

Section B

U.S. ELECTION ASSISTANCE COMMISSION



2008 Election Administration & Voting Survey

Statutory Overview

In order to better understand state laws governing federal elections, the U.S. Election Assistance Commission, as part of its biennial Election Administration and Voting Survey, is collecting information on state election laws and procedures. These answers will help us to better understand the quantitative data relating to the 2008 general election that we are collecting from all U.S. states and territories.

We understand that responding to this Statutory Overview may require significant staff time on the part of your office. Please be assured that we have attempted to minimize the burden, and we appreciate your cooperation in this very important project.

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DIRECTIONS AND EXAMPLE

Please provide your state's legal citation for the responses to these questions (where applicable).

Please answer each question to the best of your ability. If terms are ambiguous or not relevant, please explain why. If a question is not applicable to your state, please explain why. If a definition or term lacks legal standing but is widely understood in practice, please explain. If election procedures vary at the local level within your state, please explain to the best of your ability.

If state laws are currently enjoined or otherwise blocked from enforcement by a state or federal court, please specify.

Please put your responses between the red, bracketed text lines. This will help us extract your answers into our central database.

Example:

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

- a. Over-vote

[Begin definition (a) below this line.]

Your answer goes here. You may enter the text directly, or cut and paste from another word processing program.

There is no limit to the length of your response.

[End definition (a) above this line.]

SECTION A: GENERAL

A1. How does your state define the following terms related to votes and ballots? Please provide your state's legal citation defining these terms, where applicable.

a. Over-vote

[Begin definition (a) below this line.]

Section 1-1-104 (23.4), C.R.S. reads, "the selection by an elector of more names than there are persons to be elected to an office or the designation of more than one answer to a ballot question or ballot issue."

[End definition (a) above this line.]

b. Under-vote

[Begin definition (b) below this line.]

Section 1-1-104 (49.7), C.R.S. reads, "the failure of an elector to vote on a ballot question or ballot issue, the failure of an elector to vote for any candidate for an office, or the designation by an elector of fewer votes than there are offices to be filled; except that it is not an undervote if there are fewer candidates than offices to be filled and the elector designates as many votes as there are candidates."

[End definition (b) above this line.]

c. Blank ballot

[Begin definition (c) below this line.]

Secretary of State Election Rule 27.1.2 reads, "Blank Ballot. A blank ballot is one on which the voter has made no marks in any voting position, or has been marked with an unreadable marker, or is one which has been consistently marked outside of the "read" area of the scanner."

[End definition (c) above this line.]

d. Void/Spoiled ballot

[Begin definition (d) below this line.]

There is no legal definition for a voided or spoiled ballot in Colorado. However; both terms are widely understood to mean a ballot that can no longer be used for tabulation purposes. Section 1-7-504, C.R.S. clarifies the spoiled ballot process by stating, "any eligible elector who spoils a ballot or ballot card may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot or ballot card. The spoiled ballots or ballot cards thus returned shall be immediately canceled and shall be preserved and returned to the designated election official."

[End definition (d) above this line.]

e. Provisional/Challenged ballot

[Begin definition (e) below this line.]

Section 1-8.5-101, C.R.S. reads, “**1-8.5-101. Provisional ballot - entitlement to vote.** (1) At any election conducted pursuant to this title, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the registration list for the precinct or upon examination of the records on file with the county clerk and recorder shall be entitled to cast a provisional ballot in accordance with this article.(2) An elector who desires to vote but does not show identification in accordance with section 1-7-110 (2) may cast a provisional ballot.(3) If an elector applies for a mail-in ballot but spoils it or otherwise does not cast it, the elector may cast a provisional ballot at the polling place, vote center, or early voter's polling place if the elector affirms under oath that the elector has not and will not cast the mail-in ballot. The provisional ballot shall be counted if the designated election official verifies that the elector is registered to vote and did not cast the mail-in ballot and if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105.(4) No elector shall be denied the right to cast a provisional ballot in any election held pursuant to this title.” Additionally, there is no legal definition for a challenged ballot; however, the process for handling challenges is identified in part 2, article 9 of title 1, C.R.S. For an Election Day challenge, a voter may sign a challenge form and vote a regular ballot, or refuse to sign the form and vote a provisional ballot (1-9-201, C.R.S.). For challenges of ballots cast by mail (or a provisional ballot), the ballots are still processed in a normal manner for counting purposes.

[End definition (e) above this line.]

f. Absentee

[Begin definition (f) below this line.]

The term “absentee” has been removed from Colorado election law. It has been replaced by the term “mail-in.” Mail-in ballot law is described in Part 1, article 8 of title 1, C.R.S. The terms have changed to clarify the intent of 1-8-102, which reads, “any eligible elector may vote by mail-in ballot at any election under the regulations and in the manner provided in this part 1.”

[End definition (f) above this line.]

g. Early voting

[Begin definition (g) below this line.]

A method of in-person voting that is made available to any eligible elector for fifteen days before a general election or other November election conducted by the county clerk (see section 1-8-202, C.R.S.)

[End definition (g) above this line.]

h. Active Voter

[Begin definition (h) below this line.]

See below

[End definition (h) above this line.]

i. Inactive Voter

[Begin definition (i) below this line.]

The process for inactive/cancelled is set forth in section 1-2-605(2), C.R.S. Colorado deems a voter “inactive” after failure to vote in one General Election and failure to respond within 90-days to a postcard mailed by the county clerk. A voter’s status may also be changed to inactive if, when the county sends a pre-election voter information card to all active registered electors in the county, the card is returned by the Postal Service as undeliverable (see 1-2-605(1)(b)).

[End definition (i) above this line.]

j. Other terms (please specify) _____

[Identify each TERM and definition separately and begin below this line.]

