

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

NOTICE OF PROPOSED RULEMAKING

Office of the Secretary of State

Election Rules

8 CCR 1505-1

March 31, 2009

Pursuant to the requirements of section 24-4-103(3)(a), C.R.S., (2008), notice of proposed rulemaking is hereby given by the Secretary of State. A rulemaking hearing will be held on **May 5, 2009 from 2:00pm to 4:00pm** in the Blue Spruce Conference Room on the second floor of the Office of the Secretary of State at 1700 Broadway, Denver, Colorado 80290. All interested persons will be afforded an opportunity to be heard on the subject of revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1.

Subject of the Proposed Rulemaking

Amendments and revisions to the Colorado Secretary of State Election Rules as may be necessary or appropriate to improve the administration of elections in Colorado. The revisions and amendments to be considered include rules concerning definitions of common terms, list maintenance pursuant to the National Voter Registration Act of 1993, and the creation of an elections best practice and vision commission. The Secretary of State shall also consider such other rule amendments as may be necessary to answer questions arising under Title 1 of the Colorado Revised Statutes.

Authority for Proposed Rulemaking

Revisions and amendments to the "Election Rules" of the Colorado Secretary of State, 8 C.C.R. 1505-1, are proposed pursuant to the following statutes:

1. Section 1-1-107(2)(a), C.R.S., (2008), 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., (2008), 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]."

Copies of the initial draft of the proposed rules may be obtained from the office of the Secretary of State at 1700 Broadway, Suite 270, Denver, Colorado, 80290, or by calling (303) 894-2200,

Main Number (303) 894-2200
Administration (303) 860-6900
Fax (303) 869-4860

TDD
Web Site
E-mail

(303) 869-4867
www.sos.state.co.us
administration@sos.state.co.us

extension 6329. The proposed rules are also posted on the Secretary of State website at www.sos.state.co.us.

A final copy of the proposed rules for consideration at the public rulemaking hearing will be posted on the Secretary of State website and made available to the public no later than **April 30, 2009** in accordance with section 24-4-103(4)(a), C.R.S., (2008), which states that “[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.”

The rulemaking hearing on May 5, 2009 will be held in accordance with section 24-4-103, C.R.S., (2008). Written and oral data, comments, and arguments will be received from all interested parties. Written submissions must be filed at or before the commencement of the hearing on May 5, 2009 at 2:00pm in order to be considered. Oral testimony may be limited in order to allow the proceedings to go forward with reasonable promptness and efficiency. The hearing will be audio recorded and broadcast over the Internet. The broadcast may be accessed through the Secretary of State website at www.sos.state.co.us on the “Information Center” page under “Broadcast and Recorded Meetings.” For additional information, please contact Andrea Gyger, Elections Division at andrea.gyger@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 31st Day of March, 2009.



William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

Proposed Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Election Rules

March 31, 2009

1. Basis and Purpose

This statement pertains to the amendments to the Colorado Secretary of State Election Rules for the administration of Colorado State Constitution Article VII, and Title 1 of the Colorado Revised Statutes. The amendments are implemented to achieve the uniform and proper administration and enforcement of the election laws of the State of Colorado, including the requirements of the federal Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252. See sections 1-1.5-101 *et seq.*, C.R.S. (2008).

The amendments to these rules are necessary for the implementation of Article VII of the Colorado Constitution and Article 1, Title 1 of the Colorado Revised Statutes. Such revisions are necessary to improve the administration of elections in Colorado, and to answer questions arising under Title 1 of the Colorado Revised Statutes. These amendments are further necessary to increase the transparency and security of the election process, and to provide guidance until a legislative clarification may be proposed.

The Secretary of State finds that the adoption and enactment of these amendments is specifically necessary to establish a vision commission to provide guidance to the Secretary of State on the vision of elections and voting in Colorado and best practices in the administration of elections. The adoption of these rules is further necessary to provide clear and consistent guidance to the counties regarding list maintenance processes under the National Voter Registration Act of 1993, and to provide uniform definitions for common election terms.

The Secretary of State therefore finds that in order to ensure the uniform and proper administration and enforcement of the election laws, the adoption of these amendments to the Election Rules is necessary both to comply with law and to preserve the public welfare generally.

2. Statutory Authority

Amendments to the Colorado Secretary of State Election Rules are adopted pursuant to the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S. (2008), which authorizes the Secretary of State:

Main Number (303) 894-2200
Administration (303) 860-6900
Fax (303) 869-4860

TDD
Web Site
E-mail

(303) 869-4867
www.sos.state.co.us
administration@sos.state.co.us

“[t]o promulgate, publish, and distribute . . . such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws.”

