

STATE OF COLORADO
Department of State

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Proposed Statement 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"), 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, and to answer questions arising under Title 1 of the Colorado Revised Statutes.

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

- The repeal of Rule 2.7.1 is necessary to avoid repetition or confusion with Rule 30.3.2, which effectively clarifies the ID requirement for voter registration by mail.
- New Rule 2.12 establishes rules relating to voter registration of address confidentiality program participants, as required by section 24-21-201, C.R.S., *et seq.*, the Address Confidentiality Program Act.
- New Rule 2.13 clarifies that the county clerk and recorder may destroy paper voter registration records pursuant to section 1-2-227, C.R.S., only if the documents have been digitally recorded in the voter registration database.
- The amendments to Rule 11, pertaining to voting systems, clarify requirements for any device capable of producing the trusted build hash value of the firmware or software.
- New Rule 12.1.1.2 clarifies that the mail ballot secrecy sleeve or secrecy envelope or voter instructions used in the State of Colorado in any mail ballot or mail-in ballot election shall inform the voter that accessible voting systems are available and provide any relevant additional information.
- New Rule 12.3.2.1 clarifies that the Secretary of State shall not review mail ballot plans submitted by a home rule municipality unless such municipality affirms that its home rule

charter does not contain procedures different from those established in section 1-7.5-101, C.R.S., *et seq.*

- New Rule 13.13.1 clarifies application requirements and when a county clerk and recorder may process such application.
- The amendments to Rule 15.3, pertaining to circulation of a petition for signatures, clarifies that in the case of an appeal to the Supreme Court, the six-month period specified in section 1-40-108(1), C.R.S., shall begin on the date that the first signature is affixed to the petition or on the date that the decision of the Supreme Court becomes final, whichever date occurs first.
- The amendments to Rule 43.8, pertaining to security procedures, clarify that additional tamper-evident seals for the voting unit case are not required when the hash value of the firmware or software can be displayed or printed by the device as verified by the State Certification process. Additional amendments clarify the minimum specific requirement on the remedy for instances where the trusted build hash value of the firmware or software can be displayed or printed by the device.
- New Rule 43.11 provides alternative mechanisms for local governments that need to utilize county election equipment for their elections, in the context of the security “chain of custody” requirements pursuant to Rule 43. New Rule 43.11 proposes four options available to county clerk and recorders for establishing procedures relating to the lease, loan, or rental of voting equipment.
- The amendments to Rule 45.5.2.3.19 change the voting system battery life requirement from three hours to two hours, which reflects consistency with the Election Assistance Commission (EAC) direction in the voluntary voting system guidelines (VVSG).
- New Rule 48 relates to challenges to voting pursuant to section 1-9-203, C.R.S., and clarifies that an election judge shall offer a person challenged a regular ballot when he/she answers challenge questions satisfactorily.

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 Election 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.”