[End TERM(s) and definition(s) above this line.]

A2. Please provide the legal citation for any **significant** changes to election laws or procedures that have been enacted or adopted since the previous Federal election. By “significant,” we do not mean routine or technical changes (such as changes to election district boundaries or polling place changes). However, we would like to learn about any new identification requirements for voters or registrants; changes in eligibility for voting or registering; adoption of alternative voting methods; and other changes that you believe represent a significant change in the way your state runs its elections.

[Begin response to above question (A2) below this line.]

The significant changes are identified below by original bill number. Bills starting with “07” indicate that they were passed during the 2007 session of the Colorado General Assembly. Bills starting with “08” indicate that they were passed during the 2008 session.

SB07-234 amended Title 1, Article 8, C.R.S: Changing from absentee voting to “mail-in” voting. This act also created a “permanent mail-in” option for voters so they no longer are required to update a previously named absentee request every calendar year.

SB07-083 specifies that a Colorado student ID card with a photograph issued by a Colorado institution of higher education is a valid form of ID for voting; specifies that when registering to vote, the applicant must provide an appropriate state identification number if one has been issued to them; provides clarification of emergency registration identification and residency requirements; provides clarification of emergency registration requirements regarding voters who attempt to timely register through a voter registration drive; requires the use of a paper or electronic backup poll book for vote center elections; requires the Secretary of State to establish security standards for computerized equipment used at vote center locations; specifies that a ballot marking device may be considered an accessible voter interface device; allows the clerk to begin

election judge training 45 days before an election; clarifies the number of student judges that may be assigned to a combined precinct/vote center, and allows split shifts for judges; repeals the 10-minute time limit for occupying a voting booth and allows the Secretary of State to establish a reasonable time limit in rule; increases the mandatory percentage of voting devices for random audit from 1% to 5% and requires that all races on the ballot be audited; requires that the manual tallies of the V-VPAT be compared to the original election tally;

HB07-1149 allows a U.S. citizen who has never resided in the U.S. to register and vote for federal office (applies only to individuals whose parents are eligible to register and vote in Colorado); creates a narrow exception for the submission of an unsigned application for an absentee ballot (may be submitted by a commissioned officer or VOA to who the voter has submitted a written request. Also limited to military personnel deployed overseas, serving in a combat zone and receiving hostile fire or imminent danger pay who does not have access to the equipment or facilities to send their own application for the ballot); clarifies that a mail-in ballot may not be sent by fax to a UOCAVA voter unless they have requested their ballot by fax.

HB07-1350 created an “address confidentiality program” in Colorado, which masks certain public information for registered voters who are identified through a court order as requiring voter confidentiality.

HB07-1376 allows the option for state central committees to hold precinct caucuses on the first Tuesday in February in presidential election years.

HB08-1003 directs the governor to issue a proclamation setting a day to hold a special congressional vacancy election in the event of a declaration by the Speaker of the US House of Representatives that vacancies exist in 100 or more of the offices of representatives in congress and where one or more of those vacancies is in the office of a representative in congress from this state; authorizes the Secretary of State to promulgate rules for the administration and enforcement of the act.

HB08-1128 authorizes the use of signature verification devices for verifying signatures on mail-in ballot/mail ballot envelopes.

HB08-1155 Without relaxing existing standards for voting systems, authorizes the Secretary of State to amend or rescind any of the orders issued by the Secretary of State regarding the certification of voting system. Allows the Secretary to require/permit additional testing of a voting system.

[End response to above question (A2) above this line.]

SECTION B: VOTER REGISTRATION

B1. Is your state's voter registration database system best described as a bottom-up, a top-down, or a hybrid? (Note: A bottom-up system generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. A top-down system is hosted on a single, central platform/mainframe and is generally maintained by the state with information supplied by local jurisdictions. A hybrid is some combination of both systems described above.)

[Begin response to above question (B1) below this line.]

Colorado's voter registration database system is a top down system.

[End response to above question (B1) above this line.]

If your state has a bottom-up or hybrid system, how often do local jurisdictions transmit registration information to the state list?

[Begin response to above clarification question to B1 below this line.]

Not applicable.

[End response to above clarification question to B1 above this line.]

B2. Please describe the process used in your state to move voters from the active list to the inactive list, and from the inactive list to the active list. Is a different process used for UOCAVA voters?

[Begin response to above question (B2) below this line.]

In accordance with section 1-2-605, C.R.S., “[t]he county clerk and recorder shall send a voter information card by forwardable mail to each active registered eligible elector of the county, as defined in section 1-1-104 (16)...” Section 1-2-605 (b), C.R.S., states that “[f]or all electors whose communication pursuant to paragraph (a) of this subsection (1) is returned by the United States postal service as undeliverable at the elector's voting address, the county clerk and recorder may mark the registration record of that elector with the word ‘Inactive’”.

Pursuant to section 1-2-605 (c), C.R.S., “[a]ll electors whose communication pursuant to paragraph (a) of this subsection (1) is not returned to the county clerk and recorder as undeliverable shall be deemed ‘Active’, and no mark shall be made on the electors' registration records. (2) A registered elector who is deemed "Active" but who fails to vote in a general election shall have the elector's registration record marked "Inactive (insert date)" by the county clerk and recorder following the general election. A county clerk then must mail a confirmation card to any registered elector whose registration record is marked “Inactive” and who has not previously been mailed a confirmation card (section 1-2-605(6)(a)). In the case of a registered elector to whom the county clerk and recorder mailed a confirmation card pursuant to paragraph (a) of subsection (6) of this section no later than ninety days after the 2008 general election and was returned by the United States postal service as undeliverable, the county clerk and recorder shall mark the registration record of that elector with the words ‘Inactive – undeliverable’”.

