



NOTICE OF ADOPTION

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

May 21, 2009

Pursuant to sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2008) and the rulemaking provisions of the State Administrative Procedure Act, section 24-4-103 C.R.S. (2008), I, Bernie Buescher, Colorado Secretary of State, do hereby adopt and give **NOTICE** of the permanent rule adoption this 21st day of May, 2009, of the Secretary of State Election Rules (8 CCR 1505-1) as follows (additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~):

Rule 2.10 is amended as follows:

2.10 Changes to an Elector's Voter Registration Record.

- 2.10.1 If an elector submits a change to his or her voter registration record that does not contain all of the information required by sections 1-2-216 or 1-2-219, C.R.S., the county clerk and recorder may not make the requested change, unless the county clerk and recorder can confidently identify the voter, otherwise the county clerk and recorder shall notify the voter what additional information is required to process the request.**
- 2.10.2 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION RECORD AND WRITES OR SELECTS A NAME OF AN ORGANIZATION THAT IS NOT A QUALIFIED POLITICAL PARTY OR QUALIFIED POLITICAL ORGANIZATION, OR WRITES "NONE", THE ELECTOR'S AFFILIATION SHALL BE RECORDED AS "UNAFFILIATED".**
- 2.10.3 IF AN ELECTOR SUBMITS A CHANGE TO HIS OR HER VOTER REGISTRATION RECORD AND LEAVES THE AFFILIATION SECTION BLANK, NO CHANGE WILL BE MADE TO THE VOTER'S AFFILIATION IN THE REGISTRATION RECORD.**

New rule 2.18 is adopted as follows:

- 2.18 LIST MAINTENANCE PURSUANT TO SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT OF 1993.**
 - 2.18.1 WHEN A VOTER INFORMATION CARD OR CONFIRMATION CARD IS RETURNED BY THE UNITED STATES POSTAL SERVICE TO THE COUNTY CLERK AND RECORDER AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL MARK THE VOTER'S RECORD "INACTIVE – RETURNED MAIL" AND IN THE CASE OF A RETURNED VOTER INFORMATION CARD, SHALL MAIL A CONFIRMATION CARD.**

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

- A. THE SECRETARY OF STATE SHALL FORWARD A LIST TO EACH COUNTY CLERK AND RECORDER OF THE RECORDS THAT APPEAR TO HAVE A CHANGE OF ADDRESS BASED UPON THE NCOA COMPARISON.
- B. THE COUNTY CLERK AND RECORDER SHALL SEND A CONFIRMATION CARD TO EACH VOTER WHO APPEARS TO HAVE A CHANGE OF ADDRESS AND SHALL MARK THE RECORD "INACTIVE – NCOA".

2.18.3 IN ACCORDANCE WITH SECTION 1-2-605(7), C.R.S., NO LATER THAN 90 DAYS FOLLOWING A GENERAL ELECTION, THE COUNTY CLERK AND RECORDER IN EACH COUNTY SHALL CANCEL ONLY THE REGISTRATIONS OF ELECTORS WHO HAVE MET THE FOLLOWING REQUIREMENTS:

- A. WHOSE RECORDS HAVE BEEN MARKED "INACTIVE – RETURNED MAIL", "INACTIVE – UNDELIVERABLE", "INACTIVE – NCOA" OR "INACTIVE – UNDELIVERABLE BALLOT";
- B. WHO HAVE BEEN MAILED A CONFIRMATION CARD; AND
- C. WHO HAVE SINCE FAILED TO VOTE IN TWO CONSECUTIVE FEDERAL ELECTIONS.

New Rule 2.19 is adopted as follows:

2.19 CONFIRMATION CARD. "CONFIRMATION CARD" MEANS A MAILING BY FORWARDABLE MAIL THAT INCLUDES A REGISTRATION FORM SO THAT THE VOTER MAY UPDATE HIS OR HER REGISTRATION OR REQUEST A MAIL-IN BALLOT. THE MAILING SHALL BE POSTAGE PREPAID AND HAVE A RETURNABLE PORTION THAT IS PREADDRESSED TO THE SENDING COUNTY CLERK AND RECORDER.

