of each Signature Verification Device during its use.

    (1)   The county must pull a random sampling of at least ~~one~~ FIVE in every fifty machine-verified signatures daily.

    (2)   A team of bipartisan election judges must manually review the signatures identified on the Automated Signature Recognition report following the procedures in section 1-7.5-107.3, C.R.S., and this Rule.

    (3)   The election judges conducting the audit must sign and date the Automated Signature Recognition Report and the report must be maintained with all other election records under section 1-7-802, C.R.S.

    (4)   If ~~the device fails the audit~~ BOTH ELECTION JUDGES AGREE THAT A SIGNATURE ACCEPTED BY THE DEVICE ~~w~~SHOULD NOT HAVE BEEN ACCEPTED ~~IF REVIEWED BY ELECTION JUDGES~~, the county must immediately cease use of automated signature verification and notify the Secretary of State. The Secretary of State and the county must work in coordination to identify the issue and implement a solution AND RETEST.

    (5)   NO LATER THAN 30 DAYS AFTER ELECTION DAY, THE COUNTY CLERK MUST PROVIDE TO THE SECRETARY OF STATE A REPORT OF THE ENVELOPE AND AFFIDAVIT SIGNATURES ~~BALLOTS~~ AUDITED UNDER THIS RULE ON THE FORM APPROVED BY THE SECRETARY OF STATE AND AVAILABLE FOR INSPECTION.

~~7.12~~ 7.11   At each Voter Service and Polling Center, election judges and, if appropriate, election staff, must:

    ~~7.12.1~~ 7.11.1   Provide all services outlined in 1-5-102.9, C.R.S., INCLUDING PROVIDING BLANK CURE FORMS AND COLLECTING COMPLETED CURE FORMS FOR VOTERS WHO WISH TO CURE THEIR BALLOT IN ACCORDANCE WITH SECTIONS 1-2-502.5 (4)(C), 1-7.5-107 (3.5)(D), OR 1-7.5-107.3 (1.5), C.R.S.; and

    ~~7.12.2~~ 7.11.2   Use ONLINE ACCESS TO ~~Web~~SCORE to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots AND AT THE DISCRETION OF THE COUNTY CLERK, PERFORM SIGNATURE VERIFICATION WHILE THE VOTER IS PRESENT.

8.10.2   Watchers must be permitted access that would allow them to attest to the accuracy of election-related activities. This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens and reasonable proximity to hear election-related discussions between AND AMONG election judges, STAFF, and electors. WATCHERS MUST BE PERMITTED ACCESS TO VERIFY THE PROPER CONDUCT OF THE ELECTION AND TO DOCUMENT INSTANCES OF IMPROPER ACTIVITY AND POOR PRACTICES WHEN PRESENT.

    (a)   Election activities include BUT ARE NOT LIMITED TO:

(0) BALLOT PRINTING, TESTING,ISSUANCE, ADDRESSING, BALLOT ENVELOPE CONTENT ASSEMBLY, AND MAILING.

(1) Setup and breakdown of Voter Service and Polling Centers.

(2) Voter check-in and registration activities.

(3) Ballot receipt and processing.

(4) Signature verification of mail ballot envelopes at a close enough distance OR ADEQUATE RESOLUTION IF BY VIDEO STREAM to read AND VERIFY the signature at close enough distance to challenge the signature.

(4.5) ENVELOPE CURE

(5) Ballot duplication.

(6) Ballot tabulation.

(7) The logic and accuracy test and post-election audit.

(8) Provisional ballot processing.

(9) UOCAVA AND EMERGENCY AND DISABILITY ballot processing.

(10) Canvass.

(11) Recount.

(b) Witness and verify means to personally observe actions of election officials (AS DEFINED IN C.R.S. TITLE 1) in each step of the conduct of an election AND TO RECORD AND AT WATCHER DISCRETION TO PRESENT TO APPROPRIATE AUTHORITY ANY SUBSTANTIVE INFORMATION THAT SUPPORTS COMPLAINT OR CRITICISM OR COMMENDATION.

8.15 8.14   A WATCHER MAY NOT: A watcher may not: A COUNTY CLERK MUST REVOKE THE CERTIFICATE OF

[COMMENT: THIS IS AN UNNECESSARY OVERREACH TO PREVENT REASONABLE DISCRETION ON THE PART OF THE COUNTY TO SOLVE A PROBLEM WITH A WATCHER]

8.15.1 8.14.1   Personally interrupt INTERRUPTs or disrupt DISRUPTs the processing, verification, and counting of any ballots or any other stage of the election, except as permitted by the county clerk under Rule 8.13. INCLUDING LODGING REPEATED CHALLENGES OF VOTERS OR MAIL BALLOTS ON BASES THAT ARE NOT AUTHORIZED BY STATUTE OR THESE RULES AFTER BEING ADVISED THAT SUCH BASES ARE NOT AUTHORIZED.

8.15.2 8.14.2   ~~Write~~ ~~WRITES down any ballot numbers or any other~~ REVEAL TO PERSONS NOT UNDER SIMILAR RESTRICTIONS (AS ELECTION OFFICIALS ARE) ANY personally identifying information about the electors.

[Comment: this original text prevents the watcher from following statute to "witness and verify"]

8.15.3 8.14.3   ~~Touch~~ TOUCHE~~s~~ or ~~handle~~ HANDLE~~s~~ the official signature cards, ballots, mail ballot envelopes, provisional ballot envelopes, voting or counting machines, or machine components.

8.15.4 8.14.4   ~~Interfere~~ INTERFERE~~s~~ with the orderly conduct of any election process, including issuance of ballots, receiving of ballots, and voting or counting of ballots.

8.15.5 8.14.5   ~~Interact~~ COMMUNICATE~~s~~ with election judges ~~ABOUT THAT JUDGE'S DUTIES WHETHER OR NOT THAT ELECTION JUDGE IS CURRENTLY ON DUTY~~, DURING THE DISCHARGE OF THAT JUDGE OR OFFICIAL'S DUTIES UNLESS THE JUDGE IS THE ~~other than a~~ designated watcher contact ~~except as permitted by the county clerk under Rule 8.13~~.

8.15.6 8.14.6   ~~Use~~ USE~~s~~ a mobile phone or other electronic device to make or receive ~~a~~ AN AUDIO call in any polling location WHILE VOTERS ARE VOTING UNLESS OTHERWISE APPROVED BY THE COUNTY CLERK OR BY COUNTY POLICY ~~or other place election activities are conducted~~.

[Comment: this rule should be aimed at preventing distraction rather than limiting communication abilities of watchers. Voters may be allowed to use cell phones. County discretion should apply to the use of cell phones by watchers for voice calls. Texts should not be restricted.]

8.15.7 8.14.7   ~~Use~~ ~~USES any electronic device to take or record pictures, video, or audio in any polling location or other place election activities are conducted.~~ RECORD IMAGES OR VIDEO OR AUDIO OF VOTERS WHILE VOTING OR OFFICIALS PRESENTING SECURITY CREDENTIALS OTHER THAN BY PRIOR ARRANGEMENT AND APPROVAL OF THE VOTERS AND THE OFFICIALS PRESENT.

8.15.8 8.14.8   ~~Unless otherwise approved by the county clerk, have~~ UNLESS OTHERWISE APPROVED BY THE COUNTY CLERK OR BY COUNTY POLICY, HAVE ~~AS~~ in ~~his or her~~ THEIR OPEN AND VISIBLE possession any mobile phone or other electronic device while watching election activities where voters' confidential or personally identifiable information is within view.