Pursuant to section 1-2-605 (4), C.R.S., “[a]ny "Inactive" elector shall be deemed "Active" if: (a) The elector updates the registration information with the county clerk and recorder; or (b) The elector votes in any election conducted by a county clerk and recorder or any election for which the information has been provided to the clerk and recorder; or (c) The elector applies for a mail-in ballot for any election which the county clerk and recorder conducts, regardless of whether or not the ballot is returned; or (d) The elector completes, signs, and returns a confirmation card.”

[End response to above question (B2) above this line.]

B3. Please describe your state’s process for removing voters from the voter registration rolls (not merely moving them from active to inactive). Please include information regarding notices and confirmations. Are these procedures the same for UOCAVA voters?

[Begin response to above question (B3) below this line.]

There are six identified processes for changing a voter’s record to “cancelled.” They are,

1. Inactive to Cancelled (NVRA)
2. Registration Withdrawn
3. Deceased Elector
4. Convicted Felon
5. Moved out of state
6. Duplicate Registration

Inactive to Cancelled (NVRA)

In accordance with 1-2-605 (6) (a), C.R.S., “No later than ninety days after any general election, any registered elector whose registration record is marked, “Inactive” and who has not previously been mailed a confirmation card shall be mailed a confirmation card by the county clerk and recorder.”

Additionally, in accordance with 1-2-605 (7), C.R.S., “If the county clerk and recorder receives no response to the confirmation card and the elector has been designated ‘Inactive’ for two general elections since the confirmation card was mailed pursuant to the requirements of this article, the county clerk and recorder shall cancel the registration record of the elector.”

Registration Withdrawn

In accordance with 1-2-601, C.R.S., a voter can choose to withdraw or cancel their voter registration at any time. In order to have their registration cancelled, the voter must file a self-affirmation of withdrawal of registration with the county clerk and recorder.

C.R.S. 1-2-601

Deceased Elector

In accordance with section 1-2-302 (3.5) (a), C.R.S., the secretary of state shall coordinate the computerized statewide voter registration list with state agency records on death. Upon being furnished with the report provided by the state registrar of vital statistics...the registration of deceased persons may be electronically cancelled.

Additionally, in accordance with section 1-2-602 (1), “the persons on the report shall be identified by name, county of residence, date of birth, and social security number.”

Convicted Felon

SOS Election Rule 39.1 states that “[u]pon being provided information concerning felony convictions and pursuant to section 1-2-302(3.5)(b), C.R.S., the Secretary of State shall direct the cancellation of the registration of persons convicted of a felony who are serving a sentence of confinement or detention or are on parole.” Additionally, pursuant to SOS Election Rule 39.2, individuals shall be matched based upon last name, first name, date of birth, and social security number (or last four if provided).

Moved Out of County/Out of State

In accordance with section 1-2-603 (2), C.R.S., “if a county clerk and recorder receives a notice from the secretary of state or from an election official in another state that the elector has registered to vote in another county, the county clerk and recorder of the county of prior residence shall cancel the registration record if the name and birth date or the name and social security number of the elector match.”

Also, pursuant to section 1-2-605 (5), C.R.S., “...If the elector verifies that he or she resides in a county other than the county mailing the mail ballot, the county clerk and recorder shall mark the registration record of the elector ‘Canceled (insert date)’, and the record shall be removed from the registration file of the county.”

Note: Now that Colorado is on a centralized database, voter moves across counties should not result in a cancellation of their record in the original county. Instead, the new county would identify the record in the database, and “move” the voter into their county by changing the “residence” fields.

Duplicate Registration

Currently in Colorado, counties use SCORE (the centralized database) to move voters from one county to another, thereby significantly reducing the number of duplicate records. Counties are also asked to process a “potential duplicate voter” report that is accessible through SCORE. This report looks for potential duplicate voters both across and within county lines, uses ranking criteria which indicate the likelihood of a potential duplicate and provides additional information about recent voter activity for the individuals. County users would then cancel a voter by individually reviewing each

potential duplicate to determine whether a duplicate record exists and whether the record in their county has the older activity for the voter.

[End response to above question (B3) above this line.]

B4. Can your state's voter registration database (or equivalent) share information electronically with your state's drivers license agency (for example, to match records or trace changes in address)? Can your voter registration database be similarly linked with databases in any other state or federal agencies? Please describe these links, including any use of database matching to verify voter registration applications.

[Begin response to above question (B4) below this line.]

In Colorado, SCORE has the following agency interfaces:

1. CDOR Interface – As part of the verification process, the system automatically looks for matching records in the CDOR database based upon the key line information. This information includes the voter's full name, date of birth, gender, driver's license number, and last four of social security number (if provided). The CDOR verification attempts to match the applicant to a CDOR record bearing the same name, date of birth and driver's license number. The system will generate a list of potential matches and rank the confidence of the matches using the ranking criteria.[Sections 1-2-204, 1-2-501, 1-2-302(6.5), C.R.S., Election Rules 2.6, 30.2, and 30.3] The user reviews any potential matches, beginning with the highest confidence rank to determine whether the records match. The user evaluates all available information in making the determination. If there is a match in the CDOR database, the user selects the appropriate record. The system will check the "CDOR Verification" box in the voter record to indicate that the driver's license number was verified in the CDOR database.
2. CDOR Registration – an interface with the state motor vehicle agency that allows voter registration applications/changes that are submitted at a motor vehicle office to be transmitted electronically into SCORE. After transmission, county election officials are then able to process the registrations.
3. Other state agencies – Verification against the CDOC (Department of Corrections-felony status) and CDPHE (Vital Statistics Agency – deceased records) databases occurs at voter registration as part of the duplicate checking process. Data provided by the agencies is refreshed on a monthly basis and counties review any potential matches resulting from the data refresh in the CDOC and CDPHE modules within SCORE [Sections 1-2-103(4), 1-2-204, 1-2-501, 1-2-302(3.5), 1-2-602, and 1-2-606 C.R.S., Election Rule 2.16].