New Rule 2.20 is adopted as follows:

2.20 VOTER REGISTRATION STATUS DESIGNATIONS.

2.20.1 DEFINITIONS

- A. "ACTIVE STATUS" OR "ACTIVE RECORD" MEANS THAT THERE ARE NO CONDITIONS OR RESTRICTIONS ON THE VOTER'S ELIGIBILITY.
- B. "CANCELLED STATUS" OR "CANCELLED RECORD" MEANS THAT THE VOTER'S REGISTRATION HAS BEEN CANCELLED OR REVOKED BASED UPON A DETERMINATION THAT THE VOTER IS INELIGIBLE, OR THE APPLICANT HAS BEEN DEEMED NOT REGISTERED IN ACCORDANCE WITH THESE RULES AND TITLE 1, C.R.S.; OR THE VOTER HAS WITHDRAWN THEIR REGISTRATION.
- C. "INACTIVE – FAILED TO VOTE STATUS" MEANS THAT THE VOTER WAS ACTIVE PRIOR TO A GENERAL ELECTION, BUT SUBSEQUENTLY FAILED TO VOTE IN THAT GENERAL ELECTION.

- D. "INACTIVE – NCOA STATUS" MEANS THAT THE COUNTY CLERK AND RECORDER HAS RECEIVED INFORMATION FROM THE UNITED STATES POSTAL SERVICE NATIONAL CHANGE OF ADDRESS SERVICE.
- E. "INACTIVE – RETURNED MAIL STATUS" OR "INACTIVE – UNDELIVERABLE STATUS" MEANS THAT A VOTER INFORMATION CARD OR CONFIRMATION CARD WAS RETURNED TO THE COUNTY CLERK AND RECORDER BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE.
- F. "INACTIVE – UNDELIVERABLE BALLOT STATUS" MEANS THAT A VOTER WAS MAILED A BALLOT THAT WAS SUBSEQUENTLY RETURNED TO THE COUNTY CLERK AND RECORDER BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE.

2.20.2. EFFECT OF VOTER REGISTRATION STATUS DESIGNATION

- A. ACTIVE STATUS OR ACTIVE RECORD VOTERS' NAMES WILL APPEAR ON THE POLL BOOK, THEY WILL BE SENT A BALLOT IN A MAIL BALLOT ELECTION, AND THEY WILL BE SENT ELECTION NOTICE MAILINGS.
- B. CANCELLED STATUS OR CANCELLED RECORD VOTERS' RECORDS WILL REMAIN IN THE STATEWIDE VOTER REGISTRATION DATABASE; HOWEVER, THEIR NAMES WILL NOT APPEAR ON THE POLL BOOK, THEY WILL NOT BE SENT A BALLOT IN A MAIL BALLOT ELECTION, AND THEY WILL NOT BE SENT ELECTION NOTICE MAILINGS.
- C. INACTIVE – FAILED TO VOTE STATUS VOTERS ARE ELIGIBLE VOTERS; THEIR NAMES WILL APPEAR ON THE POLL BOOK AND THEY WILL BE SENT ELECTION NOTICE MAILINGS. INACTIVE – FAILED TO VOTE VOTERS WILL BE SENT A BALLOT IN A MAIL BALLOT ELECTION WHERE SPECIFICALLY REQUIRED BY SECTIONS 1-7.5-107 AND 1-7.5-108.5(B), C.R.S.
- D. INACTIVE – NCOA STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK. HOWEVER, THEY WILL NOT BE SENT A BALLOT IN A MAIL BALLOT ELECTION AND THEY WILL NOT BE SENT ELECTION NOTICE MAILINGS.
- E. INACTIVE – RETURNED MAIL STATUS OR INACTIVE – UNDELIVERABLE STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK. HOWEVER, THEY WILL NOT BE SENT BALLOTS IN A MAIL BALLOT ELECTION AND THEY WILL NOT BE SENT ELECTION NOTICE MAILINGS.
- F. INACTIVE – UNDELIVERABLE BALLOT STATUS VOTERS ARE ELIGIBLE VOTERS AND THEIR NAMES WILL APPEAR ON THE POLL BOOK. HOWEVER, THEY WILL NOT BE SENT A BALLOT IN A MAIL BALLOT ELECTION AND THEY WILL NOT BE SENT ELECTION NOTICE MAILINGS.