8.15.9 8.14.9   ~~Attempt~~ ATTEMPT~~s~~ to determine how any elector voted.

8.15.10 8.14.10   ~~Disclose~~ DISCLOSE~~s~~ or ~~record~~ RECORD~~s~~ any confidential voter information as defined in section 24-72-204(8), C.R.S., that he or she may observe.

8.15.11 8.14.11   ~~Disclose~~ DISCLOSES any results before the polls have closed.

8.14.12 ATTEMPTS TO INTIMIDATE OR INTERFERE WITH AN ELECTION JUDGE OR OTHER ELECTION OFFICIAL~~s~~ DURING THE DISCHARGE OF THAT JUDGE OR OFFICIAL'S DUTIES.

Amendments to Rule 9.2 including New Rules 9.2.1, 9.2.2(a)(1-4), 9.2.2(b)(1-4), 9.2.3, 9.2.4; Repeal of current Rule 9.2.2; and necessary renumbering:

9.2   Challenging a mail ballot voter

9.2.1 CHALLENGES OF A MAIL BALLOT MUST BE MADE IN WRITING ON THE FORM APPROVED FOR USE BY THE SECRETARY OF STATE AND MUST INCLUDE ALL INFORMATION REQUIRED ON THE FORM. ONCE FILLED OUT, THE CHALLENGE MUST BE DELIVERED TO A SUPERVISOR JUDGE WHO DID NOT MAKE THE CHALLENGE. THE ELECTION JUDGE WHO RECEIVES THE CHALLENGE MUST ATTACH THE CHALLENGE FORM TO THE MAIL BALLOT BEING CHALLENGED AND PROCESS THE CHALLENGE IN ACCORDANCE WITH THIS RULE 9.

9.2.1 9.2.2 If an individual challenges a mail ballot ~~under section 1-9-207, C.R.S.,~~ FOR FORGERY OF A DECEASED PERSON'S SIGNATURE ON THE MAIL BALLOT ENVELOPE OR FOR SUBMISSION OF MULTIPLE BALLOTS BY THE SAME VOTER FOR THE SAME ELECTION, the RECEIVING election judge OR OTHER APPLICABLE OFFICIAL must forward the ballot to two other election judges of different political party affiliations ~~DESIGNATED BY THE COUNTY CLERK~~ who must JOINTLY review the elector's eligibility to vote. ~~AT THEIR REQUEST, THE~~ ELECTION JUDGES MAY RECEIVE ASSISTANCE IN MAKING THEIR ELIGIBILITY DETERMINATION FROM COUNTY CLERK STAFF UPON REQUEST BY THE JUDGES. A CHALLENGE FOR SUBMISSION OF MULTIPLE BALLOTS UNDER THIS RULE DOES NOT APPLY TO AN UNAFFILIATED VOTER WHO RETURNS MORE THAN ONE PARTY'S BALLOT UNLESS THE DISPOSITION OF THE BALLOTS IS NOT LEGAL.

(a) If both election judges determine the ~~elector is not eligible under section 1-9-207, C.R.S., the judges must follow the procedures in section 1-7.5-107.3(2), C.R.S.~~ MAIL BALLOT SHOULD NOT BE COUNTED BECAUSE THEY BELIEVE IT CONTAINS A FORGERY OF A DECEASED PERSON'S SIGNATURE ON THE MAIL BALLOT ENVELOPE, OR THEY BELIEVE IT IS ONE OF MULTIPLE BALLOTS CAST BY THE SAME VOTER FOR THE SAME ELECTION, THEN THE FOLLOWING STEPS MUST BE TAKEN BY THE COUNTY CLERK:

[COMMENT: THE EXTREME LIMITATION ON CHALLENGE REPRESENTED BY THIS NEW RULE IS REQUIRED BY SECTION 65 OF SB-21-250. THE SECTION IS AN OUTRAGEOUS OBSTRUCTION OF CITIZEN RIGHTS TO CHALLENGE ON THE BASIS OF ELIGIBILITY WHERE THE COLORADO SYSTEM FOR ELIGIBILITY DETERMINATION IS KNOWN TO BE LESS THAN IDEAL AND SUSCEPTIBLE TO POTENTIAL MISTAKE AND MISUSE BY VOTERS AND BY NON-VOTERS AS WELL AS TO ERROR BY ELECTION JUDGES AND SUPERVISORY OFFICIALS. THERE IS A TANGIBLE NEED FOR OVERSIGHT INCLUDING A REMEDY FOR ERROR IN ELIGIBILITY DETERMINATION. THE CURRENT RULE DOES FOLLOW THE REQUIREMENT OF SB-250 BUT THAT LEGISLATION IS DEFECTIVE AND WILL NOT PROMOTE ELECTION INTEGRITY. THESE STATUTORY AND RULE CHANGES ARE NOT NECESSARY IN COLORADO ELECTIONS.]

(1) THE COUNTY CLERK MUST SEND TO THE CHALLENGED VOTER:

(A) NOTIFICATION THAT THEIR BALLOT HAS BEEN CHALLENGED;

(B) A COPY OF THE CHALLENGE FORM;

(C) A FORM FOR THE ELIGIBLE ELECTOR TO RETURN CONFIRMING THAT THE ELECTOR RETURNED THEIR MAIL BALLOT OR DID NOT RETURN MORE THAN ONE MAIL BALLOT AS APPLICABLE;

(D) INSTRUCTIONS TO THE ELIGIBLE ELECTOR TO RETURN A COPY OF THE ELECTOR'S IDENTIFICATION AS DEFINED IN SECTION 1-1-104 (19.5); C.R.S., AND

(E) NOTIFICATION TO THE ELIGIBLE ELECTOR THAT THE CHALLENGE AND ELECTOR'S RESPONSE MUST BE REFERRED TO THE DISTRICT ATTORNEY UNDER SECTION 1-9-209, C.R.S.

(2) NOTIFICATION OF THE CHALLENGE MUST BE SENT WITHIN THREE DAYS AFTER THE CHALLENGE HAS BEEN MADE, BUT NO LATER THAN TWO DAYS AFTER ELECTION DAY.

(3)   THE CHALLENGED BALLOT MUST BE COUNTED IF THE BALLOT IS OTHERWISE VALID AND THE COUNTY CLERK RECEIVES THE FORM FROM THE ELIGIBLE ELECTOR WITHIN EIGHT DAYS AFTER ELECTION DAY, INCLUDING:

  (A)   A STATEMENT THAT THE ELECTOR RETURNED A MAIL BALLOT TO THE COUNTY CLERK AND RECORDER OR DID NOT VOTE MORE THAN ONCE IN AN ELECTION AS APPLICABLE; AND

  (B)   A COPY OF THE ELECTOR'S IDENTIFICATION AS DEFINED IN SECTION 1-1-104 (19.5), C.R.S.

(4)   IF THE COUNTY CLERK RECEIVES A FORM INDICATING THAT THE ELECTOR DID NOT RETURN A BALLOT TO THE COUNTY CLERK, OR IF THE ELIGIBLE ELECTOR DOES NOT RETURN THE FORM WITHIN EIGHT DAYS AFTER ELECTION DAY, THE SELF-AFFIRMATION ON THE RETURN ENVELOPE MUST BE CATEGORIZED AS INCORRECT, AND THE BALLOT MAY NOT BE COUNTED.

