



Revised Statement of Basis, Purpose, and Specific Statutory Authority

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

July 18, 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:

- Rule 2.7.4 is repealed in accordance with changes made by section 3 of House Bill 12-1292, which amended section 1-2-204(2)(d), C.R.S., to make gender an optional response for a person registering to vote.
- New Rule 2.7.5 is adopted to implement changes made by section 6 of House Bill 12-1292. In accordance with amendments to section 1-2-509, C.R.S., if a county notifies an applicant that his or her voter registration application is incomplete, and the applicant does not provide the additional information necessary to complete the application within 24 months after notification is sent, the applicant must reapply.
- Amendments to Rule 2.11 clarify that an elector may apply through the online voter registration portal to update his or her inactive voter registration record to active status.
- Amendments to Rule 2.19.1 implement changes made by section 7 of House Bill 12-1292. Amendments to section 1-2-605(6)(b), C.R.S., provide that a confirmation card only needs to include information necessary to update registration rather than a complete voter registration application.
- Rule 8.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the rule applies to activities described in Article I, Section 7 and that watchers are permitted to view the conduct of elections described in Article I, Section 7 from a distance of six feet unless the size or configuration of the room does not allow.
- Rule 9.1 is amended to implement changes made by section 26 of House Bill 12-1292. Amendments to section 1-7-111, C.R.S., provide that an elector may receive assistance

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.

from an election judge or any other person the elector selects. Additionally, any person, other than an election judge, who assists an elector must first complete a voter assistance/disabled voter self-affirmation form. Amendments to the rule heading implement the people first language requirements of House Bill 10-1137.

- New Rule 10.6, temporarily adopted on April 2, 2012, is permanently adopted with revisions to clarify that the rule applies when a major political party nominates more than one candidate for any office.
- New Rule 10.7 establishes procedures for voiding first and generating second ballots when an elector submits a timely address or affiliation change after the county either sends the voter file to a print vendor, prints, or mails ballots. The rule also clarifies which ballot to count when the county processes the change to the elector's record after it mails ballots.
- Rules 12.4.1(a), 12.4.1(b)(2), and 12.4.2(a) are amended to implement changes made by section 32 of House Bill 12-1292 and section 10 of House Bill 12-1293. These changes harmonize mail ballot plan deadlines for elections conducted by the county clerk. The changes also adjust the deadline for a designated election official to submit a mail ballot plan for a nonpartisan recall election and for the Secretary of State to approve or disapprove the plan.
- New Rule 12.4.1(d), amendments to Rule 12.11, and new Rule 13.19 are adopted to clarify when a designated election official may mail ballots to an elector whose record is marked inactive – failed to vote. Specifically, the changes to Rules 12.4.1(d) and Rule 12.11 clarify that a county clerk may not mail a ballot in a coordinated mail ballot election to an inactive – failed to vote elector. New Rule 13.19 clarifies that, in order to receive a mail-in ballot in a polling place or vote center election, an inactive – failed to vote elector must make a timely ballot request and update his or her record to active.

The Colorado General Assembly passed the Mail Ballot Act in 1990, which provided for counties choosing to conduct a coordinated election to send ballots only to active registered electors. More recently, in 2008, the General Assembly passed House Bill 08-1329, which amended section 1-7.5-108.5(2)(b), C.R.S. The changes in House Bill 08-1329 were adopted to address concerns stemming from the 2006 general election. Election day 2006 saw unusually long lines throughout the day, leading to concerns that voters had simply given up, and become inactive – failed to vote as a result. The bill created a one-time exception requiring designated election officials to send mail ballots to all inactive – failed to vote electors for mail ballot elections conducted in November 2009. The bill also added section 1-7.5-108.5(2)(b), C.R.S., which stated that on July 1, 2011, this one-time exception was repealed.

Where the General Assembly intends for counties to mail ballots to inactive – failed to vote electors, the General Assembly specifically states that intent in the language of the statute. For example, section 1-7.5-107(3)(a)(II), C.R.S., requires mailing ballots to inactive – failed to vote electors who are affiliated with a participating party in a primary mail ballot election. In the repealed section 1-7.5-108.5(2)(b), C.R.S., the General Assembly specifically stated that counties were to mail ballots to inactive – failed to vote electors in a coordinated election. But because the requirement was for a specific period

of time and has expired, county clerks may now send ballots only to active electors in a coordinated election.

