

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

AMENDED NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State

Election Rules

8 CCR 1505-1

January 15, 2010

Notice is hereby given that the rulemaking hearing previously scheduled for February 2, 2010, pursuant to the notice of rulemaking issued on December 8, 2009 has been rescheduled to **February 18, 2010 from 9:00am to 12:00pm** 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.

As the result of a system error, the Notice of Rulemaking issued on December 8, 2009 was not published in the January 10, 2010 Colorado Register. The Notice of Rulemaking was subsequently published in the January 14, 2010 special issue. Therefore, the Secretary of State is amending the original notice filed under CCR tracking number 2009-01158 to reschedule the rulemaking hearing in accordance with section 24-4-103(3)(a), C.R.S., (2009), which states that the rulemaking hearing shall not be held less than twenty days after publication in the Colorado Register.

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 registration and list maintenance, including the use of the National Change of Address database. The Secretary of State shall also consider 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., (2009), 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."

Main Number (303) 894-2200
Administration (303) 860-6900
Fax (303) 869-4860

TDD (303) 869-4867
Web Site www.sos.state.co.us
E-mail administration@sos.state.co.us

2. Section 1-1.5-104(1)(e), C.R.S., (2009), 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 12, 2010** in accordance with section 24-4-103(4)(a), C.R.S., (2009), 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 February 18, 2010 will be held in accordance with section 24-4-103, C.R.S. (2009). 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 February 18, 2010 at 9:00am 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 15th Day of January, 2010.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Proposed Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

December 8, 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 Title 1 of the Colorado Revised Statutes. Such proposed revisions are necessary to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to 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 revisions to these rules would repeal the requirement that the Secretary of State utilize National Change of Address Database (NCOA), and would also preclude any county from utilizing the service to update the registration address of any registration record or change the status of an elector to "inactive." These amendments are proposed because Colorado election law provides for a comprehensive scheme of forwardable and non-forwardable mailings that effectively identify electors who may have moved and provide them with multiple opportunities to update their registration. These mailings serve the same purpose as use of NCOA information would, but in a more efficient and cost-effective manner. Further, any benefit that may be gained from also utilizing NCOA information is outweighed by the costs of its implementation and the risks associated with using the information. In particular, the Secretary has concerns regarding the accuracy of the NCOA information and the corresponding potential for errors that may result to electors' registration records based upon that the information.

These revisions are proposed after consideration of comments received during the November 10, 2009 elections rulemaking hearing where clarifications to the NCOA process were considered. Those amendments would have required that where the information from NCOA indicates that an elector may have moved out of their current county, a confirmation card would be sent to the elector to provide the elector a notice that their record must be updated to reflect the current residential address. However, in the case of an elector who appears to have moved within the same county, the elector would not be subject to cancellation under Rule 2.18.3 and section 1-2-605, C.R.S., based upon the information from NCOA. During the course of that rulemaking, the office received a number of persuasive comments discussing the costs and risks associated with implementing such a process.

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.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

January 15, 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 12, 2010, 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. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 2.18 would be amended as follows:

2 2.18 List Maintenance Pursuant to section 8 of the National Voter Registration Act of 1993.

3 2.18.1 When a voter information card or confirmation card is returned by the United
4 States Postal Service to the county clerk and recorder as undeliverable, the county
5 clerk and recorder shall mark the voter's record "Inactive – returned mail" and in
6 the case of a returned voter information card, shall mail a confirmation card.

7 2.18.2 National Change of Address (NCOA). COUNTIES MAY UTILIZE THE NCOA TO
8 SEND MAILINGS TO ELECTORS WHO MAY HAVE MOVED TO REQUEST THAT THE
9 ELECTORS UPDATE THEIR VOTER REGISTRATION RECORDS. HOWEVER, NO COUNTY
10 MAY UPDATE THE REGISTRATION ADDRESS OF ANY REGISTRATION RECORD OR
11 CHANGE THE STATUS OF AN ELECTOR TO "INACTIVE" BASED SOLELY UPON THE
12 INFORMATION PROVIDED BY NCOA. ~~No later than June 1 of every odd numbered~~
13 ~~year, the Secretary of State shall utilize the NCOA service to compare the records~~
14 ~~of all voters marked "Inactive – failed to vote" with the NCOA database.~~