1. [End response to above question (B4) above this line.]

B5. Please describe how your state uses National Change of Address (NCOA). What has been your state's experience with using NCOA?

[Begin response to above question (B5) below this line.]

Colorado does not use NCOA. Therefore, we do not have any experience with NCOA.

[End response to above question (B5) above this line.]

B6. Please describe your state's voting eligibility requirements as they relate to individuals with a felony conviction. (For example, are convicted felons allowed to vote while in prison or while on parole or probation? Are voting rights automatically restored or does the individual have to apply for a pardon, certificate of eligibility or other similar certificate? Does an individual whose voting rights have been restored have to produce documentation of his/her status when registering to vote?)

[Begin response to above question (B6) below this line.]

Section 1-2-103, C.R.S. states that “[n]o person while serving a sentence of detention or confinement in a correctional facility, jail, or other location for a felony conviction or while serving a sentence of parole shall be eligible to register to vote or to vote in any election; however, a confined prisoner who is awaiting trial but has not been tried shall be certified by the institutional administrator and shall be permitted to register to vote by mail registration pursuant to part 5 of this article.” Thus, a convicted felon serving a sentence of confinement or parole shall not be eligible to register to vote or vote. However, a felon serving a period of probation is eligible to register to vote and vote.

A pretrial detainee shall be eligible to register and vote by mail pursuant to section 1-8-104 (5), C.R.S., which states that “[a] prisoner in pretrial detention may apply for a mail-in ballot from the prisoner's county of residence. No application for a mail-in ballot shall be accepted unless personally signed by the applicant and accompanied by a certification from the institutional administrator or the administrator's designee that the applicant is in pretrial detention. The institutional administrator shall certify the application immediately upon request by the prisoner.

Once a convicted felon completes his/her sentence of confinement including any period of parole, his/her voting rights are automatically restored.

[End response to above question (B6) above this line.]

B7. Does your state currently use the Internet in any way to facilitate voter registration? If yes, please describe how your state allows voters to use the Internet in the registration process (e.g., entire registration completed online; completed online but then must be printed, signed, and mailed by voter, etc.).

[Begin response to above question (B7) below this line.]

Applicants may access an interactive voter registration application online via the Secretary of State website. They may print the form and complete by hand. Another option is to fill out the form using their computer and then print the form. The applicant may mail, fax, or email the form as a PDF to his/her County Clerk.

[End response to above question (B7) above this line.]

SECTION C: ELECTION ADMINISTRATION

C1. Please describe how all votes cast at a place other than the voter's precinct of registration are tabulated (for example, please include descriptions of such votes as absentee ballots, mail-in ballots, votes cast at vote centers, provisional ballots, early voting locations, etc.).

- a. Are the votes counted centrally or at the precincts?

[Begin response to above question (a) below this line.]

Early and Mail-In voting tabulation must be completed centrally.
Election Day polling place or vote center tabulation: Counties have the option to count ballots centrally or at the polling locations.
Provisional ballots are counted centrally after Election Day.
Final tabulation of all returns occurs centrally.

[End response to above question (a) above this line.]

- b. If centrally tabulated, are the votes redirected to the appropriate precinct for reporting in the canvass?

[Begin response to above question (b) below this line.]

Yes. Precinct-level reporting is required in Colorado, per Sections 1-7-601(1), 1-8-308(3), and 1-10-106(1), C.R.S.

[End response to above question (b) above this line.]

- c. Are the absentee, mail, etc., votes reported separately for each precinct, or are they added to the in-precinct results and reported as just a single number?

[Begin response to above question (c) below this line.]

Mail-In, Early, and Election Day votes are reported separately by precinct (see sections 1-7-601(1), 1-8-308(3), and 1-10-106(1), C.R.S.).

In accordance with 1-8-308(3)(b), C.R.S., "if the total number of votes cast and counted in any precinct by early voters' and mail-in ballot is less than ten, the returns for all such precincts...shall be reported together."

In accordance with 1-8.5-110, C.R.S., "(1) provisional ballots shall be kept separate from all other ballots and counted separately. (2) If twenty-five or more provisional ballots are cast and counted in a county...report the results as a separate total. If fewer than twenty-five provisional ballots are cast and counted, the results...shall be included in the results of voting by mail-in ballot."

[End response to above question (c) above this line.]

d. How are UOCAVA ballots counted and reported?

[Begin response to above question (d) below this line.]

UOCAVA ballots are counted and reported as part of the larger, mail-in ballot totals.

[End response to above question (d) above this line.]

C2. Does your state require a reason for voting absentee, or does your state allow no-excuse absentee voting? (If a reason is required, please provide the legal citation.)

[Begin response to above question (C2) below this line.]

Colorado allows no-excuse mail-in (absentee) voting pursuant to section 1-8-102, C.R.S. which states that “[a]ny eligible elector may vote by mail-in ballot at any election under the regulations and in the manner provided in this part 1.”

[End response to above question (C2) above this line.]

C3. Does your state provide for in-person early voting? If so, how is early voting defined? When early voting is used, are the ballots counted at the precinct or at a central location? How are these votes reported?

[Begin response to above question (C3) below this line.]

Yes, Colorado does provide for in-person early voting. It is described in Section 1-8-202, C.R.S., which states that “[e]arly voting shall be made available to any eligible elector...during regular business hours for ten days before a primary election and a special legislative election and for fifteen days before a general election or other November election conducted by the county clerk and recorder...[e]ligible electors who appear in person at the early voters’ polling place during this time may cast their ballots in the same manner as any ballot would be cast in a precinct polling place on election day.”

