



Revised Proposed Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

November 2, 2009

1. Basis and Purpose

This proposed 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 proposed 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. (2009).

The proposed 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 proposed revisions are necessary to improve the administration of elections in Colorado, and to increase the transparency and security of the election process. The proposed amendments are further necessary to implement changes to the election laws made during the 2009 regular session of the 67th General Assembly and answer questions arising under Title 1 of the Colorado Revised Statutes.

The Secretary of State finds that the proposed amendments and revisions to specific rules are necessary as follows:

- The proposed amendments to rule 2.18 and 2.20 are necessary to address questions regarding the use of the National Change of Address (NCOA) database. Specifically, these revisions are proposed to clarify that where the information from NCOA indicates that an elector may have moved out of their current county, a confirmation card will be sent to the elector to provide the elector a notice that their record must be updated to reflect the current residential address. In the case of an elector who appears to have moved within the same county, the elector will not be subject to cancellation under rule 2.18.3 and section 1-2-605, C.R.S., based upon the information from NCOA.
- New rule 2.21 is proposed to answer questions regarding the minimum matching criteria set forth in sections 1-2-603 and 1-2-604, C.R.S. The new rule would clarify the policy for resolving discrepancies in name, suffix, and address for the purpose of determining whether two records are a match under the criteria.

- Proposed rule 2.22 is necessary to establish a deadline for processing duplicate records for the same elector in advance of a federal election. The proposed rule would require the processing to stop ninety days prior to a federal election. The proposed rule would not take effect until 2012 because of the ongoing effort to consolidate voter records following the implementation of the statewide voter registration database.
- New rule 2.23 would require the county to mail a notification letter to any elector whose record is consolidated or cancelled within ninety days prior to a federal election. This requirement would ensure that if any record were consolidated or cancelled based upon erroneous information, the elector would have an opportunity to request reinstatement prior to Election Day.
- The proposed revisions to rule 12 would implement changes to Article 7.5 of Title 1, C.R.S., made by House Bill 09-1015 regarding primary elections conducted by mail ballot and answer other questions regarding the mail ballot plans.
- The revisions to rules 26.3, 26.4, and 26.5 are proposed to clarify the process for verifying provisional ballots. These proposed amendments are necessary to answer questions that arose in the 2008 general election and provide clear guidance well in advance of the 2010 general election.
- The amendments to rule 26.1.2 and new rule 26.10 are proposed to clarify the treatment of the provisional ballot envelope and affidavit as an application for registration for future elections or as change to a voter registration record. These proposed changes are necessary to provide a clear process for updating voter registration records based upon the information provided on the affidavit.
- The revisions to rule 30.1.6 are proposed to clarify that a valid tribal identification card falls under a “government document” and is an acceptable form of identification under section 1-1-104(19.5)(VII). This proposed amendment is necessary to provide clarification for election workers and to encourage voter participation by easing the burden on electors who may have no other form of identification.
- New rule 30.11.3 is proposed to implement changes made by House Bill 09-1336 regarding identification requirements for voting in-person by residents of a group residential facility. The proposed rule would establish county procedures and clarify what documentation is sufficient to verify that an elector resides at a group residential facility as defined in section 1-1-104(18.5), C.R.S.
- Revisions to Rule 44 are proposed to clarify the renewal and training requirements for voter registration drive (VRD) organizers. In particular, the proposed amendments would establish the same procedure for an initial VRD registration and VRD renewal, as well as provide for online training for all VRD organizers.
- New rule 51 is proposed to clarify the use of election forms approved and recommended by the Secretary of State in accordance with the “Uniform Election Code of 1992”. In

particular the proposed rule is necessary to provide clarification for election officials and registration offices and to ensure uniformity in election forms. The proposed rule also clarifies that while political parties and other organizations that provide election forms to the public for the purpose of registering or requesting a ballot may use the National Mail Voter Registration form, using the forms approved by the Secretary of State affords applicants and the organizations greater protection.

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. (2009), 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. (2009), 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.”