[SECTIONS 1-2-605(3) AND (11), 1-5-206, 1-7-110, 1-7.5-107, AND 1-7.5-108.5, C.R.S.]

New Rule 50 is adopted as follows:

50. RULES CONCERNING THE ELECTIONS BEST PRACTICES AND VISION COMMISSION

50.1 PURPOSE

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

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

50.1.3 THE COMMISSION SHALL MAKE RECOMMENDATIONS TO THE SECRETARY OF STATE REGARDING THE DEVELOPMENT AND ADOPTION OF BEST PRACTICES, ADMINISTRATIVE RULES AND LEGISLATIVE CHANGES.

50.1.4 THE COMMISSION SHALL CONSIDER ALL ASPECTS OF VOTING AND ELECTIONS IN COLORADO RELEVANT TO THE DEVELOPMENT OF AN ELECTIONS AND VOTING VISION AND BEST PRACTICES, INCLUDING BUT NOT LIMITED TO:

A. VISION

1. VOTING TECHNOLOGY. INVESTIGATION AND ANALYSIS OF NEW TECHNOLOGIES AND METHODOLOGIES, INCLUDING CONSIDERATION OF:

- I. DEVELOPMENT AND FUNCTIONALITY;
- II. SECURITY, ACCURACY, AND EFFICIENCY; AND
- III. ACCESSIBILITY AND USABILITY.

2. THE CONDUCT AND ADMINISTRATION OF ELECTIONS

- I. ALTERNATIVE METHODS OF CONDUCTING ELECTIONS, INCLUDING INVESTIGATION AND CONSIDERATION OF NEW TECHNOLOGIES AND METHODOLOGIES;
- II. EVALUATION AND RESEARCH OF METHODS FOR MEASURING PERFORMANCE, QUALITY, AND SUCCESS OF ELECTIONS;
- III. SHARING INFORMATION, DATA AND RESEARCH; AND
- IV. AUDITING AND RECOUNT PROCEDURES.

3. DISCUSSION OF BENEFITS TO CENTRALIZATION VERSUS LOCAL CONTROL REGARDING VOTER REGISTRATION, VOTE SYSTEMS, AND ADMINISTRATION OF ELECTIONS.

B. BEST PRACTICES

1. THE CONDUCT AND ADMINISTRATION OF ELECTIONS

- I. ELECTION PREPARATION, INCLUDING BUT NOT LIMITED TO:

- A. ELECTION OFFICIAL TRAINING AND CERTIFICATION;
 - B. ELECTION JUDGE ASSIGNMENT AND TRAINING; AND
 - C. POLLING PLACE SETUP AND ACCESSIBILITY.
 - II. USE OF SHARED INFORMATION, DATA, AND RESEARCH.
- 2. SIMPLICITY, UNIFORMITY, AND STANDARDIZATION
 - I. DEVELOPMENT OF ELECTION FORMS, NOTICES AND EDUCATION MATERIALS;
 - II. BALLOT DESIGN AND PRINTING; AND
 - III. POST-ELECTION ACTIVITIES, INCLUDING CANVASS, AUDIT, AND RECOUNT.
- C. COSTS AND FUNDING OF VOTER REGISTRATION AND ELECTIONS
 - 1. INVESTIGATION AND DISCUSSION OF MEASURES TO DECREASE OR STREAMLINE THE COSTS ASSOCIATED WITH THE ADMINISTRATION OF ELECTIONS;
 - 2. THE CONSIDERATION OF THE APPROPRIATE ALLOCATION OF COSTS BETWEEN THE STATE AND COUNTIES; AND
 - 3. EXPLORATION OF ALTERNATIVE SOURCES OF FUNDING FOR ELECTIONS IN COLORADO.
- D. CONSIDERATION OF NON-SUBSTANTIVE LEGISLATIVE CLARIFICATIONS OR CORRECTIONS TO ADDRESS OBSOLETE, CONFLICTING, INCOMPLETE, OR INCORRECT STATUTORY PROVISIONS.
- E. ANY OTHER ELECTIONS OR VOTING RELATED ISSUE THAT THE SECRETARY OF STATE OR THE COMMISSION DEEMS APPROPRIATE.