The counting of early voting ballots is described in Part 3, of section 1, article 8, C.R.S. The relevant citations are included below:

1-8-305. Counting mail-in and early voters' ballots - partisan elections. (1) Mail-in and early voters' ballots shall be counted after delivery of the ballots as provided in section 1-8-303 and after preparation of the ballots as provided in section 1-8-304.

(2) Mail-in and early voters' ballots shall be counted in one of the following ways:

(a) In counties that use paper ballots, the mail-in and early voters' ballots may be counted in the manner provided in section 1-7-307 for counting paper ballots.

(c) Any county may use electronic vote-tabulating equipment for the counting of mail-in ballots in the same manner provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(d) Early voters' ballots that are cast directly on electronic or electromechanical vote-tabulating equipment shall be counted in the same manner as provided for the counting of precinct ballots in part 6 of article 5 and parts 4 and 5 of article 7 of this title.

(3) Votes for or against any ballot issue or measure shall be cast in the same manner as provided in section 1-8-202.

Early voting results are reported at the precinct level per section 1-8-308 (3), C.R.S.; however, if the total number of votes cast and counted in any precinct by early voters and mail-in ballots is less than ten, the returns for all such precincts in the county shall be reported together (section 1-8-308(3)(b)).

[End response to above question (C3) above this line.]

C4. Do any jurisdictions in your state use a vote-by-mail system to replace (and not merely supplement) at-the-precinct voting in any elections?

[Begin response to above question (C4) below this line.]

Counties have the option to conduct their odd-year (non-federal) elections by mail (see 1-7.5, C.R.S.). Many counties choose to use this election type in odd years; however, state law prohibits the administration of an all-mail election type for federal elections.

[End response to above question (C4) above this line.]

C5. Please list each of the situations that require a provisional ballot in your state. Please provide the relevant legal citation for each situation.

[Begin response to above question (C5) below this line.]

1-8.5-101. Provisional ballot - entitlement to vote.

(1) At any election conducted pursuant to this title, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the registration list for the precinct or upon examination of the records on file with the county clerk and recorder shall be entitled to cast a provisional ballot in accordance with this article.

(2) An elector who desires to vote but does not show identification in accordance with section 1-7-110 (2) may cast a provisional ballot.

(3) If an elector applies for a mail-in ballot but spoils it or otherwise does not cast it, the elector may cast a provisional ballot at the polling place, vote center, or early voter's polling place if the elector affirms under oath that the elector has not and will not cast the mail-in ballot. The provisional ballot shall be counted if the designated election official verifies that the elector is registered to vote and did not cast the mail-in ballot and if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105.

(4) No elector shall be denied the right to cast a provisional ballot in any election held pursuant to this title.

See also SOS Election Rule 26 concerning Provisional Ballots.

[End response to above question (C5) above this line.]

C6. Does your state count provisional ballots of voters who are registered in different precincts, or are those ballots automatically rejected? Please describe the process used by local election officials in determining whether to count a provisional ballot.

[Begin response to above question (C6) below this line.]

The relevant citations are included below:

1-8.5-107. Electors who move before close of registration - effect of provisional

ballot. (1) A person who moves to Colorado from another state no later than the thirtieth day before an election but fails to register to vote before the close of registration may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) (a) A registered elector who moves from the county in which the elector is registered to another county in the state no less than thirty days before an election but fails to register to vote in the new county of residence before the close of registration may complete an emergency registration form at the office of the county clerk and recorder pursuant to section 1-2-217.5 or may cast a provisional ballot at a polling place, vote center, or early voter's polling place. (b) If the elector completes an emergency registration form on an election day and the county clerk and recorder is unable to verify the elector's qualification to vote, the elector may cast a provisional ballot. (c) If the elector casts a provisional ballot, the ballot shall be counted if the elector's eligibility to vote in the county is verified pursuant to section 1-8.5-105. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If a registered elector moves from the precinct in which the elector is registered to another precinct within the same county before the close of registration but fails to register at the new address or complete a change of address form pursuant to section 1-2-216 (4) (a), the elector may cast a provisional ballot, which shall be counted if the county clerk and recorder or designated election official verifies that the elector is eligible to vote in the elector's new precinct of residence.

1-8.5-108. Electors who move after close of registration - effect of provisional ballot.

(1) A person who moves to Colorado from another state in the twenty-nine days before an election may cast a provisional ballot, but the ballot shall not be counted. The provisional ballot affidavit shall serve as the person's voter registration application for future elections.

(2) If an elector who moves from the county in which the elector is registered to another county during the twenty-nine days before an election does not vote in the county where registered pursuant to section 1-2-217 (1) and instead casts a provisional ballot in the new county of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

(3) If an elector who moves from the precinct in which the elector is registered to another precinct in the same county during the twenty-nine days before an election does not vote in the precinct where registered pursuant to section 1-2-217 (2) and instead casts a provisional ballot in the new precinct of residence, the elector's votes for federal and statewide offices for which the elector is eligible to vote and statewide ballot issues and ballot questions shall be counted. The provisional ballot affidavit shall serve as the elector's voter registration application for future elections.

1-8.5-109. Electors who vote outside precinct of residence - effect of provisional ballot. If an elector casts a provisional ballot at a polling place in a precinct other than the precinct in which the elector is registered but within the elector's county of residence, the elector's votes for federal offices for which the elector is eligible to vote and the elector's votes for statewide offices and statewide ballot issues and ballot questions shall be counted. Except for ballots cast in accordance with section 1-8.5-107 (2) or 1-8.5-108 (2) by electors who moved from one county to another county, a provisional ballot cast by an elector in a county other than the elector's county of residence shall not be counted.

[End response to above question (C6) above this line.]