[COMMENT: THE WAY THIS IS WRITTEN IT IS APPARENT THAT THIS CHALLENGE IS THE ACTION TAKEN BY ELECTION JUDGES TO CONTEST THE ELIGIBILITY OF THE VOTER AS PART OF THE REGULAR PROCESS OF SIGNATURE VERIFICATION. IF NOT, THEN THE RELATIONSHIP OF THE TWO IS LEFT UNCLEAR. THE CHALLENGE PROCESS MUST REMAIN IN PLACE IN ORDER TO PROVIDE OVERSIGHT AND REMEDY OF THE ELECTION JUDGE DECISIONS REA\GARDING ELIGIBILITY, NOT ONLY TO REMEDY POTENTIAL FRAUD BY AN INELIGIBLE WOULD-BE VOTER. THIS RULE CHANGE AS PROPOSED BY THE SECRETARY OF STATE WILL ADD CONFUSION AND PARTISANSHIP TO THE PROCESS. WE REQUEST THIS RULE CHANGE AS PROPOSED NOT BECOME PERMANENT.

(b)   If ~~both~~ EITHER election ~~judges determine~~ JUDGE DETERMINES the ~~elector is eligible and that elector's signature is valid~~, CHALLENGE SHOULD BE REJECTED, THEN THE COUNTY CLERK ~~the election judges~~ must count the elector's ballot IF IT IS OTHERWISE VALID. UNLESS THE CHALLENGE IS WITHDRAWN, THE COUNTY CLERK MUST SEND THE CHALLENGED VOTER:

(1)   A COPY OF THE CHALLENGE ALONG WITH NOTIFICATION THAT THE CHALLENGE WAS REJECTED;

(2)   NOTIFICATION THAT THE BALLOT WAS COUNTED;

(3)   INSTRUCTIONS TO THE ELECTOR ALLOWING THEM TO OTHERWISE RESPOND TO THE CHALLENGE; AND

(4)   NOTIFICATION THAT THE CHALLENGE AND ELECTOR'S RESPONSE MUST BE REFERRED TO THE DISTRICT ATTORNEY UNDER SECTION 1-9-209, C.R.S.

9.2.2   ~~Unless the challenge is withdrawn, the county clerk must notify a voter whose ballot was challenged. The notification must include a copy of the challenge form, the disposition of the ballot, and a statement that the matter will be referred to the district attorney under section 1-9-209, C.R.S. The county clerk must provide a copy of the notification to the challenger upon request.~~

9.2.3   IF AN INDIVIDUAL CHALLENGES A MAIL BALLOT FOR ANY REASON OTHER THAN FOR FORGERY OF A DECEASED PERSON'S SIGNATURE OR FOR SUBMISSION OF MULTIPLE BALLOTS CAST BY THE SAME VOTER FOR THE SAME ELECTION, THE ELECTION JUDGE MUST FORWARD THE CHALLENGE TO THE COUNTY CLERK AND OTHERWISE PROCESS THE MAIL BALLOT AS NORMAL. UNLESS THE CHALLENGE IS WITHDRAWN, THE COUNTY CLERK MUST SEND THE CHALLENGED VOTER:

(A)   A COPY OF THE CHALLENGE;

(B)   NOTIFICATION THAT THE BALLOT WAS COUNTED;

(C)   INSTRUCTIONS TO THE ELECTOR ALLOWING THEM TO OTHERWISE RESPOND TO THE CHALLENGE; AND

(D)   NOTIFICATION THAT THE CHALLENGE AND ELECTOR'S RESPONSE MUST BE REFERRED TO THE DISTRICT ATTORNEY UNDER SECTION 1-9-209, C.R.S.

9.2.4   FOLLOWING THE ELECTION, THE COUNTY CLERK MUST SEND A COPY OF ALL CHALLENGES THAT HAVE NOT BEEN WITHDRAWN, ALONG WITH ANY RESPONSES RECEIVED FROM THE CHALLENGED VOTERS, TO THE DISTRICT ATTORNEY AS REQUIRED BY SECTION 1-9-209, C.R.S.

[COMMENT: THE ABOVE LANGUAGE IS SPECIFICALLY A MED AT REMOVING REMAINING VESTIGES OF CITIZEN OVERSIGHT OVER CRUCIAL DECISIONS THAT AFFECT ELECTION OUTCOMES- EVEN IF WATCHERS RETAIN RIGHTS TO "OBSERVE" ELECTION JUDGES PERFORMING SIGNATURE VERIFICATION. THE SB-250 REDUCTION OF THE SCOPE OF THE ELIGIBILITY CHALLENGE TO REMOVE THE CRUCIAL SIGNATURE FROM EVIDENCE FOR CHALLENGE IS NOT NECESSARY. SUCH RULE CHANGES AS PROPOSED ARE LIKELY TO DECREASE TRUST, VOTER ENGAGEMENT, AND WILL INCREASE THE LIKELIHOOD OF LITIGATION TO REMEDY ISSUES IN ELECTIONS AND THUS INCREASE COSTS FOR COLORADO TAXPAYERS.THE CURRENT SYSTEM HELPED RESOLVE CONCERNS QUICKLY AND INCREASED TRUST WHILE REDUCING COSTS. THE PARTISAN ASSAULT ON CITIZEN OVERSIGHT IN ELECTIONS MUST END FOR THE SAKE OF ALL COLORADO VOTERS..]

Amendments to Rule 10.1.5 concerning precanvass accounting:

10.1.5   ~~Designated Election Official's disposition of forms~~

(a)   The designated election official must review the Statement of Ballots forms for completion and accuracy.

(b)   If the designated election official or the canvass board discovers a problem with a Statement of Ballots form that cannot be easily resolved, they may contact the election judges for an explanation or correction.

[Comment: restore this rule 10.1.5.b. This is a substantial element of the role of the Canvass Board.The well trained members of the Canvass Board must have the right and responsibility to perform investigation and to access all election records.]

Amendments to Rule 10.2.5 concerning appointment to the Canvass Board:

10.2.5   ~~Appointment of Canvass Workers~~ The designated election official IN CONSULTATION WITH THE CANVASS BOARD may appoint canvass workers to help prepare and conduct the canvass.

Amendments to Rules 10.3 including repeal of Rule 10.3.3 and necessary renumbering:

10.3   Duties of the Canvass Board

10.3.1   The canvass board must make its determinations by majority vote in accordance with section 1-10-101.5(1)(c), C.R.S.

10.3.2   The canvass board's ~~ONLY~~ duties are to:

(a)   Conduct the canvass ~~AND CERTIFY THE OFFICIAL ABSTRACT OF VOTES~~ in accordance with section 1-10-101.5, C.R.S., INCLUDING BY:

   (1)   Account and balance the election and certify the official abstract of votes;

   (2)(1) Reconcile ~~RECONCILING~~ the number of ballots counted to the number of ballots cast; and

   (3)(2) Reconcile ~~RECONCILING~~ the number of ballots cast to the number of voters who voted by reviewing the reconciled detailed ballot logs and Statement of Ballots.

(b)   Observe the post-election audit in accordance with section 1-7-514(4), C.R.S., and Election Rule 25.2 or 25.3;

(c)   In coordination with the county clerk, investigate and report discrepancies found in the audit under section 1-7-514(2), C.R.S.; and

(d)   Conduct any recount in accordance with section 1-10.5-107, C.R.S., and this Rule. The canvass board's role in conducting a recount includes selecting ballots for the random test, observing the recounting of ballots, and certifying the results.

10.3.3 If the board identifies a discrepancy in a Statement of Ballots form, the board may review the particular ballots at issue to identify, correct, and account for the error.