In 2011, the City and County of Denver determined that it would mail ballots to inactive – failed to vote electors in the coordinated election. The Secretary of State advised Denver that the statute contemplated mailing only to active electors in a coordinated election. Denver refused to comply, and the Secretary filed a complaint in Denver district court to enjoin Denver from mailing to inactive – failed to vote electors. Denver responded and asserted several defenses, including an allegation that the Secretary failed to comply with the rulemaking requirements of the Administrative Procedure Act (APA). The changes to Rules 12.4.1(d) and Rule 12.11 address Denver’s concern that the Secretary failed to comply with the APA.

- Amendments to Rule 26 clarify the procedures for processing provisional ballots in the statewide voter registration system to ensure uniformity and consistency in statewide elections. Specifically, the revisions to Rule 26.10 state that the county clerk must make updates to the appropriate voter registration records before coding the ballots and linking to the voter record. New Rule 26.11 provides that the county clerk must completely enter and code all provisional ballots in the statewide voter registration system before closing the election, and new Rule 26.12 requires the county clerk to process all pollbooks before tabulating provisional ballots. Repealed Rule 26.1.6 is amended and relocated to new Rule 26.12.
- Amendments to Rule 29 clarify that the designated election official must use the signature affidavit and signature verification letters and forms prescribed by the Secretary of State.
- Rule 30.1.6(a) is amended to implement changes made by Senate Bill 12-062 and House Bill 12-1292. Specifically, amendments to the definition of identification in section 1-1-104(19.5)(a), C.R.S., list two additional forms of identification: (1) a valid veteran identification card issued by the United States department of veterans affairs veterans’ health administration with a photograph of the eligible elector; and (2) a valid identification card issued by a federally recognized tribal government certifying tribal membership.
- Rules 32.1, 32.2, 32.3, and 32.4 are repealed. House Bill 12-1293 re-codified Part 1 of Article 12 with respect to recall elections. As a result, the Rules are no longer necessary.
- Amendments to Rule 41 clarify the role and duties of canvass boards to ensure uniform appointment and operation of canvass boards in state and federal elections. Specifically, the amendments:
 - Clarify the makeup of the canvass board. Colorado presently has more than two major political parties. This rule affords each major party an equal number of representatives on the canvass board, provided that each party submits representatives. This rule also provides that the county clerk and recorder may appoint minor party and unaffiliated candidates to the board. For purposes of efficient elections administration and fairness, this rule also limits the number of representatives from each major party to two and requires the canvass board to consist of an odd number of members.

- Clarify the canvass board’s duties under section 1-10-101.5, C.R.S. In particular, the board is tasked with reviewing the election judges’ reconciliation to account and balance the election returns. The rule clarifies that where the board identifies a discrepancy in the judges’ reconciliation, it may review the ballots at issue only for the purpose of correcting and accounting for the error. The rule also clarifies that the board must certify the abstract in accordance with sections 1-10-102 and 1-10-103, C.R.S., even if that means certifying imperfect returns.
- Clarifies the process for the Secretary of State to provide additional assistance and guidance to the county clerk and canvass boards. Specifically, the rule outlines the Secretary’s role in the event that the board certifies imperfect returns. The rule provides that where imperfect returns have the potential to affect the outcome of any race or ballot measure, the Secretary will investigate and assist the board in resolving the imperfection before the state or county certifies the election results.
- Clarifies that watchers may observe the canvass in the same manner as any other election procedure.
- Revisions to Rule 42 include technical corrections and conforms the rule to changes made by section 38 of House Bill 12-1292. Specifically, Rules 42.11.3 through 42.11.7 are repealed. Amendments to section 1-8-115, C.R.S., eliminate the requirement that the designated election official seek authority from the Secretary of State before faxing an emergency mail-in ballot to an elector. Changes to Rule 42.2 clarify the definition of electronic transfer for emergency ballots.

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].”
3. Section 1-7.5-106(2), C.R.S., (2011), which authorizes the Secretary of State to “adopt rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.].”
4. Section 1-8-115(5)(d), C.R.S., (2011), which authorize the Secretary of State to “prescribe by rule any procedure or requirements as may be necessary to implement the provisions of [the emergency electronic transfer statute].”

5. Section 1-8.5-112, C.R.S., (2011), which requires the Secretary of State to promulgate all appropriate rules...for the purpose of ensuring the uniform application of [Article 8.5 of Title 1, C.R.S.]”
6. Section 1-10-104.5, C.R.S. (2011), which authorizes the Secretary of State to “promulgate rules...for the purpose of establishing equitable uniformity in the appointment and operation of canvass boards.”