C7. Please describe your state's laws regarding post-election audits, if any.

[Begin response to above question (C7) below this line.]

Section 1-7-514, C.R.S. outlines post-election audits and SOS rule 11.5.4 further defines the process. General procedures from rule are identified below:

“11.5.4.1 Within twenty-four (24) hours of the close of polls on election night, the Secretary of State shall notify the designated election official which voting devices and which race or races on the ballots have been selected for auditing purposes based on the submitted hardware inventory list.

11.5.4.2 The selection of equipment will be based on a random selection of five (5) percent of precinct scanner based voting equipment, at least one Central Count Scanner/vote center, and five (5) percent of Direct Record Electronic (DRE) voting devices.

11.5.4.3 Pursuant to section 1-7-514, only devices used in the election shall be selected for the audit.

11.5.4.4 For optical scanners used for any function of counting ballots except for Central Count/vote center as defined herein, the designated election official shall manually verify all of the ballots that were counted on the randomly selected device(s) with the election summary report that was generated from the device(s) at the close of the polls. The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.

11.5.4.5 For Optical Scanners used for the purpose of counting ballots in a Central Count/vote center environment as defined herein, the designated election official shall randomly select five (5) percent but not more than five hundred (500) ballots of all the ballots counted on the specific audited device. If the amount of ballots is less than five hundred (500) on the audited device, then a minimum of twenty percent (20%) of the ballots counted on the device will be manually verified. The public counter for that voting device shall be reset to zero, and the ballots shall be recounted on the voting device. A new report will be generated from the electronic count of the ballots and shall be manually verified. The ballots and a copy of the report shall be sealed in a separate container and secured with the remainder of the official election records for the election.

The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.

11.5.4.6 For Direct Record Electronic Devices (DREs) that do not meet the requirements of section 1-5-802, C.R.S., used for any function of counting ballots in an election, the designated election official will manually verify the image of all the ballots contained in the Ballot Log or Ballot Audit that were counted on the specific device with the report generated for that specific device at the close of polls which contains the election summary report. The Secretary of State shall randomly select a minimum of two (2) races per device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.

11.5.4.6.1 For any device capable of producing the trusted build hash value (MD5 or SHA-1) of the firmware or software, the designated election official shall verify and document the accuracy of the value to be included with the records for the device prior to conducting the audit.

11.5.4.7 For Direct Electronic Devices (DREs) that do meet the requirement of section 1-5-802, C.R.S., used for any function of counting ballots in an election, after the close of the polls, the designated election official will manually verify all of the voter verified paper record produced with the report generated for that specific device, which contains the election summary report. The Secretary of State shall randomly select a minimum of two races on each device to be manually verified to ensure that each office, issue, and question on the ballot is audited in accordance with section 1-7-514, C.R.S.

11.5.4.7.1 For any device capable of producing the trusted build hash value (MD5 or SHA-1) of the firmware or software, the designated election official shall verify and document the accuracy of the value to be included with the records for the device prior to conducting the audit.

11.5.4.8 The actions of the random audit as identified in this section are to be observed by at least two members of the canvass board. The designated election official may appoint additional deputized clerks to assist in the functions of the audit.

11.5.4.9 If there are discrepancies in the audit, the canvass board or the designated election official's deputized clerks shall:

11.5.4.9.1 First, manually verify the results as many times as necessary to confirm that there is no discrepancy in the manual count;

11.5.4.9.2 Second, take any additional steps as necessary to check for voter error, which shall include but not be limited to: over-votes, stray marks on the ballot, or other voter intent indicia; and

11.5.4.9.3 Third, review the situation and take action as necessary in accordance with the canvass board's powers as set forth in part 1 of Article 10 of Title 1 Colorado Revised Statutes.

11.5.4.10 At all times relevant to the Post-Election Audit, the designated election official or the deputized clerks or the canvass board shall take every precaution necessary to protect the confidentiality of the ballots cast by the electors.

11.5.4.11 Upon completion of the audit, the designated election official shall promptly report the results of the audit to the Secretary of State's Office. The report shall be submitted following the completion of the audit and up to and including 5:00 pm on the last day of the canvass. The report shall contain:

- (a) The make, model, and serial number of the voting device that was audited.
- (b) The number of ballots originally counted by the device or the number of ballots audited as identified in paragraph (d) of this section;
- (c) The count of the specific race or races as provided on the summary report printed at the close of polls or the report generated for the audit;
- (d) The count of the specific race as manually verified;
- (e) Any other information required by section 1-7-514, C.R.S.; and
- (f) The signature of the canvass board and the designated election official."

[End response to above question (C7) above this line.]

C8. Please describe any state requirements for poll worker training.

[Begin response to above question (C8) below this line.]

In accordance with section 1-6-101, C.R.S., “ (5) the county clerk and recorder...shall hold a class of instruction concerning the tasks of an election judge and a special school of instruction concerning the task of a supply judge not more than forty-five days prior to each election. (6) Each person appointed as an election judge shall be required to attend one class of instruction prior to the first election in an election cycle in which the person will serve as an election judge. The county clerk and recorder...may require a person appointed as an election judge to attend more than one class of instruction in an election cycle.”

Per Secretary of State Rule 28.1, an “election cycle” includes all elections held during a calendar year beginning with January 1 and ending on December 31.

[End response to above question (C8) above this line.]

SECTION D: ELECTION DAY ACTIVITIES

D1. Please describe your state's process for capturing “over-vote” and “under-vote” counts.

[Begin response to above question (D1) below this line.]

Section 1-5-704 (VIII), C.R.S., relating to standards for accessible voting systems, states that the voting system “shall warn the elector of the consequences of overvoting for an office.” Furthermore, section 1-5-704 (XIII), C.R.S., states that the ballot marking device “shall alert the

elector before the ballot is marked that the elector has made an overvote, as defined in section 1-1-104 (23.4), or an undervote, as defined in section 1-1-104 (49.7), and allow the elector to make corrections.”

