



NOTICE OF ADOPTION

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

February 19, 2010

Pursuant to sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2009) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103 C.R.S. (2009), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give NOTICE of the permanent rule adoption this 19<sup>th</sup> day of February, 2010, of the Secretary of State Election Rules (8 CCR 1505-1) as follows (additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. Annotations may be included):

Rule 2.18 is amended as follows:

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

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

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

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

~~b. The county clerk and recorder shall send a confirmation card to each voter who appears to have a change of address and shall mark the record "Inactive – NCOA".~~

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

a. Whose records have been marked "Inactive – returned mail", "inactive – undeliverable", ~~"Inactive – NCOA"~~ or "Inactive – undeliverable ballot";

- b. Who have been mailed a confirmation card; and
- c. Who have since failed to vote in two consecutive ~~federal~~ GENERAL elections.

Rule 2.20 is amended as follows:

2.20 Voter registration status designations.

2.20.1 Definitions

- a. "Active status" or "active record" means that there are no conditions or restrictions on the voter's eligibility.
- b. "Cancelled status" or "cancelled record" means that the voter's registration has been cancelled or revoked based upon a determination that the voter is ineligible, or the applicant has been deemed not registered in accordance with these rules and Title 1, C.R.S.; or the voter has withdrawn their registration.
- c. "Inactive – failed to vote status" means that the voter was active prior to a ~~general election~~ GENERAL ELECTION, but subsequently failed to vote in that ~~general election~~ GENERAL ELECTION.
- ~~d. "Inactive – NCOA status" means that the county clerk and recorder has received information from the United States Postal Service National Change of Address service.~~
- eD. "Inactive – returned mail status" or "inactive – undeliverable status" means that a voter information card or confirmation card was returned to the county clerk and recorder by the United States Postal Service as undeliverable.
- ƒE. "Inactive – undeliverable ballot status" means that a voter was mailed a ballot that was subsequently returned to the county clerk and recorder by the United States Postal Service as undeliverable.

2.20.2. Effect of voter registration status designation

- a. Active status or active record voters' names will appear on the poll book, they will be sent a ballot in a mail ballot election, and they will be sent election notice mailings.
- b. Cancelled status or cancelled record voters' records will remain in the statewide voter registration database; however, their names will not appear on the poll book, they will not be sent a ballot in a mail ballot election, and they will not be sent election notice mailings.
- c. Inactive – failed to vote status voters are eligible voters; their names will appear on the poll book and they will be sent election notice mailings. Inactive – failed to vote voters will be sent a ballot in a mail ballot election where specifically required by sections 1-7.5-107 and 1-7.5-108.5(b), C.R.S.
- ~~d. Inactive – NCOA status voters are eligible voters and their names will appear on the poll book. However, they will not be sent a ballot in a mail ballot election and they will not be sent election notice mailings.~~

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

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

These new and amended rules shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

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

Dated this 19<sup>th</sup> day of February, 2010,



William A. Hobbs  
William A. Hobbs  
Deputy Secretary of State

For

Bernie Buescher  
Colorado Secretary of State



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

**Office of the Secretary of State**  
**Election Rules**

**February 19, 2010**

**1. Basis and Purpose**

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

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

The Secretary of State finds that the amendments and revisions to specific rules concerning the use of the National Change of Address database are necessary to provide clear guidance regarding the use of this service for list maintenance purposes. Specifically, the revisions repeal the requirement that the Secretary of State utilize National Change of Address Database (NCOA), and preclude any county from utilizing the service to update the registration address of any registration record or change the status of an elector to "inactive."

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

Colorado election law provides for a comprehensive scheme of forwardable and non-forwardable mailings that effectively identify electors who may have moved and provide them with multiple opportunities to update their registration. These mailings serve the same purpose as use of NCOA information would, but in a more efficient and cost-effective manner. Further, any benefit that may be gained from also utilizing NCOA information is outweighed by the costs of its implementation and the risks associated with using the information. The Secretary finds particularly compelling the concerns regarding the accuracy of the NCOA

information and the corresponding potential for errors that may result to electors' registration records based upon that the information.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of these amendments and revisions to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

## **2. Statutory Authority**

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

1. Section 1-1-107(2)(a), C.R.S., (2009), which authorizes the Secretary of State "[t]o promulgate, publish and distribute . . . such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."
2. Section 1-1.5-104(1)(e), C.R.S., (2009), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."