1 a. ~~The Secretary of State shall forward a list to each county clerk and~~
2 ~~recorder of the records that appear to have a change of address based upon~~
3 ~~the NCOA comparison.~~

4 b. ~~The county clerk and recorder shall send a confirmation card to each voter~~
5 ~~who appears to have a change of address and shall mark the record~~
6 ~~“Inactive NCOA”.~~

7 2.18.3 In accordance with section 1-2-605(7), C.R.S., no later than 90 days following a
8 General Election, the county clerk and recorder in each county shall cancel only
9 the registrations of electors who have met the following requirements:

10 a. Whose records have been marked “Inactive – returned mail”, “inactive –
11 undeliverable”, ~~“Inactive NCOA”~~ or “Inactive – undeliverable ballot”;

12 b. Who have been mailed a confirmation card; and

13 c. Who have since failed to vote in two consecutive ~~federal~~ GENERAL
14 elections.

15 Rule 2.20 would be amended as follows:

16 2.20 Voter registration status designations.

17 2.20.1 Definitions

18 a. “Active status” or “active record” means that there are no conditions or
19 restrictions on the voter’s eligibility.

20 b. “Cancelled status” or “cancelled record” means that the voter’s
21 registration has been cancelled or revoked based upon a determination that
22 the voter is ineligible, or the applicant has been deemed not registered in
23 accordance with these rules and Title 1, C.R.S.; or the voter has withdrawn
24 their registration.

25 c. “Inactive – failed to vote status” means that the voter was active prior to a
26 ~~general election~~ GENERAL ELECTION, but subsequently failed to vote in
27 that ~~general election~~ GENERAL ELECTION.

28 d. ~~“Inactive NCOA status” means that the county clerk and recorder has~~
29 ~~received information from the United States Postal Service National~~
30 ~~Change of Address service.~~

31 eD. “Inactive – returned mail status” or “inactive – undeliverable status”
32 means that a voter information card or confirmation card was returned to
33 the county clerk and recorder by the United States Postal Service as
34 undeliverable.

1 fE. “Inactive – undeliverable ballot status” means that a voter was mailed a
2 ballot that was subsequently returned to the county clerk and recorder by
3 the United States Postal Service as undeliverable.

4 2.20.2. Effect of voter registration status designation

5 a. Active status or active record voters’ names will appear on the poll book,
6 they will be sent a ballot in a mail ballot election, and they will be sent
7 election notice mailings.

8 b. Cancelled status or cancelled record voters’ records will remain in the
9 statewide voter registration database; however, their names will not appear
10 on the poll book, they will not be sent a ballot in a mail ballot election, and
11 they will not be sent election notice mailings.

12 c. Inactive – failed to vote status voters are eligible voters; their names will
13 appear on the poll book and they will be sent election notice mailings.
14 Inactive – failed to vote voters will be sent a ballot in a mail ballot election
15 where specifically required by sections 1-7.5-107 and 1-7.5-108.5(b),
16 C.R.S.

17 ~~d. Inactive – NCOA status voters are eligible voters and their names will~~
18 ~~appear on the poll book. However, they will not be sent a ballot in a mail~~
19 ~~ballot election and they will not be sent election notice mailings.~~

20 eD. Inactive – returned mail status or inactive – undeliverable status voters are
21 eligible voters and their names will appear on the poll book. However,
22 they will not be sent ballots in a mail ballot election and they will not be
23 sent election notice mailings.

24 fE. Inactive – undeliverable ballot status voters are eligible voters and their
25 names will appear on the poll book. However, they will not be sent a
26 ballot in a mail ballot election and they will not be sent election notice
27 mailings.

28 [Sections 1-2-605(3) and (11), 1-5-206, 1-7-110, 1-7.5-107, and 1-7.5-108.5,
29 C.R.S.]