[Comment: Restore this rule 10.3 to original. The canvass board role in Colorado has been evolving into a vestigial role while other states have substantive roles for supervisory boards consisting of citizens - such as Boards of Elections - who are not employees of officials and have independence from the officials who control the management of the election. This progression away from citizen involvement is directly detrimental to the "gold standard" that Colorado would like to claim. The canvass board is already dominated by a partisan clerk who may unbalance the board as a partisan. This itself is a problem that Colorado should address and has not. In previous policymaking, Colorado has weakened the minority party on the Canvass Board by requiring only a majority vote among potentially only three members with the county clerk as the deciding vote. The Canvass Board can perform well only when the clerk agrees with at least 50 percent of the bipartisan canvass board members, or if a majority of bipartisan canvass board members agree to overrule the clerk. County clerks across Colorado, regardless of party, take great care to support the Canvass Board to perform their duties. Only once in the past 15 years has any county not obtained certification by the Canvass Board, and that election was nevertheless certified by the Secretary of State's office. There is no valid or viable reason to gut the role of Canvass Boards. The status quo represents an extremely high bar to meet and there is no necessity to eliminate this rule. The Secretary of State claims the reason is for "equity" of Canvass Boards but this represents a dangerous standard. Canvass Boards must have the ability to meet the needs of the county from which they are appointed. It is unreasonable to expect every Canvass Board to act exactly the same when the number of voters and issues raised in each county are not the same. The draft Rule for 10.3 would only create confusion and distrust in Colorado elections.]

~~10.3.4~~ 10.3.3   The canvass board may not perform duties typically reserved for election judges, including:

(a)   Determining voter intent;

(b)   Evaluating voter eligibility, ~~INCLUDING REVIEWING SIGNATURES THAT HAVE BEEN ACCEPTED OR REJECTED;~~ and

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(c) ~~Requesting new logs or reports that were not created to conduct the election.~~

[Comment: This is tantamount to a gag rule applied to a formally constituted citizen supervisory body intended to provide independence from the authority of the County Clerk and Recorder. Now is the time to correct the mistake. 10.3 (a) and especially the addition to (b) are needless attempts to curtail the opportunity for citizen oversight of Colorado elections potentially for partisan gain. When Colorado implements an eligibility audit it will want to give the Canvass Board access to the data in order to oversee the audit process if not be directly involved. There is no rational explanation for removing the Canvass Board from this responsibility while allowing election officials including the County Clerk and Recorder to exercise authority that permits involvement in such "duties typically reserved for election judges". Canvass Boards should canvass the work of election judges, workers, and officials as a whole to build up the confidence of Colorado voters in their elections.]

~~10.3.5~~ 10.3.4 ~~Role of Watchers.~~ Watchers appointed under section 1-10-101(1)(a), C.R.S., may observe the board while it performs its duties, subject to Rule 8.

New Rule 10.6.3 concerning official abstract and reporting to the Secretary of State:

10.6.3 IF A MAJORITY OF THE CANVASS BOARD VOTES NOT TO CERTIFY THE ABSTRACT OF VOTES CAST OR DOES NOT MAKE A FINAL DETERMINATION BY THE DEADLINE TO CERTIFY THE ABSTRACT OF VOTES CAST, THE COUNTY CLERK MUST FORWARD THE ABSTRACT THAT HAS NOT BEEN CERTIFIED TO THE SECRETARY OF STATE ALONG WITH A REPORT FROM THE CANVASS BOARD DESCRIBING WHY THE ABSTRACT HAS NOT BEEN CERTIFIED. UPON RECEIVING AN ABSTRACT UNDER THIS RULE, OR IF THE COUNTY CLERK DOES NOT PROVIDE THE ABSTRACT TO THE SECRETARY OF STATE BY THE DEADLINE TO CERTIFY THE ABSTRACT OF VOTES CAST, THE SECRETARY OF STATE **WILL CONSIDER WHETHER TO CANVASS THE RETURNS** UNDER SECTION 1-10-104, C.R.S.

[COMMENT: THE ABOVE EMBOLDENED TEXT SIGNIFIES A PORTION OF THIS RULE THAT DESERVES ATTENTION. THE SOS APPEARS TO BE PROMULGATING AN AUTHORITY TO CANVASS A COUNTY CONTEST INTENDING TO CERTIFY IN LIEU OF THE APPROPRIATE COUNTY AUTHORITY - THE CANVASS BOARD (OR IN OPPOSITION TO PORTIONS THEREOF). THAT BODY MAY HAVE CHOSEN NOT TO CERTIFY FOR A REASON. THIS RULE OUGHT TO BE VETTED VERY CAREFULLY AS THE STATUTE LACKS CLARITY AND MENTIONS SOS IN PARALLEL WITH THE COUNTY CLERK AND CANVASS BOARD (ON WHICH THE CLERK GENERALLY SERVES) AS IF THEY HAVE OVERLAPPING AUTHORITY BECAUSE DIFFERENT CONTESTS ARE CERTIFIED BY THESE DIFFERENT ENTITIES. WE REQUEST FURTHER CLARIFICATION AND VETTING OF THIS RULE CHANGE TO PREVENT INCREASED CONFUSION IN COLORADO ELECTIONS]

Amendments to Rule 10.8.2 concerning the Secretary of State's role concerning the caNvass board:

10.8.2 ~~The county clerk or the ANY canvass board MEMBER may request that the Secretary of State provide guidance and support to the canvass board in the exercise of the board's duties.~~

[Comment: This revision takes a bad rule and makes it even worse. What role does the SOS have in interfering with the certification decisions to be made by the county board? The attempt here is to invite involvement where the SOS does not have authority. The SOS does have certification authority for multi-county and statewide contests and this rule is not needed to substantiate that authority. This rule attempts to invoke statewide authority over a county specific process. It should be deleted.]

15.1.4   Verifying individual entries

(a)   Staff will check each individual entry against the information contained in SCORE.

(b)   Staff will create and maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.

(c)   If an entry does not match the signor's current information in SCORE, staff must check the signor's information in SCORE as of the date the signor signed the petition.

(d)   Secretary of State or DEO staff will reject the entry if:

(1)   The name on the entry is not in SCORE;

(2)   The middle initial or middle name on the entry does not match the middle initial or middle name in SCORE;

(3)   The address on the entry does not match the ~~RESIDENTIAL~~ address in SCORE;

(4)   ~~The address on the entry is a post office box;~~ THE ENTRY INCLUDES NO RESEMBLANCE TO ADDRESSES WITHIN SCORE.

[COMMENT: REGARDING (3) AND (4) ABOVE: THIS IS ALREADY LEADING TO A LOT OF ISSUES FOR CANDIDATES AND PETITIONS. AS IT STANDS NOW, THIS RULE THREATENS SYSTEMIC VOTER DISENFRANCHISEMENT IN THE PETITION PROCESS, CONSIDERABLE CONFUSION FOR VOTERS AND PETITIONERS, AND DOES NOT INCREASE THE INTEGRITY OF COLORADO ELECTIONS. AUTOMATIC VOTER REGISTRATION (AVR) IS ADDING CONFUSION AND ERRORS INTO THE ADDRESSES IN SCORE. IT ELIMINATES AND/OR REDUCES VOTER AWARENESS AND CHOICE IN REGISTRATION AND THIS PROCESS FURTHER AMPLIFIES THE IMPACT OF MISTAKES MADE BY THE NEW AVR SYSTEM. COLORADO IS NOT READY YET FOR THIS LEVEL OF ACCURACY IN HAND ENTERED ADDRESSES ON PETITIONS. IT IS REGRETTABLE AND WORTHY OF CONSIDERATION THAT WHILE THE SOS INTENDS TO MAKE VOTING AS CONVENIENT AS POSSIBLE WITH MAXIMUM LENIENCY FOR ERRORS IN ELIGIBILITY TO VOTE AND MINIMUM VERIFICATION, THE OFFICE APPARENTLY WISHES CITIZEN ACCESS TO THE BALLOT TO BE THE OPPOSITE- AS HARD TO DO AND AS MUCH SUBJECT TO VERIFICATION AS POSSIBLE. INSTEAD, WE REQUEST THE SECRETARY OF STATE TO INCREASE THE ABILITY OF VOTERS TO MAKE CORRECTIONS TO THEIR VOTER REGISTRATIONS AFTER AVR UPDATES AND TO INCREASE THEIR ABILITIES TO PARTICIPATE IN THE PETITION PROCESS.]

