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Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State
Election Rules
8 CCR 1505-1

May 9, 2024

I.   Basis and Purpose

This statement explains amendments to the Colorado Department of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws,[1] improve elections administration in Colorado, and increase the transparency and security of the election process. This statement includes the temporary re-adoption of new Rule 7.2.17, initially adopted on a temporary basis on January 10, 2024 (under SOS Tracking #2024-00018). Extension of the temporary rule is necessary to allow the rule to remain in effect until and through the June Primary and Congressional Vacancy Election, as well as until the rules are adopted on a permanent basis (under SOS Tracking #2024-00131).

Specific changes include:

- New Rule 7.2.17 bars a county from using a ballot-return envelope that has a hole or any other opening in which the target area[2] for any contest on the ballot may be seen through the hole or other opening. A county clerk who uses a hole or other opening in a ballot-return envelope must provide a written certification to the Department that any envelope with a hole or other opening has been inspected and tested to verify that no target area can be seen through that hole or opening.

II.   Rulemaking Authority

The statutory authority is as follows:

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[1] Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

[2] "Target area" means the square or oval corresponding to the candidate's name or ballot response (examples: "Yes", "No", "For" or "Against") on a paper ballot. 8 CCR 1505-1, Election Rule 1.1.56.

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- Section 1-1-107(2)(a), C.R.S., (2023), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary finds necessary for the proper administration and enforcement of the election laws."

- Section 1-1-110(1), C.R.S., (2023), which requires county clerks to, "follow the rules and order promulgated by the secretary of state pursuant to this code."

- Section 1-1.5-104(1)(e), C.R.S., (2023), which gives the Secretary of State the power to "[p]romulgate rules…as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of [Article 1.5]."

- Section 1-7.5-104, C.R.S., (2023), which requires the county clerk and recorder to conduct a mail ballot election "under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state."

- Section 1-7.5-105(3), C.R.S., (2023), which requires the county clerk and recorder to "supervise the distribution, handling, and counting of ballots and the survey of returns in accordance with rules promulgated by the secretary of state..."

- Section 1-7.5-106, C.R.S., (2023), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting "rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]."

- Section 1-7.5-106(2), C.R.S., (2023), which allows the Secretary of State to adopt rules "governing procedures and forms necessary to implement" mail ballot elections.

- Section 1-7.5-107(1), C.R.S. (2023), which requires ballots to be prepared, "by law or rules promulgated by the secretary of state."

- Section 1-7.5-107.3(5.5), C.R.S. (2023), which requires the secretary of state to adopt rules regarding ballot return envelopes, "to ensure the privacy of each elector's vote."