50.2 MEMBERSHIP OF THE COMMISSION

50.2.1 APPOINTMENT AND TERMS OF SERVICE. THE SECRETARY OF STATE SHALL APPOINT AT LEAST 11 MEMBERS TO THE COMMISSION AS FOLLOWS:

- A. EACH MEMBER SHALL SERVE A ONE YEAR TERM OF SERVICE THAT WILL BEGIN ON JUNE 1 AND END ON JUNE 1 OF THE FOLLOWING YEAR.
- B. IF THERE IS A VACANCY DURING THE TERM, THE SECRETARY OF STATE SHALL APPOINT AN INDIVIDUAL TO FILL THE VACANCY. THE MEMBER FILLING THE VACANCY SHALL SERVE THE REMAINDER OF THE ONE YEAR TERM.
- C. THE SECRETARY OF STATE MAY RE-APPOINT ANY MEMBER FOLLOWING THE CONCLUSION OF A TERM OF SERVICE. MEMBERS OF THE COMMISSION SHALL SERVE AT THE PLEASURE OF THE SECRETARY OF STATE.

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

- A. NON-PROFIT ORGANIZATIONS AND GROUPS THAT WORK TO PRESERVE CONSTITUTIONAL RIGHTS AND CIVIL LIBERTIES;
- B. ACADEMICIANS, SCIENTISTS, TECHNICIANS, AND OTHER INDIVIDUALS POSSESSING THE EXPERTISE, KNOWLEDGE AND EXPERIENCE TO ADDRESS ISSUES CONCERNING VOTING SYSTEMS AND ELECTIONS ADMINISTRATION;
- C. CURRENT OR FORMER STATE OR CONGRESSIONAL LEGISLATORS, OR THEIR STAFF, AND OTHER INDIVIDUALS WITH ELECTIONS LAW AND LEGISLATIVE EXPERTISE, KNOWLEDGE, AND EXPERIENCE;
- D. COUNTY CLERK AND RECORDERS OR EMPLOYEES OF COUNTY CLERK AND RECORDERS' OFFICES WHOSE DUTIES INCLUDE ELECTIONS ADMINISTRATION;
- E. OTHER DESIGNATED ELECTION OFFICIALS OR EMPLOYEES OF DESIGNATED ELECTION OFFICIALS' OFFICES WHOSE DUTIES INCLUDE ELECTIONS ADMINISTRATION;
- F. POLITICAL PARTIES; AND
- G. VOTING ADVOCACY GROUPS.

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

50.2.4 THE SECRETARY OF STATE'S OFFICE WILL PROVIDE STAFF SUPPORT TO THE COMMISSION AS MAY BE DIRECTED BY THE SECRETARY OF STATE.

50.3 MEETINGS

50.3.1 THE COMMISSION SHALL MEET NO FEWER THAN SIX TIMES ANNUALLY.

50.3.2 THE MEETINGS WILL BE HELD AT THE OFFICE OF THE SECRETARY OF STATE OR SUCH REGIONAL LOCATIONS THROUGHOUT THE STATE AS THE COMMISSION DEEMS APPROPRIATE.

50.3.3 MEETINGS SHALL BE OPEN TO THE PUBLIC, AUDIO RECORDED, AND, WHERE FEASIBLE, BROADCAST OVER THE INTERNET VIA THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE; HOWEVER, LEGISLATIVE COMMITTEE OR RULEMAKING HEARING FORMALITIES NEED NOT BE IMPOSED.

50.3.4 COMMISSION MEMBERS MAY SUBMIT A REQUEST TO ATTEND A MEETING(S) BY TELEPHONE OR WEB-BASED ONLINE MEETING SERVICE WHEN PERSONAL ATTENDANCE IS NOT FEASIBLE DUE TO HARDSHIP.