(5)   ~~The entry is incomplete;~~

~~(6)~~ (4)   The signer completed the entry before the designated election official approved the petition format;

~~(7)~~ (5)   The signer was not an eligible elector at the time he or she completed the entry;

(8) (6)   The signer completed the entry after the date on the circulator affidavit;

(9) (7)   Evidence exists that some other person assisted the signer in completing the entry but no statement of assistance accompanies the entry;

(10) (8)   The name and signature on the entry is illegible and cannot be verified in SCORE;

(11) (9)   The entry is a duplicate of a previously accepted entry on the same petition; or

(12) (10)   For a candidate petition where an elector may sign only one petition for the same office, the entry is a duplicate of a previously accepted entry on a ~~previously filed~~ petition THAT WAS DECLARED SUFFICIENT OR INSUFFICIENT AFTER LINES WERE REVIEWED for the same office.

(13) (11)   The signer's information appears outside of a numbered signature block on a petition section.

(14) (12)   For a candidate petition, the address on the entry does not match the current residential or mailing address for the elector in SCORE.

(e)   Secretary of State or DEO staff will ~~accept the~~ NOT USE ANY OF THE FOLLOWING DISCREPANCIES AS THE SOLE REASON TO REJECT AN entry ~~if~~:

(1)   The name on an entry matches or is substantially similar to the information in SCORE, or if the signature on an entry is a common variant of the name;

(2)   A middle initial or middle name is present on the entry but not in SCORE, or present in SCORE but not on the entry;

(3)   A name suffix is present on the entry but not in SCORE, or present in SCORE but not on the entry; ~~or~~

(4)   THE PRINTED NAME IS MISSING OR ILLEGIBLE BUT THE SIGNATURE CAN BE READ;

(4) (5)   The address on the entry is missing an apartment letter or number or a street direction, OR THE ADDRESS ENTRY CONTAINS AN APARTMENT LETTER OR NUMBER OR A STREET DIRECTION THAT IS MISSING IN THE VOTER REGISTRATION RECORD;

(6)   THE COUNTY NAME IS MISSING, ABBREVIATED, OR WRONG;

(5) (7)   For ~~a~~ candidate ~~petition~~ AND RECALL PETITIONS, the address provided did not match the current residence address information in SCORE, but did match the current mailing address information in SCORE~~.~~;

(8)   ON A SIGNER LINE, THE DATE IS MISSING BUT A LINE ABOVE OR BELOW HAS AN ACCEPTABLE DATE; OR

(9)   FOR SECRETARY OF STATE REVIEWED PETITIONS ONLY, THE YEAR OF THE DATE IS MISSING OR WRONG.

Rule 15.6 is repealed:

15.6   ~~Curing insufficient statewide initiative petitions~~

   15.6.1 ~~If petition proponents submit additional signatures within the permitted time, Secretary of State staff will verify the additional signatures in accordance with this Rule 15.~~

   15.6.2 ~~If the Secretary of State found the original submission insufficient based on the random sample verification, staff will add the number of additional valid signatures to the number of projected valid signatures in the original submission.~~

      (a)   ~~If the new projected number of valid signatures equals 110% or more of the required signatures, the Secretary of State will issue a statement of sufficiency.~~

      (b)   ~~If the new projected number of valid signatures equals more than 90% but less than 110% of the required signatures, staff will verify all previously submitted signatures. Staff will add the total number of valid signatures in the original petition to the number of additional valid signatures submitted in the addendum in order to determine sufficiency.~~

   15.6.3 ~~If the initial verification was of every signature, staff will add the number of additional valid signatures to the number of valid signatures in the original submission in order to determine sufficiency.~~

   15.6.4 ~~Staff will issue a new statement of insufficiency or sufficiency that reports the total number of valid signatures submitted.~~

==[Comment: Please reinstate this Rule 15.6.. There is no need to do this. It shuts citizens and candidates out of elections & increases expense.]==

Amendments to Rule16.2.2, concerning Military and Overseas Voters (UOCAVA) and electronic transmission, including New Rule 16.2.2(a) and necessary renumbering:

   16.2.2 The electronic transmission must include:

      (A)   DIRECTIONS FOR THE VOTER TO ACCESS THEIR BALLOT AND MATERIALS ONLINE AT THE WEBSITE APPROVED BY THE SECRETARY OF STATE; OR

      ~~(a)~~ (B)   The county clerk's contact information including mailing address, email address, phone, and fax number;

      ~~(b)~~ (C)   A notice that the ballot may not be duplicated for any other elector;

      ~~(c)~~ (D)   Instructions for completing and returning the ballot;

      ~~(d)~~ (E)   A notice regarding the ballot return deadline;

      ~~(e)~~ (F)   Information regarding how the elector may verify that his or her ballot has been received by the county clerk; and

      ~~(f)~~ (G)   Any other information deemed necessary by the Secretary of State or the county clerk.

      ~~(g)~~ (H)   The ballot packet, which must be in text format on 8 ½" x 11" white paper and must include:

(1)   An electronic transmission ~~AFFIDAVIT~~ **SELF AFFIRMATION** AND coversheet to protect voter privacy;

(2)   The unvoted ballot; AND

(3)   The electronic transmission ballot instructions.~~; and~~

(4)   ~~The self-affirmation required by section 1-8.3-114, C.R.S., and Rule 16.2.3.~~

==[Comment: There is no visible reason this (4) should be deleted. If it is to be deleted, then the phrase affidavit should not be used in (1). This is an unnecessary rule change that does not add clarity but reduces it. Please remedy.]==

Amendments to Rule16.2.6 update a cross-reference:

16.2.6   Upon receipt of a voted ballot sent by electronic transmission, the county clerk must verify the elector's signature in accordance with Rule ~~7.8~~ 7.7. After the affidavit has been verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must **ACHIEVE AND PROTECT THE ANONYMITY OF THE VOTER INTENT TO THE EXTENT POSSIBLE AND IN ANY CASE NEVER** ~~not~~ reveal how the elector voted.

Part of Rule 16.2.7(b) is repealed:

16.2.7   A military or overseas elector whose registration record is inactive may download an application and ballot using the electronic ballot delivery system.

(a)   The elector must submit the ballot and application in accordance with the deadlines in section 1-8.3-111 and 1-8.3.113, C.R.S., for the ballot to be counted.

