



Notice of Adoption

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

April 25, 2013

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a permanent basis.

The following rules were considered at the April 2, 2013 rulemaking hearing in accordance with the State Administrative Procedure Act⁴.

(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.

- (A) A COUNTY THAT USES ROTATING NUMBERS MUST PRINT AT LEAST TEN BALLOTS OF EACH BALLOT STYLE FOR EACH NUMBER.
- (B) 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 DISSOCIATED 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

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2012).

² Section 24-4-103(3)(a), C.R.S. (2012).

³ 8 CCR 1505-1.

⁴ Section 24-4-103(3)(a), C.R.S. (2012).

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.).

New Rule 10.9

10.9 TRACKING BALLOT BATCHES. THE COUNTY CLERK MUST DISSOCIATE ANY BATCH NUMBER THAT COULD TRACE A BALLOT BACK TO THE SPECIFIC VOTER WHO CAST IT FROM THE COUNTED BALLOTS NO LATER THAN THE FINAL CERTIFICATION OF THE ABSTRACT OF VOTES CAST.

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Effective Date of Adopted Rules

These new rules will become permanently effective twenty days after publication in the Colorado Register.⁵

Dated this 25th day of April, 2013,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁵ Section 24-4-103(5), C.R.S. (2012).



Statement of Basis, Purpose, and Specific Statutory Authority

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

April 25, 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.¹ 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.

During the rulemaking hearing proceedings, Secretary of State considered alternative language concerning tracking ballot batches. Because the final certification of the abstract of votes cast includes a recount, the Secretary determined that the adopted language of Rule 10.9 was more straightforward and has less potential for confusion.

Written comments received in anticipation of and during the formal rulemaking process are incorporated into the official rulemaking record and available online at:
www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130402.html.

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.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

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].