In accordance with Section 1-7-508, C.R.S., “Votes cast for an office to be filled or a ballot question or ballot issue to be decided shall not be counted if a voter marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector’s choice of candidate or vote concerning the ballot question or ballot issue. A defective or an incomplete mark on any ballot in a proper place shall be counted if no other mark is on the ballot indicating an intention to vote for some other candidate or ballot question or ballot issue.”

[End response to above question (D1) above this line.]

D2. What identification does your state require from voters in the following situations:

a. registering to vote;

[Begin response to above question (a) below this line.]

Voter registration in person:

In accordance with section 1-2-204 (2)(f.5), C.R.S., SOS Election Rule 30.2.1, states that when a person registers to vote in person, he/she must provide:

- A valid Colorado Driver’s License number;
- if the voter does not have a valid Colorado Driver’s License, the voter shall provide the number of the voter’s current and valid identification card issued by the Colorado Department of Revenue.
- If the voter has not been issued a valid Colorado Driver’s License or ID card issued by the Department of Revenue, then the voter shall provide at least the four last digits of the voter’s social security number.

Pursuant to section 1-2-204 (2.5), SOS Election Rule 30.2.3 further states that “[i]f an applicant for voter registration has not been issued a current and valid Colorado driver’s license or a current and valid identification card issued by the Department of Revenue or a social security number, the election official shall nevertheless register the voter. The applicant shall be assigned a unique identification number that will serve to identify the applicant for voter registration purposes.”

Voter registration by mail:

In accordance with sections 1-2-501(2)(a) and 1-1-104(19.5), C.R.S, SOS Election Rule 30.3 states that “(a) The voter must provide one of the following identification numbers: (b) The person’s Colorado Driver’s License number or ID number issued by the Department of Revenue; if the voter does not have a current and valid Colorado Driver’s License or ID card issued by the Department of Revenue, the voter shall provide the last four digits of the voter’s social security number. (c) If a voter has not been issued a Colorado Driver’s License number, ID card issued by the Department of Revenue or a Social Security card, the voter must provide a copy of one of the forms of identification listed in 30.1.6.”

[End response to above question (a) above this line.]

b. casting an in-person ballot;

[Begin response to above question (b) below this line.]

Section 1-7-110, C.R.S., requires that all electors attempting to vote in person must provide a copy of identification to vote a regular ballot. Otherwise, if a voter fails to provide identification at the polls, they will be required to vote a provisional ballot.

When voting in person, you will need one of the following types of identification:

- A current and valid Colorado driver's license;
- 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.;
- A valid U.S. passport;
- 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;
- A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;
- A valid U.S. military identification card with a photograph of the eligible elector;
- 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. (A cable bill, a telephone bill, 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, a paycheck from a government institution, or a Certificate of Degree of Indian or Alaskan Native Blood are sufficient forms of identification);
- A valid Medicare or Medicaid card issued by the United States Health Care Financing Administration;
- A certified copy of a U.S. birth certificate for the elector issued in the United States; or
- Certified documentation of naturalization
- 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.

A Social Security number/card (or last four digits) is not a legal form of identification for voting in person.

[End response to above question (b) above this line.]

c. casting a mail-in or absentee vote;

[Begin response to above question (c) below this line.]

Election Rules 30.1.3 and 30.1.4, concerning voter identification, state that a tagged voter (meaning a first-time voter who registered by mail but did not satisfy ID requirements) must provide a copy of the required identification to be enclosed with a mail-in or mail ballot. Furthermore, a tagged voter may present the required voter ID or a number which is subsequently verified to the county clerk and recorder at any time prior to returning a voted mail or mail-in ballot to satisfy the provisions of Rule 30.1.3.

[End response to above question (c) above this line.]

d. casting a ballot under UOCAVA;

[Begin response to above question (d) below this line.]

Per 1-8-113(f), C.R.S., any voter eligible to vote under the provisions of UOCAVA are exempt from the requirement to provide ID.

[End response to above question (d) above this line.]

e. any other stage in registration or voting process in which identification is required (please specify).

[Begin response to above question (e) below this line.]

Concerning provisional voting: in accordance with Election Rule 26, if an elector whose name is not on the registration records appears in person at the county clerk and recorder's office and states that he/she has timely registered, can affirm to the location of, and approximate date he or she completed the application, and provides an ID as defined in section 1-1-104 (19.5), C.R.S., the elector shall be offered an emergency registration and be offered a regular ballot. If he/she does not provide ID the elector shall be offered a provisional ballot.

Pursuant to SOS Election Rule 2.12.1, relating to voter registration of Address Confidentiality Program participants, "when an ACP participant registers to vote by mail, the elector shall provide identification pursuant to Rule 30.3 and a copy of his/her ACP Authorization Card."

Pursuant to SOS Election Rule 2.16, an elector whose registration record has been affected by a match with a record bearing the same name, date of birth, and social security number in the CDOC or CDPHE databases (felon or deceased respectively) and who believes the match was made in error may ask for a correction if they either appear in person at the county clerk's office and provide identification or returns to the clerk's office a signed, notarized, and dated statement affirming that they believe the match was made in error.

[End response to above question (e) above this line.]

D3. Please describe your state's laws regarding access to the polling place for election observers. Election observers are people allowed inside the polling place who are not poll workers, election officials or voters. If decisions on access to observers are left to local jurisdictions, please explain.

[Begin response to above question (D3) below this line.]

Relevant statutory provisions:

1-7-105, C.R.S. Watchers at primary elections.

1-7-106, C.R.S. Watchers at general and congressional vacancy elections.

