

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman
Secretary of State

Holly Z. Lowder
Director, Elections Division

Proposed Statements of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State
Election Rules

November 21, 2007

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"), U.S.C. 15301 to 15545. See sections 1-1.5-101 *et seq.*, C.R.S. (2007).

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:

- New Rule 2.6.3 clarifies that a county clerk shall not register an applicant for voter registration who provides a social security number or a portion of a social security number but does not indicate that he or she does not possess a driver's license or identification card number.
- The amendments to Rule 2.7.2 clarify that a county clerk may register an elector who fails to check appropriate boxes relating to citizenship and age requirements if the elector properly completes the remainder of the application and signs the affirmation relating to the elector's eligibility.
- The amendments to Rule 5.4.1, 38.7, 38.9, and 44.4.5 make technical corrections and clarifications.
- The amendments to Rule 5.4.5 and 5.4.6 clarify the procedures for petitions and the calling of an election for water conservancy districts.

- New Rule 7.6 establishes rules as required by section 1-7-115, C.R.S., concerning the amount of time a voter may occupy a voting booth. The Rule further clarifies that there is no maximum allowable time for voters with disabilities.
[Note: The Notice of Rulemaking contains three (3) proposed alternatives for establishing the maximum time allowable for occupying a voting booth.]
- The amendments to Rule 12.1.1.1 require a county clerk and recorder to notify a voter of necessary required postage to return a voted mail or mail-in ballot.
- The amendments to Rule 26.1.5 clarify that for the purposes of processing provisional ballots, “statewide offices” include Justice of the Supreme Court and Judge of the Court of Appeals.
- New Rule 26.1.6 establishes that the system electors may access free of charge to determine if their provisional ballot was counted must be available for at least thirty (30) days after an election. The Rule further clarifies that a local telephone number is not sufficient to establish free access.
- New Rules 37.3.3 and 37.3.4 address questions from county clerk and recorders about what kind of voting systems and equipment may be purchased after new federal standards take effect, in connection with existing rule and sections 1-5-601.5, 1-5-612 (2), and 1-5-613 (2), C.R.S.
- The amendments to Rule 38 clarify minimum contingency and security procedures for vote centers, minimum standards for data encryption, minimum electronic pollbook requirements, the minimum number of computers in a vote center, electronic pollbook pre-election testing procedures, and make technical corrections.
- The amendments to Rule 40.5 are necessary to clarify that the election official certification advisory board may reject applications for certification if course work is duplicated.
- The amendments to Rule 40.8.2 are necessary to clarify the allowable time for completing continuing education if certification has lapsed.
- The amendments to Rule 40.8.3 are necessary to clarify that a certified election official shall be de-certified for failure to complete continuing education requirements for a period of two consecutive years.
- The repeal of Rule 40.8.4 is necessary to clarify that the election official certification advisory board shall not have discretionary authority with regarding to de-certifying election officials.
- The repeal of Rule 40.9 is necessary as the Rule relates to applications for certification in the year 2006 only.
- The amendments to Rule 43.8.7.1 (c) are necessary to clarify procedures for delivering and logging the receipt of election equipment prior to the opening of the polls.
- New Rule 44.5 establishes the requirements and procedures for a voter registration drive to renew registration.
- New Rule 44.6 creates a process by which the Secretary of State may receive, review, and investigate complaints against voter registration drives prior to imposing a fine.

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. (2007), 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. (2007), 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.”