

STATE OF COLORADO
Department of State

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Proposed Statements of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Election Rules

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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 implemented 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. (2006).

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, to answer questions arising under Title 1 of the Colorado Revised Statutes, and to implement amendments to the Colorado election laws made during the 2007 regular session of the 66th General Assembly. The adoption of the amendments to the Rules is further necessary to increase the transparency and security of the election process.

The adoption of specific amendments to the Election Rules is necessary as follows:

- The amendments to Rules 2 and 30 are necessary to clarify the procedures for submitting changes to a voter registration record, to eliminate duplicative language, to implement amendments to the list of acceptable identification made by SB07-083, and to change the term “absentee” to “mail-in” in accordance with SB07-234.
- The amendments to Rules 5.5.10, 8, 14, 29, 37.1.3, 40, and 41 are necessary to change the term “absentee” to “mail-in” in accordance with SB07-234.
- The amendments to Rule 6 are necessary to clarify procedures for managing coordinated elections, specifically those involving jurisdictions shared by two or more counties. The amendments will establish consistent statewide procedures for assigning and publishing races, issues, and questions for jurisdictions shared by multiple counties after the implementation of the statewide voter registration database.

- The amendments to Rule 7.6 are necessary to establish consistent guidelines regarding the amount of time any one voter may occupy the voting booth in accordance with the amendments to section 1-7-115, C.R.S., made by SB07-083.
- The amendments to Rule 10.4 and the adoption of new Rule 10.5 are necessary to provide clarification to candidates regarding the audio pronunciation of their name. Specifically, the amendments to Rule 10.4 clarify that a candidate for statewide office must record the audio pronunciation of his or her name exactly as it appears on the candidate's acceptance or statement of intent and that the candidate wants it to appear on the ballot. New Rule 10.5 is necessary to provide uniform, reasonable deadlines to all candidates for local office for the submission of required information to the county clerk and recorder, and to ensure that the counties and their vendors have sufficient time to program the audio ballot required by section 1-5-704, C.R.S.
- The amendments to Rule 11 are necessary to conform the procedures for conducting the post-election audit with the amendments to section 1-7-514, C.R.S., made by SB07-083.
- The amendments to Rule 12 are necessary to change the term "absentee" to "mail-in" in accordance with SB07-234, to clarify the process for mail-in ballots sent in a mail ballot election, and to implement amendments regarding special district elections made by HB07-1159. The amendments to Rule 12.3.5 are specifically necessary to establish a process to allow special districts to request a filing extension for their mail ballot plan where the district may cancel the election. The amendments are necessary because the deadline to cancel an election falls after the deadline for filing a mail ballot plan.
- The amendments to Rule 13 are necessary to implement amendments to Article 8 of Title 1, C.R.S., made by SB07-234. Specifically, the amendments are necessary to change the term "absentee" to "mail-in" and create uniform statewide procedures to implement the permanent mail-in voter list.
- The amendments to Rules 16, 17, 22, and 23 are necessary to implement amendments to the Colorado election laws regarding petition circulators made SB07-083 in accordance with *Buckley v. American Constitutional Law Foundation*, 520 U.S. 182 (1999). The amendments to Rule 16 and the repeal of Rule 17 are also necessary to eliminate duplicative language.
- Rule 20 is repealed in accordance with the amendments to section 1-4-1002, C.R.S., made by SB07-083, which allows a party to appeal the determination by the Secretary of State of sufficiency or insufficiency of a petition directly to district court.
- The amendments to Rule 25 are necessary change the term "absentee" to "mail-in" in accordance with SB07-234, and to clarify the procedures by which a uniformed or overseas voter submits an application for voter registration, or updates his or her record by federal post card application.

- The amendments to Rule 26 are necessary to clarify the procedures regarding the treatment of provisional ballots where the voter attempted to timely register to vote with a voter registration agency or a voter registration drive in accordance with the requirements of SB07-083.
- The amendments to Rule 38 are necessary to establish uniform minimum requirements, testing and backup procedures for electronic pollbooks in accordance with the amendments to section 1-5-102.7, C.R.S., made by SB07-083.
- The amendments to Rule 42 are necessary to change the term “absentee” to “mail-in” in accordance with SB07-234, and to clarify the deadlines for submitting an application for an emergency mail-in ballot.
- The amendments to Rule 43 are necessary to change the term “absentee” to “mail-in” in accordance with SB07-234, and to clarify the restrictions on access to storage and tabulation areas.
- The amendments to Rule 45 are necessary to change the term “absentee” to “mail-in” in accordance with SB07-234, and to make technical corrections.

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

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2006), which authorizes the Secretary of State:

“[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1), C.R.S. (2006), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”
3. SB07-083 amending section 1-5-102.7(4), C.R.S., requiring the Secretary of State to:

“adopt rules . . . establishing requirements for the equipment used at a vote center, including but not limited to requirements to test and backup the equipment used for the secure electronic connection to the computerized registration book and requirements that a vote center have a noncomputerized copy of the registration book or a copy of the elector registration records stored electronically at the vote center to be used in case of a system failure.”