50.3.5 NOTICES, RECORDS OF MEETINGS, WRITTEN COMMENTS, AND DOCUMENTS SUBMITTED TO THE COMMISSION WILL BE PUBLISHED ON THE OFFICIAL WEBSITE OF THE SECRETARY OF STATE. HOWEVER, DOCUMENTS THAT ARE OTHERWISE PUBLICLY AVAILABLE NEED NOT BE POSTED. ANY SUBMISSION CONTAINING INFLAMMATORY OR OTHERWISE INAPPROPRIATE

CONTENT WILL NOT BE POSTED, INCLUDING ANY MATERIAL THAT IS DEFAMATORY, IRRELEVANT, DUPLICATIVE, OR OBSCENE.


50.3.6 THE SECRETARY OF STATE MAY REIMBURSE COMMISSION MEMBERS FOR REASONABLE EXPENSES THAT ARE SUBMITTED AND APPROVED IN ADVANCE AND ARE CONSISTENT WITH THE STATE TRAVEL POLICY.

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

These new and amended rules shall take effect twenty (20) days after publication in the Colorado Register in accordance with the State Administrative Procedures Act.

A written Statement of Basis, Purpose and Specific Statutory Authority is attached and hereby incorporated herein by reference.

Dated this 21st day of May, 2009,


William A. Hobbs
Deputy Secretary of State

For

Bernie Buescher
Colorado Secretary of State



Statement of Basis, Purpose and Specific Statutory Authority

Office of the Secretary of State Election Rules

May 21, 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, security, and purity of the election process.

The Secretary of State finds that the adoption and enactment of the amendments to specific rules is necessary as follows:

- The amendments to rule 2.10 are necessary to clarify the processing of changes to the voter registration record submitted by the voter to ensure uniform and consistent procedures in each county.
- The adoption of new rule 2.18 is necessary to clarify list maintenance processes under the National Voter Registration Act of 1993 and section 1-2-605(7), C.R.S. Section 1-2-605(7), C.R.S., requires the county clerk and recorder to cancel the registration of voters who have been "inactive" for two federal elections and who have failed to respond to a mailing or update their registration. This rule is necessary to clarify which "inactive" voters may be subject to cancellation under this statute because recent legislative changes have resulted in the creation of multiple categories of "inactive" voters and have dictated specific treatment for those categories with respect to mail ballot and election notice mailings. This clarification is necessary for uniform treatment of each category for list maintenance purposes. It ensures consistency with federal law, and with how each category is treated with respect to ballot and election notice mailings. This clarification further ensures that voters are protected from being cancelled merely because they choose not to participate regularly in elections.
- New rule 2.19 is necessary to clearly define the term "confirmation card" as it is used in the Election Rules and Title 1, C.R.S., to ensure consistent and uniform confirmation card format. This clarification is necessary because there is currently no definition in statute.

- New rule 2.20 is necessary to clearly define active, inactive, and cancelled status designations. These definitions are necessary because there are no definitions in statute and recent legislative changes have created multiple categories of “inactive” voters. This rule also provides an explanation of the effect of each designation on the voter’s eligibility to appear on the poll book, receive a mail ballot, and receive election notice mailings. Currently, the impact of the different “inactive” designations are outlined in multiple areas in statute. These rules are consistent with the effect of each of the status designations outlined in Title 1. By consolidating the definition and effect of each status designation, this new rule will protect all voters by ensuring uniform and consistent treatment of the status designations.
- The Secretary of State is establishing a commission in new rule 50 to provide guidance on the vision of elections and voting in Colorado and best practices in the administration of elections. The purpose of the commission is to facilitate collaborative discussion among elections and voting stakeholders and to foster innovative recommendations concerning the vision and best practices of state elections and voting. The concept of the commission originated from the Election Reform Commission (ERC) recommendations. The ERC was created pursuant to Senate Bill 08-243 and was charged with reviewing, researching, and making recommendations to ensure that every eligible citizen has the opportunity to register to vote, participate in fair, accessible, and impartial elections, and have the assurance that his or her vote will count. The committee provided its recommendations in the spring of 2009. The ERC was a short term commission that was not extended via statute. However, recognizing the value of the ERC and its findings, the Secretary of State has determined that it is necessary to establish an ongoing commission by rule to promote open dialogue of these critical issues.

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:

“[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.”