2. Section 1-1.5-104(1), C.R.S. (2008), which provides that:

“The secretary may exercise such powers and perform such duties as reasonably necessary to ensure that the state is compliant with all requirements imposed upon it pursuant to HAVA . . . including, without limitation, the power and duty to:

(e) Promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of this article.”

COLORADO SECRETARY OF STATE

8 CCR 1505-1

ELECTION RULES

Preliminary Draft of Proposed Rules

March 31, 2009

Disclaimer: This draft is not yet final. The proposed changes to be considered at the public rulemaking hearing may be different than the proposed changes in this draft. This draft is submitted to the Department of Regulatory Agencies for the purpose of complying with section 24-4-103(2.5), C.R.S., which requires that a draft be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

A final copy of the proposed rule changes will be available to the public no later than April 30, 2009, and a copy will be posted on the Department of State's web site, in compliance with the requirement of section 24-4-103(4)(a), C.R.S., that "[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."

Proposed additions to the current rules are reflected in SMALL CAPS. Proposed deletions from current rules are shown in ~~stricken type~~. Annotations may be included.

1 Rule 1.1 would be amended as follows:
2

3 1.1 As used in these Rules and the "Uniform Election Code of 1992" unless the
4 context otherwise requires, the following terms shall have the meanings indicated:
5

6 A. "ACTIVE STATUS" OR "ACTIVE RECORD" MEANS THAT THERE ARE NO
7 CONDITIONS OR RESTRICTIONS ON THE VOTER'S ELIGIBILITY. ACTIVE
8 STATUS VOTERS' NAMES WILL APPEAR ON THE POLL BOOK, THEY WILL
9 RECEIVE A BALLOT IN A MAIL BALLOT ELECTION, AND THEY WILL RECEIVE
10 ELECTION NOTICE MAILINGS.
11

12 B. "CANCELLED STATUS" OR "CANCELLED RECORD" MEANS THAT THE
13 VOTER'S ELIGIBILITY HAS BEEN CANCELLED OR REVOKED IN ACCORDANCE
14 WITH THESE RULES AND TITLE 1, C.R.S. CANCELLED VOTERS' RECORDS
15 WILL REMAIN IN THE STATEWIDE VOTER REGISTRATION DATABASE;
16 HOWEVER, THEY ARE NOT ELIGIBLE TO VOTE IN ANY ELECTION. CANCELLED
17 STATUS VOTERS' NAMES WILL NOT APPEAR ON THE POLL BOOK AND THEY
18 WILL NOT RECEIVE ELECTION NOTICE MAILINGS.

- 1
2 C. "CONFIRMATION CARD" MEANS A MAILING BY FORWARDABLE MAIL THAT
3 INCLUDES A REGISTRATION FORM SO THAT THE VOTER MAY UPDATE HIS OR
4 HER REGISTRATION OR REQUEST A MAIL-IN BALLOT. THE MAILING SHALL BE
5 POSTAGE PREPAID AND HAVE A RETURNABLE PORTION THAT IS
6 PREADDRESSED TO THE SENDING COUNTY CLERK AND RECORDER.
7
8 D. "District office of state concern" means any of the following offices:
9 Member of the State Board of Education, Member of the Board of Regents
10 of the University of Colorado, and Member of the Board of Directors of
11 the Regional Transportation District.
12
13 E. "INACTIVE – FAILED TO VOTE STATUS" MEANS THAT THE VOTER WAS
14 ACTIVE PRIOR TO A GENERAL ELECTION, BUT SUBSEQUENTLY FAILED TO
15 VOTE IN THAT GENERAL ELECTION. INACTIVE – FAILED TO VOTE STATUS
16 VOTERS ARE ELIGIBLE VOTERS; THEIR NAMES WILL APPEAR ON THE POLL
17 BOOK AND THEY WILL RECEIVE ELECTION NOTICE MAILINGS.
18
19 F. "INACTIVE – NCOA STATUS" MEANS THAT THE COUNTY CLERK AND
20 RECORDER HAS RECEIVED INFORMATION FROM THE UNITED STATES POSTAL
21 SERVICE NATIONAL CHANGE OF ADDRESS SERVICE. INACTIVE - NCOA
22 STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON
23 THE POLL BOOK; HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE
24 MAILINGS.
25
26 G. "INACTIVE – RETURNED MAIL STATUS" OR "INACTIVE – UNDELIVERABLE
27 STATUS" MEANS THAT A VOTER INFORMATION CARD OR CONFIRMATION
28 CARD WAS RETURNED TO THE COUNTY CLERK AND RECORDER BY THE
29 UNITED STATES POSTAL SERVICE AS UNDELIVERABLE. INACTIVE –
30 RETURNED MAIL AND INACTIVE – UNDELIVERABLE STATUS VOTERS ARE
31 ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK;
32 HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE MAILINGS.
33
34 H. "INACTIVE – UNDELIVERABLE BALLOT STATUS" MEANS THAT A VOTER WAS
35 MAILED A BALLOT THAT WAS SUBSEQUENTLY RETURNED TO THE COUNTY
36 CLERK AND RECORDER BY THE UNITED STATES POSTAL SERVICE AS
37 UNDELIVERABLE. INACTIVE – UNDELIVERABLE BALLOT STATUS VOTERS ARE
38 ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK;
39 HOWEVER, THEY WILL NOT RECEIVE ELECTION NOTICE MAILINGS.
40
41

