

STATE OF COLORADO

Department of State

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Bernie Buescher

Secretary of State

William A. Hobbs
Deputy Secretary of State

NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State

Election Rules

8 CCR 1505-1

January 30, 2009

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2008), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **March 3, 2009 from 2:00pm to 4:00pm** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

Subject of the Proposed Rulemaking

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning treatment of undeliverable new voter registration notifications pursuant to section 1-2-509(3), C.R.S. The Secretary of State shall also consider such other rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

1. Section 1-1-107(2)(a), C.R.S., (2008), 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."
2. Section 1-1.5-104(1)(e), C.R.S., (2008), which authorizes the Secretary of State to "[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the "Help America Vote Act of 2002", 42 U.S.C. 15301-15545]."

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 270, Denver, Colorado, 80290, or by calling (303) 894-2200,

extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **February 26, 2009** in accordance with section 24-4-103(4)(a), C.R.S., (2008), which states that “[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing.”

The rulemaking hearing on March 3, 2009 will be held in accordance with section 24-4-103, C.R.S., (2008). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on March 3, 2009 at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 30th Day of January, 2009.



William A. Hobbs
William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Statements of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State

Election Rules

January 30, 2009

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. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, 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. These amendments are further necessary to increase the transparency and security of the election process, and to provide guidance until a legislative clarification may be proposed.

The Secretary of State finds that the adoption and enactment of these amendments is specifically necessary to provide an additional layer of protection to help ensure that eligible electors who apply for voter registration are not precluded from becoming registered because of postal or other error.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the temporary 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. (2008), 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. (2008), 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.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

January 30, 2009

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

A final copy of the proposed rule changes will be available to the public no later than February 26, 2009, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[a]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing . . . shall be made available to any person at least five days prior to said hearing."

Proposed additions to the current rules are reflected in SMALL CAPS or underlined. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 New Rule 2.17 would be permanently adopted as follows:
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3 2.17 WHEN A COUNTY CLERK AND RECORDER DEEMS AN APPLICANT "NOT
4 REGISTERED" UPON RECEIPT OF AN UNDELIVERABLE NEW VOTER
5 NOTIFICATION IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., THE
6 APPLICANT SHALL BE MAILED A CONFIRMATION CARD BY
7 FORWARDABLE MAIL. THE CONFIRMATION CARD SHALL HAVE A
8 POSTAGE PREPAID RETURNABLE PORTION THAT IS PREAMBITTED TO
9 THE SENDING COUNTY CLERK AND RECORDER.

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11 2.17.1 IF THE COUNTY CLERK AND RECORDER RECEIVES A SIGNED
12 CONFIRMATION CARD WITHIN 90 DAYS FROM AN APPLICANT
13 WHO WAS DEEMED "NOT REGISTERED" IN ACCORDANCE WITH
14 SECTION 1-2-509(3), C.R.S., THE APPLICANT SHALL BE
15 DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL
16 APPLICATION.
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2.17.2 DURING THE 28 DAYS PRIOR TO AN ELECTION, IF AN APPLICANT WHO HAS BEEN DEEMED "NOT REGISTERED" IN ACCORDANCE WITH SECTION 1-2-509(3), C.R.S., COMPLETES A CERTIFICATE OF REGISTRATION AND PRESENTS IDENTIFICATION IN PERSON AT THE OFFICE OF THE COUNTY CLERK AND RECORDER, THE APPLICANT SHALL BE DEEMED REGISTERED AS OF THE DATE OF THE ORIGINAL APPLICATION.