



Revised Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules
8 CCR 1505-1

February 9, 2012

I. Basis and Purpose

This statement is about amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under State election laws as follows:

- Revisions to Rule 12.4 and New Rule 12.10.4 consolidate rules regarding drop-off locations and clarify security requirements for those sites. Specifically, the changes outline that all ballot boxes must be monitored, and that the monitoring may include video surveillance, as defined in Rule 43.
- New Rules 43.2.7(c) and (d) strengthen the security required for transporting ballots and clarify the written plan for alternative counting method. Specifically, the ballot transportation provisions previously outlined in repealed Rule 27.8 are relocated to new paragraph (d) to consolidate all ballot transportation provisions in the same rule. Additionally, new paragraph (c) requires that two election judges accompany ballots at during all stages of transportation.
- Revisions to Rule 43.1.2 eliminate redundancy and clarify the definition of “video security surveillance recording”. Going forward, the term means video monitoring by a device that continuously records a designated location. Therefore, it is unnecessary to include the word “continuous” as part of the defined term. Additional amendments provide language to clarify the standard for video surveillance equipment that is dependent on motion detection.
- Amendments to Rule 43.2 reorganize the Security Plan requirements.
- Revisions to Rule 43.2.2 add a general requirement that election judges record and verify all seal numbers and outline the number of seals that the county must use to ensure the integrity of each component of a DRE.

¹ Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

- Amendments to Rule 43.2.5(a) ensure that video surveillance systems do not record over records that the county clerk and recorder must maintain for 25 months.
- Current Rule 43.10 is relocated to proposed new Rule 43.2.8(b).
- Amendments to Rule 43.2.11 outline the county’s responsibilities regarding investigation, documentation and reporting chain-of-custody issues. Specifically, paragraph (a) requires the county clerk and recorder to investigate broken seals and discrepancies in chain-of-custody logs, and complete an internal incident report.

The amendments to paragraphs (b) and (c) clarify that the county clerk is not required to provide written reports to the Secretary of State’s Office for every security issue. But, the county clerk must send a copy of the incident report to the Secretary of State’s Office if the clerk cannot determine why a seal was broken or there is a discrepancy in a chain-of-custody log after an investigation under the Rule. The Secretary of State retains the ability to inspect county documentation, including incident reports, at any time.

- Current Rules 43.3 through 43.7 are relocated to Rule 43.4.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), 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., (2011), 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].”