

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 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 Titles 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, and to implement amendments to the Colorado election laws made during the 2008 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 2.5.3, 26.4.2 and 26.4.4 support implementation of the statewide voter registration database.
- The amendments to Rule 2.12 implement amendments made by House Bill 08-1274. Specifically, the term "actual address" shall include the county and voting precinct number.
- New Rule 2.14 clarifies the effective date of a voter registration application received by mail at the office of the Secretary of State. Specifically, the effective date shall be the date of the postmark or receipt by the office of the Secretary of State, whichever is earlier.
- New Rule 2.15 clarifies when a county clerk and recorder may cancel the voter registration record of an elector who has moved and registered in a different county.
- New Rule 2.16 clarifies cancellation of voter registration when an elector's name is matched with a record bearing the same name, date of birth, and social security number in the databases provided by the Colorado Department of Corrections or

- Colorado Department of Health and Environment. This rule establishes that an elector may request that his or her application for voter registration be processed or registration be reinstated if he/she appears in person at the office of the county clerk and recorder and presents a form of authorized identification.
- The amendments to Rule 8 clarify “watcher” eligibility requirements. Specifically, a designated watcher need not be a resident of the county he/she is designated in as long as he/she is an eligible elector in the state of Colorado. Additionally, the amendments establish what access a designated election official must provide watchers so they may observe the election process.
 - New Rules 8.14-8.17 clarify the designation of watchers.
 - The amendments to Rule 12.3.4(b)(2) concerning mail ballot election written timetable specifications, is necessary to clarify that an anticipated date of approval of election by the governing body is acceptable considering that the designated election official will not know the exact date if the written plan is submitted to the Secretary of State online.
 - The amendments to Rule 12.4.11 and 13.17 establish that the mail ballot return envelope shall not be required to have a flap covering the signature or otherwise impede the use of a signature verification device in accordance with amendments to section 1-7.5-107, C.R.S, made by House Bill 08-1128.
 - New Rule 20.4, concerning verification of petitions and challenges to the determination of sufficiency or insufficiency, is necessary to restore a rule inadvertently repealed when Rule 20 was amended in 2007. Specifically, the rule will reestablish that individual entries which were not check by the Secretary of State may not be challenged as sufficient or insufficient.
 - The amendments to Rule 27 clarify uniform ballot counting standards, and establish rules concerning determination of voter intent and written plan requirements for alternative counting methods.
 - New Rule 29.12 implements amendments to section 1-8-114.5, CRS, made by House Bill 08-1128, requiring the Secretary of State to establish procedures for using signature verification devices to process mail-in ballots and ballots used in mail ballot elections.
 - The amendment to Rule 30.1.6 clarifies the US Federal Agency that issues Medicare or Medicaid cards. Specifically, the United States Health Care Financing Administration is now the Centers for Medicare and Medicaid Services.
 - Rule 44.6.3 is repealed to eliminate repetition with Rule 44.6.4.
 - The amendment to Rule 48, relating to voter challenges, clarifies when a challenged person answers one of the challenge questions insufficiently.
 - New Rule 49 establishes rules concerning voter information reports for the purposes of the Public (Open) Records Act, section 24-72-202, C.R.S. Specifically, the rule clarifies custodianship of voter registration information and fees for voter information reports.
 - New Rule 50 establishes rules concerning the uniform administration and maintenance of usernames and privilege assignment in the SCORE system.

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 1-1.5-101(1)(c), C.R.S. (2007), which states that the purposes of HAVA include preventing “disenfranchisement resulting from mistaken determinations of ineligibility.”
3. 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.”