42 Rule 2.10 would be amended as follows:
43

44 2.10 Changes to an Elector's Voter Registration Record.
45

1 2.10.1 If an elector submits a change to his or her voter registration record that
2 does not contain all of the information required by sections 1-2-216 or 1-
3 2-219, C.R.S., the county clerk and recorder may not make the requested
4 change, unless the county clerk and recorder can confidently identify the
5 voter, otherwise the county clerk and recorder shall notify the voter what
6 additional information is required to process the request.
7

8 2.10.2 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION
9 RECORD AND WRITES OR SELECTS A NAME OF AN ORGANIZATION THAT IS
10 NOT A QUALIFIED POLITICAL PARTY OR QUALIFIED POLITICAL
11 ORGANIZATION, OR WRITES "NONE", THE ELECTOR'S AFFILIATION SHALL BE
12 RECORDED AS "UNAFFILIATED".
13

14 2.10.3 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION
15 RECORD AND LEAVES THE AFFILIATION SECTION BLANK, NO CHANGE WILL
16 BE MADE TO THE VOTER'S AFFILIATION IN THE REGISTRATION RECORD.
17
18

19 New rule 2.18 would be adopted as follows:
20

21 2.18 LIST MAINTENANCE PURSUANT TO SECTION 8 OF THE NATIONAL VOTER
22 REGISTRATION ACT OF 1993.
23

24 2.18.1 WHEN A VOTER INFORMATION CARD OR CONFIRMATION CARD IS RETURNED
25 BY THE UNITED STATES POSTAL SERVICE TO THE COUNTY CLERK AND
26 RECORDER AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL
27 MARK THE VOTER'S RECORD "INACTIVE – RETURNED MAIL" AND IN THE
28 CASE OF A RETURNED VOTER INFORMATION CARD, SHALL MAIL A
29 CONFIRMATION CARD.
30

31 2.18.2 NATIONAL CHANGE OF ADDRESS (NCOA). NO LATER THAN JUNE 1 OF
32 EVERY ODD-NUMBERED YEAR, THE SECRETARY OF STATE SHALL UTILIZE
33 THE NCOA SERVICE TO COMPARE THE RECORDS OF ALL VOTERS MARKED
34 "INACTIVE – FAILED TO VOTE" WITH THE NCOA DATABASE.
35

36 A. THE SECRETARY OF STATE SHALL FORWARD A LIST TO EACH
37 COUNTY CLERK AND RECORDER OF THE RECORDS THAT APPEAR TO
38 HAVE A CHANGE OF ADDRESS BASED UPON THE NCOA
39 COMPARISON.
40

41 B. THE COUNTY CLERK AND RECORDER SHALL SEND A CONFIRMATION
42 CARD TO EACH VOTER WHO APPEARS TO HAVE A CHANGE OF
43 ADDRESS AND SHALL MARK THE RECORD "INACTIVE – NCOA".
44

45 2.18.3 IN ACCORDANCE WITH SECTION 1-2-605(7), C.R.S., NO LATER THAN 90
46 DAYS FOLLOWING A GENERAL ELECTION, THE COUNTY CLERK AND