(b)   Every county must use the approved electronic delivery system to implement this Rule.~~, except that a county may obtain a waiver. The Secretary will consider the following factors in approving or denying a request for waiver:~~

~~(1)   Number of military or overseas electors registered to vote in the county;~~

~~(2)   Historical data regarding the number of military and overseas electors who have registered and voted in the county; and~~

~~(3)   Staff or other resource limitations.~~

==[Comment: the elimination of county discretion to use their own remote ballot delivery method is unfortunate, particularly in view of the lack of public involvement and access to the usage of these SOS adopted electronic delivery and separate return systems and the behind the scenes decisions that lead to their selection. The rules must require adequate public involvement in the testing and selection of any required voting system such as for this purpose. Centralizing systems increases security risk and this is not adequately assessed or addressed.The rules must also require adequate reporting on usage of these voting methods. Currently the reporting on usage of Democracy Live, SBR, TextTo Cure is all largely unavailable. This must change, particularly if the counties are required to use these untested and unreported services. Please establish an improved process that creates better transparency in Colorado elections and does not leave citizens in the dark.]==

[No changes to Rule 17]

Amendments to Rule 18.4.1 concerning uniform counting standards for paper ballots:

18.4   Ballot Duplication

   18.4.1 A resolution board must duplicate a voter's choices or selections on a damaged ballot
           onto a blank ballot of the same ballot style in accordance with Rule 18.4. During the
           duplication process, and to the extent necessary, the resolution board must also resolve
           overvotes, write-in votes, and ambiguous markings in accordance with Rule 18.5. During
           ballot duplication, two ==additional== election judges must observe or review the work of each
           resolution board. In a partisan election, the observing election judges must be
           representatives of each major political party.

   [Comment: the planned removal of the word "additional" causes a reduction in required verification of a
   crucial and error prone process of duplication. It is important that extra eyes observe the result of
   the duplication. It isn't an improvement to remove the requirement for this extra set of bipartisan
   eyes.]

*Amendments to Rule 20.4 including repeal of Rules 20.4.1(a), 20.4.2, 20.4.3, and necessary
renumbering:*

20.4   Physical locking mechanisms and seals. The county must record the serial number of every seal
         on the appropriate chain-of-custody log. Two individuals must verify, and indicate by signing and
         dating the log, that the seal serial numbers match the logged serial numbers. If a seal is
         inaccessible and cannot be removed, then it is not necessary to verify that seal serial number.

   20.4.1 ~~DREs,~~ BMDs~~, and Judge's Booth Controllers (JBCs)~~

           ~~(a)   The county must place a seal over a removable card or cartridge that is inserted
                    into the unit, or over the slot or door covering the card or cartridge.~~

           ~~(b)~~ (A)   The county must place a seal over any data port when the port is not being used,
                    except slots for activation cards.

           ~~(c)~~ (B)   If the county cannot verify the firmware or software hash value (MD5 or SHA-1),
                    the county must seal the ~~DRE or~~ BMD case. To detect unauthorized access, the
                    county must use seals at either the seams of the case or at key entry points such
                    as screw access points.

           ~~(d)~~ (C)   In each voter service and polling center, the county must provide a minimum of
                    one accessible ~~DRE or~~ BMD that complies with section 1-5-704, C.R.S.

   ~~20.4.2 Before attaching a VVPAT to a specific voting device, the county must seal the unit after
           verifying that no votes were cast. At least two election officials must verify that seals are
           intact before the start of voting, and at the close of voting. VVPAT records must either
           remain in the VVPAT canister, or be sealed and secured in a suitable device for
           protecting privacy or as described in Rule 20.13.~~

   ~~20.4.3 Ballot scanners~~

           ~~(a)   The county must place a seal over each card or cartridge inserted into the unit, or
                    over any door or slot containing the card or cartridge.~~

           ~~(b)   The county must place a seal over each empty card or cartridge slot or door
                    covering the area where the card or cartridge is inserted.~~

~~(c)   Before the start of voting and after the close of voting, two election officials must visually confirm that all seals are intact and that the seal numbers match those logged in the chain-of-custody log.~~

~~20.4.4~~ 20.4.2   ~~Memory cards and activation~~ ACTIVATION cards

(a)   The county must assign and securely affix a permanent unique identifier to each removable card or activation card. The county may use the manufacturer assigned serial number for this purpose.

(b)   The county must handle ~~memory cards and~~ activation cards in a secure manner at all times. The county must transfer and store any card or activation card ~~that is not sealed in a voting machine~~ in a secure container with at least one seal. Upon delivery and receipt, election judges or county personnel must verify, and indicate by signing and dating the chain-of custody log, that all seal numbers match those listed in the log.

(c)   The county must maintain a written or electronic log to record ~~memory card or~~ activation card seals and track seals for each voting unit. ==THE LOG MUST BE KEPT OUTSIDE OF THE SEALED CONTAINER SO THAT IT CAN BE READ WITHOUT BREAKING THE SEAL. ANY ELECTRONIC VERSION OF A LOG MUST BE SUBJECT TO A MEANS OF AUTHENTICATION TO PROVE THAT IT HAS NOT BEEN MODIFIED CONTRARY TO ITS INTENDED USE..==

(d)   The county must maintain a complete inventory of ~~memory cards and~~ activation cards, including which VSPC they are assigned to during an election. Before and after a VSPC opens and closes each day, the supervisor judge must verify that all cards issued to the VSPC are present. If at any time the supervisor judge cannot account for all activation cards issued to the VSPC, the supervisor judge or a member of the county election staff must immediately submit an incident report to the Secretary of State under Rule 11.7.

Permanent adoption of amendments to Rule 20.5.4 that were temporarily adopted on June 17:

20.5.4 Voting system access security

(a)   Except for voters using a voting system component to vote during an election, county clerks may not allow any person to PHYSICALLY access any component of a county's voting system unless that person has passed the background check required by this or any other rule or law, is performing a task permitted by the county clerk or the Office of the Secretary of State under statute or rule OR COURT ORDER, and is:

(1)   An employee OR DESIGNEE of the county clerk; OR IS

(2)   Appointed as an election judge by the county clerk in accordance with Article 6 of Title 1, C.R.S.; OR IS

(3)   An employee of the APPLICABLE voting system provider for the COMPONENT ~~county's voting system~~; or IS

(4)   An employee or designee of the Secretary of State OR IS

(5)   A DESIGNEE OF A COURT OF APPROPRIATE JURISDICTION.

(b) All voting system provider employees who conduct work on any component of a county's voting system must complete a criminal background check prior to the employee's work with the voting system. The provider must affirm that the check was conducted in writing to the Secretary of State prior to the employee conducting any work. Any person convicted of an election offense or an offense with an element of fraud is prohibited from working on any component of a county's voting system.

(c) All Secretary of State staff who conduct work on any component of a county's voting system must undergo a criminal background check prior to the staff's work with the voting system.

(d) Any person convicted of an election offense or an offense with an element of fraud is prohibited from working on any component of a county's voting system.

(e) Any violation of Rule 20 may result in the prohibition or limitation on the use of, as well as decertification of, a county's voting system or components in accordance with section 1-5-621, C.R.S., and Rule 21.7.3.

(f) NO PERSON SHALL ACCESS A COMPONENT OF THE VOTING SYSTEM IN PRIVATE. NO CHANGE SHALL BE MADE TO A COMPONENT OF A VOTING SYSTEM UNLESS TWO WITNESSES ARE PRESENT IN ADDITION TO THE PERSON(S) MAKING THE CHANGE. FOR PURPOSES OF THIS RULE 20.5, AN ORIGINAL VOTER MARKED PAPER BALLOT IS A COMPONENT OF A VOTING SYSTEM. COPIES OF BALLOTS INCLUDING CAST VOTE RECORDS AND OTHER DIGITAL RECORDS AND DOCUMENTS PRODUCED DURING THE ELECTION ARE NOT COMPONENTS OF A VOTING SYSTEM.

