



## **Notice of Proposed Rulemaking**

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

**February 27, 2013**

#### **I. Notice of hearing**

As required by the State Administrative Procedure Act,<sup>1</sup> the Secretary of State gives notice of proposed rulemaking. A hearing is scheduled for **April 2, 2013 from 2:00 p.m. to 5:00 p.m.** in the Blue Spruce Conference Room on the second floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

#### **II. Subject of the proposed rulemaking**

The Secretary is considering amendments to the election rules<sup>2</sup> in order to improve the administration and enforcement of Colorado elections law<sup>3</sup> and to increase the transparency and security of the election process.

Specifically, the Secretary is considering permanent adoption of rules regarding the use of unique numbers on ballots. A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

#### **III. Statutory authority for proposed rulemaking**

The rule revisions and amendments are proposed in accordance with the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S., (2012), 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., (2012), 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].”

---

<sup>1</sup> Section 24-4-103(3)(a), C.R.S. (2012).

<sup>2</sup> 8 CCR 1505-1.

<sup>3</sup> Article VII of the Colorado Constitution, Title I of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

3. Section 1-5-407(7), C.R.S. (2012), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

#### **IV. Copies of draft rules**

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

[www.sos.state.co.us/pubs/rule\\_making/hearings/2013/ElectionRulesHearing20130402.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130402.html).

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,<sup>4</sup> if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by March 28, 2013.

#### **V. Opportunity to testify and submit written comments**

The Secretary values your feedback in our rulemaking process, and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

All interested persons will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office anytime before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website [www.sos.state.co.us/pubs/rule\\_making/hearings/2013/ElectionRulesHearing20130402.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130402.html).

Prior to posting online, contact information including home address, email address, and telephone number(s) will be redacted from submissions unless otherwise directed by the contributor.

#### **VI. Broadcast and audio recording of hearing**

If you are unable to attend the hearing, you may listen to the live broadcast from the Blue Spruce Conference Room online at [www.sos.state.co.us/pubs/info\\_center/audioBroadcasts.html](http://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html). After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

---

<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2012). “Any 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.”

**VII. Office contact**

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at [SoS.Rulemaking@sos.state.co.us](mailto:SoS.Rulemaking@sos.state.co.us) or (303) 894-2200 ext. 6329.

Dated this 27th Day of February, 2013.



Suzanne Staiert  
Deputy Secretary of State

For

Scott Gessler  
Colorado Secretary of State



## **Draft Statement of Basis, Purpose, and Specific Statutory Authority**

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

**February 27, 2013**

#### **I. Basis and Purpose**

This statement explains 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.<sup>1</sup> The revisions are also intended to improve elections administration in Colorado and to increase the transparency and security of the election process.

The Secretary received credible evidence that a unique number or bar code containing a unique number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it. The purpose of this rule is to ensure that no ballot is printed with a number that can be used for this purpose. It is essential that all Colorado voters have confidence in the processes and procedures for the upcoming Presidential election.

After voted ballots have been separated from return envelopes and the ballot stubs are removed, unique numbers may be used for accounting and auditing purposes, including risk limited auditing and duplication of damaged ballots. The rule also requires that counties redact unique numbers or barcodes containing unique numbers from any ballots printed before the adoption of the rule that are provided in response to a request under the Colorado Open Records Act.

On February 1, 2013, the Secretary issued a request for public comment to help our office develop preliminary draft rules to address the use of numbers on ballots. The comments we received in anticipation of rulemaking are available online at: [www.sos.state.co.us/pubs/rule\\_making/ruleComments.html](http://www.sos.state.co.us/pubs/rule_making/ruleComments.html) and are incorporated into the official rulemaking record.

#### **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

---

<sup>1</sup> 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.

1. Section 1-1-107(2)(a), C.R.S., (2012), 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., (2012), 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 1-5-407(7), C.R.S. (2012), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

# Preliminary Draft of Proposed Rules

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

February 27, 2013

### Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.<sup>1</sup>

This is a preliminary draft of the proposed rules that may be revised before the April 2, 2013 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **March 28, 2013**.<sup>2</sup>

SMALL CAPS indicate proposed additions to the current rules.

~~Stricken type~~ indicates proposed deletions from current rules.

*(Annotations)* may be included.

---

### New Rule 10.8:

#### 10.8 USE OF UNIQUE NUMBERS ON BALLOTS.

10.8.1 EXCEPT FOR BALLOTS SENT TO MILITARY OR OVERSEAS ELECTORS BY ELECTRONIC TRANSMISSION UNDER RULE 25.2.7, NO COUNTY MAY PRINT A BALLOT FOR USE IN A STATE OR FEDERAL ELECTION THAT HAS A UNIQUE NUMBER, OR A BARCODE CONTAINING A UNIQUE NUMBER, THAT IS SPECIFIC TO A SINGLE BALLOT. NOTHING IN THIS RULE PROHIBITS A COUNTY FROM PRINTING A UNIQUE NUMBER OR BARCODE ON THE REMOVABLE STUB.

10.8.2 AFTER ELECTION JUDGES HAVE DISASSOCIATED A VOTED BALLOT FROM ITS ENVELOPE AND THE STUB IS REMOVED, THE COUNTY MAY WRITE OR PRINT UNIQUE NUMBERS ON THE VOTED BALLOT FOR AUDITING AND ACCOUNTING PURPOSES, INCLUDING DUPLICATION OF DAMAGED BALLOTS AND RISK LIMITING AUDITS.

10.8.3 FOR BALLOTS PRINTED BEFORE THE ADOPTION OF THIS RULE THAT ARE IN A COUNTY'S POSSESSION, THE COUNTY MUST REDACT UNIQUE NUMBERS, OR BARCODES CONTAINING UNIQUE NUMBERS, BEFORE PROVIDING BALLOTS IN RESPONSE TO A REQUEST FOR INSPECTION UNDER THE COLORADO OPEN RECORDS ACT (SECTION 24-72-205.5(4)(b)(II), C.R.S.).

---

<sup>1</sup> Sections 24-4-103(2.5) and (3)(a), C.R.S. (2012). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

<sup>2</sup> Section 24-4-103(4)(a), C.R.S. (2012). "[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."

New Rule 10.9

- 10.9 TRACKING BALLOT BATCHES. THE COUNTY CLERK MUST IMPLEMENT A PROCESS TO DISSOCIATE ANY BATCH NUMBER FROM THE COUNTED BALLOTS NO LATER THAN THE FINAL CERTIFICATION OF THE ABSTRACT OF VOTES CAST.