1 RECORDER IN EACH COUNTY SHALL CANCEL ONLY THE REGISTRATIONS OF
2 ELECTORS:

- 3
- 4 A. WHOSE RECORDS HAVE BEEN MARKED "INACTIVE – RETURNED
5 MAIL", "INACTIVE – NCOA" OR "INACTIVE – UNDELIVERABLE
6 BALLOT",
7
- 8 B. WHO HAVE BEEN MAILED A CONFIRMATION CARD; AND
9
- 10 C. WHO HAVE SINCE FAILED TO VOTE IN TWO CONSECUTIVE FEDERAL
11 ELECTIONS.
12

13 New Rule 50 would be adopted as follows:
14

15 **50. RULES CONCERNING THE ELECTIONS BEST PRACTICES AND VISION COMMISSION**
16

17 **50.1 PURPOSE**
18

19 50.1.1 THE SECRETARY OF STATE RECOGNIZES THAT NONPARTISAN AND OPEN
20 DISCUSSION REGARDING THE ADMINISTRATION AND CONDUCT OF ELECTIONS
21 IN COLORADO IS NECESSARY TO ENSURE THAT EVERY ELIGIBLE CITIZEN HAS
22 THE OPPORTUNITY TO PARTICIPATE IN FAIR, ACCESSIBLE, AND IMPARTIAL
23 ELECTIONS, AND HAS THE ASSURANCE THAT HIS OR HER VOTE WILL COUNT.
24

25 50.1.2 THE SECRETARY OF STATE SHALL ESTABLISH A BEST PRACTICES AND
26 VISION COMMISSION (THE COMMISSION) TO PROVIDE GUIDANCE TO THE
27 SECRETARY OF STATE ON ISSUES CONCERNING THE VISION OF ELECTIONS
28 AND VOTING IN COLORADO AND BEST PRACTICES IN THE ADMINISTRATION
29 OF ELECTIONS.
30

31 50.1.3 THE COMMISSION SHALL CONSIDER ALL ASPECTS OF VOTING AND
32 ELECTIONS IN COLORADO INCLUDING, BUT NOT LIMITED TO: THE CONDUCT
33 AND ADMINISTRATION OF ELECTIONS; BEST PRACTICES, TECHNOLOGY,
34 SIMPLICITY, UNIFORMITY AND STANDARDIZATION.
35

36 **50.2 MEMBERSHIP OF THE COMMISSION**
37

38 50.2.1 THE COMMISSION MEMBERSHIP SHALL INCLUDE 15-19 MEMBERS WHO ARE
39 APPOINTED BY THE SECRETARY OF STATE.
40

41 50.2.2 THE MEMBERSHIP SHALL INCLUDE REPRESENTATION FROM THE GENERAL
42 PUBLIC INCLUDING, BUT NOT LIMITED TO:
43

- 44 A. COUNTY CLERK AND RECORDERS OR EMPLOYEES OF COUNTY CLERK
45 AND RECORDERS' OFFICES WHOSE DUTIES INCLUDE ELECTIONS
46 ADMINISTRATION,

1
2 B. OTHER DESIGNATED ELECTION OFFICIALS OR EMPLOYEES OF
3 DESIGNATED ELECTION OFFICIALS' OFFICES WHOSE DUTIES INCLUDE
4 ELECTIONS ADMINISTRATION,
5

6 C. POLITICAL PARTIES; AND
7

8 D. VOTING ADVOCACY GROUPS.
9

10 50.2.3 THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, SHALL BE A MEMBER
11 AND SHALL CHAIR THE COMMISSION.
12

13 50.2.4 THE SECRETARY OF STATE'S OFFICE SHALL PROVIDE STAFF SUPPORT TO THE
14 COMMISSION.
15

16 50.3 MEETINGS
17

18 50.3.1 THE COMMISSION SHALL MEET NO FEWER THAN TWO TIMES ANNUALLY.
19 MEETINGS SHALL BE OPEN TO THE PUBLIC.
20

21 50.3.2 NOTICES AND RECORDS OF MEETINGS SHALL BE PUBLISHED ON THE
22 OFFICIAL WEBSITE OF THE SECRETARY OF STATE.
23

24 50.3.3 THE COMMISSION MAY REQUEST PARTICIPATION OR INFORMATION TO BE
25 PROVIDED BY COUNTY CLERKS AND RECORDERS OR THEIR ELECTIONS STAFF,
26 POLITICAL PARTIES, VENDORS, TECHNICAL EXPERTS, OR OTHER MEMBERS OF
27 THE PUBLIC, AS MAY BE APPROPRIATE.