New Rule 20.9.4 concerning security cameras or other surveillance:

20.9.4 VIDEO FOOTAGE CREATED UNDER THIS RULE MUST BE MAINTAINED AS AN ELECTION RECORD UNDER SECTION 1-7-802, C.R.S AND RENDERED READILY AVAILABLE FOR INSPECTION BY THE PUBLIC, WITH PROVISIONS TO MAINTAIN SUBSTANTIVE VOTER PRIVACY AND BALLOT ANONYMITY.

Amendments to Rule 20.11 including repeal of Rule 20.11.2 and necessary renumbering:

20.11 Transportation of equipment, ~~memory cards,~~ ballot boxes, and ballots

20.11.1 The county must submit detailed plans to the Secretary of State before an election regarding the transportation of equipment and ballots both to remote voting sites and back to the central elections office or storage facility. If there is any evidence of possible tampering with a seal, or if the seal numbers do not match those listed in the chain-of-custody log, the county clerk must be immediately notified and must follow the procedures specific to the incident as described in Rule 20.15. While the method of transportation of equipment may vary, the following standards apply:

(a)   Transportation by county personnel. County personnel must at all times display identification provided by the County. Two employee signatures and date are required at the departure location verifying that the equipment, ~~including memory card or cartridge,~~ is sealed to detect tampering. Upon delivery of equipment, at least two election officials must verify, and indicate by signing and dating the chain-of-custody log, that all seals are intact and that the seal numbers match the logged seal numbers.

(b)   Transportation by election judges. Election officials that are receiving equipment must inspect all voting devices and verify the specific seal numbers by signature and date on the chain-of-custody log for the device.

(c)   Transportation by contract. If a county contracts for the delivery of equipment to remote voting locations, each individual delivering equipment must successfully pass a criminal background check. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from handling or delivering voting equipment. ~~Two~~ BIPARTISAN election officials must IDENTIFY AND verify the specific seal numbers by device, AND sign, and date the chain-of-custody log upon release of the equipment to the individuals delivering the equipment.

:

~~20.13.2~~ 20.13   Anonymity. ~~The designated election official must implement measures to protect the anonymity of voters choosing to vote on DREs~~

    ~~(a)~~ 20.13.1   Measures to protect anonymity include:

        ~~(1)~~ (A)   The county may not keep any record indicating the order in which people voted on the BMD ~~DRE, or which VVPAT record is associated with the voter~~.

        ~~(2)~~ (B)   When more than one ~~DRE~~ BMD is available at a voting location, the county must, to the extent practicable, allow the voter to choose the ~~DRE~~ BMD they wish to vote on.

    ~~(b)~~ 20.13.2   The county clerk may not release a report generated from SCORE that includes a date and time stamp that could potentially, AFTER THE BALLOT SHEET OR SHEETS ARE REMOVED FROM THE IDENTIFIABLE ENVELOPE, identify a voter WITH A SPECIFIC BALLOT SHEET ~~who cast a specific ballot~~.

    (C)   AT NO TIME MAY AN ELECTION OFFICIAL PROCESS BALLOT SHEETS OR ENVELOPES IN A MANNER THAT WOULD PERMIT THE LINKAGE OF ONE TO THE OTHER AFTER THEY ARE SEPARATED.

(c) ~~At no time may an election official simultaneously access a VVPAT and the list of voters. If the VVPAT record requires inspection, at least two election officials must conduct the examination.~~

~~(d)~~ 20.13.3   The county must arrange voter service and polling center ~~DREs~~ BMDs in a manner that prevents election officials, WATCHERS and other voters from observing ~~how a~~ ~~DRE~~ DETAILS ON THE BMD SCREEN AND ON THE BALLOT SHEET WHILE THE voter marks or casts the~~ir~~ ballot.

[Comment: The additional specificity and clarity that we suggest here will benefit everyone.]

Amendments to Rule 20.14.2, concerning security training for election officials, include repeal of Rule 20.14.2(d):

20.14.2 Security training must include the following components:

(a)   Proper application and verification of seals and chain-of-custody logs;

(b)   How to detect tampering with voting equipment, memory cards, or election data on the part of anyone coming in contact with voting equipment, including election officials, vendor personnel, or voters;

(c)   Ensuring privacy in voting booths;

~~(d)   VVPAT requirements;~~

~~(e)~~ (D)   Chain-of-custody requirements for voting equipment, ~~memory~~ ACTIVATION cards, and other election materials;

~~(f)~~ (E)   Ballot security;

~~(g)~~ (F)   Voter PRIVACY AND BALLOT SHEET/CARD anonymity; and

[Comment: Voters are not treated as anonymous in elections, except in the special case of the ACP voter. Envelopes likewise are not anonymous, they are identifiable to voters. Ballot sheets (or cards if you prefer) removed from envelopes must be anonymous to protect the secrecy of the vote.]

~~(h)~~ (G)   Recognition and reporting of security incidents.

Amendments to Rule 21.4.1:

21.4   Voting System Standards

21.4.1   The 2002 Voting Systems Standards are incorporated by reference. Material incorporated by reference in the Election Rules does not include later amendments or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Federal Election Commission, 999 E Street NW, Washington, DC, 20463, 800-424-9530. ~~Copies are also available online at~~ ~~http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx~~

https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines

[Comment: The rule seems to ignore the VVSG 2.0 that has now been adopted. What is CO SOS plan for inclusion of the new standards? What is the reasoning of the Secretary of State's office to lag behind?]

Amendments to Rule 21.4.11(g) concerning documentation requirements:

(g)   The voting system must include detailed documentation, which includes the location and a description of the content of the ~~of~~ audit trail information throughout the system. The audit information applies to:

(1)   Operating Systems (workstation, server, ballot scanner, and BDM~~, and DRE~~);

(2)   Election management system; and

(3)   Election Tabulation Devices – ballot scanner ~~and DRE~~; AND

<mark>(4)   ENVELOPE SORTER SCANNER AND SIGNATURE VERIFICATION AND VERIFICATION MANAGEMENT DEVICES AND SOFTWARE; AND</mark>

<mark>(5)   ELECTRONIC BALLOT DELIVERY AND RETURN AND CURE SOFTWARE.</mark>

Amendments to Rule 21.5.1, concerning testing preparation procedures, include: repeal of Rules 21.5.1(b)(4), (b)(6)(A-C), (b)(13) and (b)(16); New Rules 21.5.1(g), (h), and (i):

21.5.1 Voting system provider demonstration

(a)   The voting system provider must demonstrate the submitted voting system to the Secretary of State ~~prior to any functional testing~~ prior to certification of the voting system.

(b)   The demonstration period does not have a predetermined agenda for the voting system provider to follow; however, presentations should be prepared to address and demonstrate the following items as they pertain to each area and use within the voting system, if applicable:

(1)   System overview;

(2)   Verification of complete system matching ~~EAC certification~~ the Application for Certification of a Voting System;

(3)   Ballot definition creation;

~~(4)   Printing ballots on demand;~~

~~(5)~~ (4) Hardware diagnostic testing;

~~(6)~~ (5) Programming election media devices; ~~for various counting methods including:~~

~~(A)   Mail ballots;~~

~~(B)   In person ballots; and~~

~~(C) Provisional ballots;~~

~~(7)~~ (6) Sealing and securing system devices;

~~(8)~~ (7) Logic and accuracy testing;

~~(9)~~ (8) Processing ballots;

(10) (9) Accessible use, including a full demonstration of all functionality using accessible voter interface devices and the audio ballot;

(11) (10) Accumulating results;

(12) (11)   Post-election audit;

(13)   Canvass process handling;

(14) (12)   Audit steps and procedures throughout all processes; and

(15)   Certification of results; and

(16) (13) Troubleshooting.

