



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

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

**July 1, 2015**

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

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The Secretary is considering other amendments to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws,<sup>1</sup> improve elections administration in Colorado, and increase the transparency and security of the election process.

On May 8, 2015, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: [http://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.

Specific proposed changes include:

- Amendments to Rule 1.1.46 to clarify how watchers are appointed for a recall election.
- Amendments to Rule 2.3 to clarify that a county must mark an elector's registration record as "ID Required" if the elector provides a driver's license or state identification card number or social security number that does not verify in the statewide voter registration database.
- New Rule 2.3.1 requires a county to process the Help American Vote Verification file on a monthly basis and remove the "ID Required" flag for those numbers that are verified.
- Amendments to Rule 2.4 to clarify that the provisions of Rule 2.4 apply to new registration applications.

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<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.

- Amendments to Rule 2.5 to clarify that those rule provisions apply to existing voter registration records. The amendments also establish that an application must meet minimum matching criteria before a county may change an elector's status.
- Repeal of Rules 2.10.1 and 2.10.2 as unnecessary in light of same-day registration.
- Amendments to Rule 2.10.4 clarify that if a new voter notification card is returned to the county clerk as undeliverable after the 20-day period outlined in section 1-2-509(3), C.R.S., expires, the county clerk must mark the voter's record as "Inactive – returned mail" and mail a confirmation card.
- Amendments to Rule 2.13.1(a) clarify that election judges are permitted to register voters or update voter registration information in SCORE.
- Repeal of Rule 2.13.1(b) to correspond with Senate Bill 15-100.
- Amendments to New Rule 2.13.1(b) allow a county to provide its own training to election judges instead of the Secretary of State provided training if the training is approved by the Secretary of State.
- Repeal of Rule 4.1.3 as unnecessary because the counties and political subdivisions may cover these provisions in their intergovernmental agreements.
- New Rule 4.3.3 clarifies canvass board appointments in odd-year November elections in which there is a statewide issue on the ballot.
- Repeal of Rule 6.4.1 and 6.5 to correspond with Senate Bill 15-100.
- Repeal of 7.2.3(c) because it is addressed by section 1-7.5-107(3)(a)(I), C.R.S.
- Amendments to Rule 7.2.5 to provide an effective date of January 1, 2016.
- Repeal of 7.2.6 to correspond with Senate Bill 15-100.
- New Rule 7.2.6, which provides that each mail ballot return envelope must include a section for the elector to identify the person returning a ballot other than the voter. This rule is intended to assist with the enforcement of the ten-ballot receipt-for-delivery requirement in statute and to provide a chain-of-custody in instances of alleged ballot tampering.
- New Rule 7.2.7 clarifies that a county must issue a mail ballot to any eligible elector who requests one in person at the county clerk's office beginning 32 days before an election in accordance with section 1-7.5-107(2.7), C.R.S.
- Amendments to Rule 7.3.1 clarify that a designated election official must attempt to call all electors whose missing signature affidavits are unsigned if the designated election official calls any elector.

- Amendments to Rule 7.5.1 requires counties to adequately light all drop-off locations and clarifies that a county must monitor each drop-off location using either an election official or video security surveillance recording system as defined in Rule 1.1.42.
- Amendments to Rule 7.5.5 clarify that election officials must receive undeliverable ballots in SCORE upon receipt.
- Amendments to Rule 7.7.1 require election officials to follow the procedures for discrepant signatures outlined in section 1-7.5-107.3(2)(a), C.R.S., if a ballot return envelope lacks a signature.
- New Rule 7.1.4 clarifies that if an elector fails to cure a missing signature, the county clerk is not required to send a copy of the ballot return envelope to the district attorney.
- Repeal of Rules 7.7.2 and 7.7.3 as unnecessary with amendments to Rule 7.7.1
- Amendments to Rule 7.9.3 provide that a county clerk must configure voter service and polling centers, and provide sufficient resources to assist registrants and electors efficiently.
- New Rule 7.11.2 requires a county to use the WebSCORE application to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots. It also requires that in the event that the voter service and polling center loses connectivity to WebSCORE but retains connectivity to SCORE, the county must offer an in-person voter the option to obtain a replacement mail ballot rather than a provisional ballot.
- Amendments to Rule 7.11.3 provide that an election official may not open simultaneous sessions of both SCORE and WebSCORE on a single workstation.
- Amendments to Rule 11.1.3 explaining that a person convicted of an election offense containing an element of fraud may not have access to a code, combination, password, or encryption key for the voting equipment, ballot storage area, counting room, or tabulation workstation.
- Repeal of Rule 16.1.5 as duplicative of sections 1-8.3-111 and 1-8.3-113, C.R.S.
- Amendments to Rule 16.2.1(c) to correspond with section 1-8.3-111, C.R.S., and define “not feasible” as circumstances where the elector believes the timely return of his or her ballot by mail is not certain.
- Amendments to Rule 16.2.3 to amend the affirmation to indicate the elector’s understanding that Colorado law requires an elector to return his or her ballot by a more secure method, such as mail, if available and feasible.
- New Rule 16.2.8 prohibits and defines internet voting.
- Amendments to Rule 20.4.1 and 20.4.3 to correspond to Senate Bill 15-100.

- Amendments to Rule 20.9.1(c) to correspond to Senate Bill 15-100.
- New Rule 23 to create a Bipartisan Election Advisory Commission. This Rule outlines the purpose of the Commission, the membership of the Commission, and the structure of the meetings.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2014), 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)(b), C.R.S., (2014), which authorizes the Secretary of State to “[p]romulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title.”
3. Section 1-1.5-104(1)(e), C.R.S., (2014), 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] of [Article 1.5 of Title 1].”
4. Section 1-2-217.7(7), C.R.S., (2014), which states that “[t]he secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to implement this section” concerning registration on or immediately before election day.
5. Section 1-5-504.5(1)(e), C.R.S., (2014) which authorizes the Secretary of State to promulgate rules to prescribe the form of “explanation of the procedures that govern the provision of voting assistance to electors with disabilities who require such assistance pursuant to section 1-7-111, C.R.S.
6. Section 1-7.5-104, C.R.S. (2014), which requires the county clerk and recorder to conduct a mail ballot election “under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state.”
7. Section 1-7.5-106, C.R.S., (2014), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting “rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.].”
8. Section 1-8.3-105(2), C.R.S., (2014), which authorizes the Secretary of State to prescribe by rule “special procedures or requirements as may be necessary to facilitate early voting

by those members of the military or military support personnel directly affected by the emergency.”

9. Section 1-8.3-113(1)(a), C.R.S., which instructs the Secretary of State to promulgate rules regarding the feasibility of electronic transmission of ballots by military and overseas voters.
10. Section 1-8.5-112, C.R.S., (2014), 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.]”