1-7-107, C.R.S. Watchers at nonpartisan elections.

SOS Election Rule 8 concerns watchers. Rule 8.1.2 defines a watcher as:

“an eligible elector, in the State of Colorado, other than a candidate on the ballot who has been selected by a political party chairperson on behalf of the political party, by a party candidate at a primary or recall election, by an unaffiliated candidate at a general, congressional vacancy, nonpartisan, or recall election by a person designated by either the opponents/proponents in the case of a ballot issue or ballot question. If selected by a political party chairperson, a party candidate, or an unaffiliated candidate, the watcher shall be affiliated with that political party or unaffiliated as shown on the registration books of the county clerk and recorder. A designated watcher need not be a resident of the county he or she is designated in as long as he or she is an eligible elector in the State of Colorado. *See* section 1-1-104(51), C.R.S.”

Rule 8.7 states that “[d]uly appointed watchers may observe polling place voting, early voting and the processing and counting of precinct, provisional, mail, and mail-in ballots. For mail ballot elections, or mail-in ballot processing, watchers may be present at each stage of the election including the receiving and bundling of the ballots received by the designated election official. Watchers may be present during provisional ballot processing but may not have access to confidential voter information.”

Further, Rule 8 describes state laws regarding “official observers” (Rule 8.1.1) and “media observers” (Rule 8.1.3).

Pursuant to SOS Election Rule 8.10, “Official Observers appointed by the federal government shall be approved by the Secretary of State and shall be subject to Colorado law and these rules as they apply to Watchers; however, they need not be eligible electors in the jurisdiction in which they act as watchers. This Rule shall not apply to Official Observers appointed by the United States Department of Justice. Official Observers appointed by the Secretary of State shall be subject to the rules and regulations as prescribed by the Secretary of State. Official Observers shall obtain from the Secretary of State, or his or her designee, duly executed letters of authority. The Official Observers shall surrender such letter of authority to the designated election official in the jurisdiction in which they act as Watchers.”

Pursuant to SOS Election Rule 8.12, “Media Observers with valid and current media credentials may be present to witness early voting, election day voting, and the processing and counting of provisional, mail and mail-in ballots. However, at the discretion of the county clerk and recorder, Media Observers may be required to appoint one member of the media as a pool reporter, and one member as a pool photographer to represent all media observers in accordance with the Guidelines established by the

Colorado Press Association in conjunction with the Colorado County Clerks' Association and the Secretary of State.”

[End response to above question (D3) above this line.]

SECTION E: OTHER

E1. Under HAVA, Section 402, states are required to have in place administrative complaint procedures to remedy grievances. Has your state revised its administrative complaint procedures since they were first implemented? If so, how?

[Begin response to above question (E1) below this line.]

In accordance with section 1-1.5-105, C.R.S., SOS Election Rule 31 provides the HAVA administrative complaint procedures:

31.1 The HAVA Title III complaints may be received by the Secretary of State's office or the designated election official's office. The HAVA Complaint procedure shall be uniform and nondiscriminatory. The Complaint procedure shall conform to section 1-1.5-105(2)(a), C.R.S., as follows:

- (a) A uniform and nondiscriminatory complaint procedure;
- (b) Authorization for any person who has either been personally aggrieved by or has personally witnessed a violation of title III of HAVA that has occurred, is occurring, or that is about to occur, as applicable, to file a complaint;
- (c) A description by the complainant in his or her complaint of the alleged violation with particularity and a reference to the section of HAVA alleged to have been violated;
- (d) A requirement that the complaint be filed no later than one year from the date of either the occurrence of the alleged violation or of the election giving rise to the complaint, whichever is later;
- (e) A requirement that each complaint be in writing and notarized, signed, and sworn by the person filing the complaint;
- (f) Authorization for the secretary to consolidate two or more complaints;
- (g) At the request of the complainant, a hearing on the record;
- (h) Authorization for the secretary to provide an appropriate remedy if the secretary determines that any provision of title III of HAVA has been violated or to dismiss the complaint and publish the results of his or her review if the secretary determines that no provision of title III of HAVA has been violated.
- (i) A final determination on the complaint by the secretary prior to the expiration of the ninety-day period that begins on the date the complaint is filed, unless the complainant consents to an extension of time for making such determination;
- (j) Resolution of the complaint within sixty days under an alternative dispute resolution procedure that the secretary shall establish in accordance with the

requirements of this rule if the secretary fails to satisfy the applicable deadline specified in section 1-1.5-105(2)(i), C.R.S., and the availability of the record and any other materials from any proceedings conducted under the complaint procedures established for use under such alternative dispute resolution procedures;

(k) Authorization for the secretary to conduct a preliminary review of any complaint submitted to him or her and to dismiss any complaint that he or she finds is not supported by credible evidence; and

(l) Recovery by the secretary of the costs of the proceeding against any complainant who files a complaint that, in connection with the final determination by the secretary pursuant to section 1-1.5-105(2)(i), is found on the basis of clear and convincing evidence to be frivolous, groundless, or vexatious.

[End response to above question (E1) above this line.]

E2. Please add any additional comments or information about your state's election administration processes that would help to inform the EAC's interpretation of your data.

[Begin response to above question (E2) below this line.]

[End response to above question (E2) above this line.]

* The information collection associated with the Election Administration and Voting Survey is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1). This part of the information collection is being requested to help the EAC to better understand state laws governing federal elections. Respondents include the fifty states, the District of Columbia, and the U.S. Territories. This information will be made publicly available on the EAC website (www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0006 (expires 3/31/09). The time required to complete this information collection is estimated to average 59 hours per state response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent the U.S. Election Assistance Commission – 2008 Election Administration and Voting Survey, 1225 New York Avenue, Suite 1100, Washington, DC 20005.