(c)   At the time of application, the voting system provider must arrange a time with the Secretary of State to access the demonstration room to setup the voting system if the demonstration is to be in-person.

(d)   A maximum of one business day is normally allowed for the a in-person demonstration. If the voting system provider requests more time for the demonstration or, if the Secretary of State finds that the complexity of the system is such that more time is needed for a demonstration, more time may be granted.

(e)   The An in-person demonstration will be open to representatives of the press and the public to the extent allowable. The Secretary of State may limit the number of representatives from each group to accommodate space.

(f)   The Secretary of State will post notice of the fact that the in-person demonstration will take place in the designated public place for posting such notices for at least seven days prior to the demonstration. The notice must indicate the general time frame during which the demonstration may take place and the manner in which members of the public may obtain specific information about the time and place of the test.

(g)   The Secretary of State may allow a virtual demonstration in lieu of the in-person demonstration. A virtual demonstration may be livestreamed or a submitted video. WHETHER OR NOT VIDEO IS THE MEDIUM OR THE DEMONSTRATION IS IN PERSON, THE DEMONSTRATION MUST INCLUDE OPPORTUNITY FOR QUESTIONS TO BE ASKED BY THE PUBLIC AND ANSWERS TIMELY GIVEN. THE DEMONSTRATION PROCESS MUST INCLUDE AN OPPORTUNITY FOR PUBLIC EXAMINATION OF DOCUMENTATION RELATED TO THE OPERATION AND SPECIFICATIONS OF THE SYSTEM.

(h)   If the Secretary of State allows a livestream virtual demonstration in lieu of an in-person demonstration, then the Secretary will post notice of the livestream demonstration at least seven days prior to the demonstration. The notice must indicate the time and link for the demonstration.

(i)   If the Secretary of State allows a submitted video demonstration in lieu of an in-person demonstration, then the Secretary of State will post notice and provide a link to the submitted video prior to certification of the voting system.

Amendments to Rule 23.1.3 concerning the Bipartisan Election Advisory Commission:

23.1.3 Meetings

(a)   The Commission must meet no fewer than three times annually. ~~The Secretary of State will set the time and location for the commission to meet.~~

(b)   The meetings will be held at the office of the Secretary of State, ~~or~~ regional locations throughout the state~~, or~~ MEETINGS MAY OCCUR ENTIRELY OR PARTIALLY virtual~~ly~~ as the Commission determines appropriate.

Amendments to Rules 25.2.2(d-i) and (l) concerning preparing for risk limiting audit, including repeal of Rule 25.2.2(d)(2):

(d)   Ballot manifest. The county must maintain an accurate ballot manifest in a form approved by the Secretary of State and independent of the voting system.

(1)   ~~In the case of centrally counted paper ballots, the~~ THE ballot manifest must BE CREATED PRIOR TO AND SEPARATE FROM TABULATION. TO ENSURE ALL LEGALLY CAST BALLOT CARDS ARE INCLUDED. AT DEO DISCRETION PROVISIONAL BALLOTS MAY ALSO BE INCLUDED IN THE MANIFEST. THE MANIFEST SHOULD SUBSEQUENTLY, ONLY AFTER SCANNING TAKES PLACE, uniquely identify for each tabulated ballot CARD OR SHEET the scanner on which the ~~ballot~~ CARD ~~is~~ WAS scanned, the ballot batch of which the ~~ballot~~ CARD is a part, the number of ballot cards in the batch, and the storage container in which the ballot batch is stored after tabulation. The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container. IF SORTING BY STYLE TAKES PLACE, THE STYLE OF THE CARDS IN EACH BATCH MAY BE INCLUDED IN THE MANIFEST,

(2)   ~~In the case of paper ballots scanned on polling location scanners, and electronic ballots cast on DREs, the ballot manifest must uniquely identify the device on which the ballot is cast or tabulated, the number of ballots or ballot cards cast or tabulated on the device, and the storage container or location in which the paper ballots or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody for each polling location scanner, DRE, and VVPAT, and all ballots cast on an individual polling location scanner or DRE must constitute a single batch.~~

(e)   RLA tabulation. On the ~~ninth~~ TENTH day after election day, the county must finish tabulating all in-person and accepted mail ballots cast by voters registered in the county. The county may but is not required to include in the RLA tabulation any provisional ballots and property owner ballots that have been verified and accepted on or before the ninth day after election day. Immediately after completing the RLA tabulation, and to the extent permitted by its voting system, the county must also generate and preserve:

(1)   A summary results report, showing overvotes, undervotes, blank-voted contests, and valid write-in votes;

(2)   A results file export suitable for uploading to the Secretary of State's election night reporting system; and

(3)   A CVR export.

(f)   CVR export verification. Counties conducting a comparison audit must verify that:

(1)   The number of individual CVRs in its CVR export equals the aggregate number of ballot cards reflected in the county's ballot manifest as of the ~~ninth~~ TENTH day after election day; and

(2)   The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.

(3)   After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the Secretary of State.

(g)   Comparison audit uploads. No later than 5:00 p.m. MT on the ~~ninth~~ TENTH day after election day, each county conducting a comparison audit must upload:

(1)   Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the Secretary of State's office;

(2)   Its verified and hashed CVR export, and the CVR export's hash value, to the Secretary of State's office; and

(3)   Its RLA tabulation results export to the Secretary of State's election night reporting system.

(h)   Ballot polling audit uploads. No later than 5:00 p.m. MT on the ~~ninth~~ TENTH day after election day, each county conducting a ballot polling audit must submit or upload:

(1)   Its verified and hashed ballot manifest, and the ballot manifest's hash value, by email to the Secretary of State's office;

(2)   Its cumulative tabulation report, by email to the Secretary of State's office; and

(3)   Its RLA tabulation results export to the Secretary of State's election night reporting system.

(i)   Random seed. The Secretary of State will convene a public meeting on the ~~tenth~~ THIRTEENTH day after election day to establish a random seed for use with the Secretary of State's RLA tool's pseudo-random number generator based on Philip Stark's online tool, *Pseudo-Random Number Generator using SHA-256*. This material is incorporated by reference in the Election Rules and does not include later amendments or editions. The following material incorporated by reference is posted on the Secretary of State website and available for review by the public during regular business hours at the Colorado Secretary of State's office: *Pseudo-Random Number Generator using SHA-256* available at https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html. The Secretary of State will give public notice of the meeting at least seven

calendar days in advance. The seed is a number consisting of at least 20 digits, and each digit will be selected in order by sequential rolls of a 10-sided die. The Secretary of State will randomly select members of the public who attend the meeting to take turns rolling the die, and designate one or more staff members to take turns rolling the die in the event that no members of the public attend the meeting. The Secretary of State will publish the seed on the Audit Center immediately after it is established.

[No changes to (j) and (k)]

(l)   Random selection of ballot cards for audit. The Secretary of State will randomly select the individual ballot cards to audit. The Secretary of State will use a pseudo-random number generator with the seed established under subsection (h) of this Rule to identify individual ballot cards as reflected in the county ballot manifests. The Secretary of State will notify each county of, and publish on the Audit Center, the randomly selected ballot cards that each county must audit no later than 11:59 p.m. MT on the ~~tenth~~ THIRTEENTH day after election day.

Thank you for your consideration of our recommendations.

Harvie Branscomb, Democrat

Emily Brake, Republican