



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

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

**August 7, 2014**

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

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The Secretary of State intends to adopt rules to implement Senate Bills 14-161 and 14-158, and House Bill 14-1164. The Secretary is also 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 June 26, 2014, 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 to move the definitions currently in Rule 20 to Rule 1 and clarify the language of the definitions.
- Repeal of Rule 2.1.2, which unnecessarily repeats language already in section 1-2-501, C.R.S., regarding voter registration applications.
- New Rule 2.1.5 requires a quality assurance process sufficient to prevent counties from creating duplicate voter registration records and to ensure the information in the statewide voter registration database matches the information provided by the elector.
- Repeal of Current Rule 2.1.6, which currently conflicts with Senate Bill 161's revisions of section 1-2-508(3)(a)(I), C.R.S., requiring county clerks to process voter registration applications received after the voter registration application deadlines. The statutory revisions also provide adequate guidance to county clerks for contacting affected voters.

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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.

- Repeal of current Rule 2.1.7, which was made obsolete by Senate Bill 161's amendments to the voter registration self-affirmation in section 1-2-205(2), C.R.S.
- Amendments to and partial repeal of current Rule 2.2 to reflect statutory changes made in Senate Bill 161 and House Bill 1164.
- New Rule 2.3.4, which clarifies that identification documents issued to individuals not lawfully present under section 42-2-505, C.R.S., are not acceptable forms of identification for purposes of voting.
- Amendments to Rule 2.10 to provide that an elector must submit a reinstatement form to a county clerk if the elector's registration was erroneously cancelled.
- Amendments to Rule 2.13.2 to reflect Senate Bill 161's revisions of section 1-2-302.5, C.R.S.
- New Rule 2.13.4, which provides a deadline by which a county must process all voter records designated for cancellation by the Secretary of State. This rule creates a uniform timeline for completing list maintenance activities.
- Repeal of current Rule 2.13.4, which is obsolete in light of same-day voter registration under section 1-2-217.7, C.R.S.
- Amendment to current Rule 2.13.5 to allow counties to consolidate or cancel duplicate records within the period beginning 90 days before a primary or general election.
- New Rule 4.1.3, which provides that designated election officials must verify the completeness and accuracy of the residential addresses located within their district because the Secretary of State is responsible for the accuracy and completeness of the data that is in the statewide voter registration database.
- Amendments to Rule 4.8.4 to reflect Senate Bill 161's revisions to section 1-5-407, C.R.S.
- Amendments to and partial repeal of Rule 5 to reflect House Bill 1164's new requirements for nonpartisan elections not coordinated by the county clerk.
- Amendments to Rule 6.5 to consolidate the minimum background check requirements into a single rule.
- Repeal of Rule 7.1.1(a) to reflect Senate Bill 158's revision of section 1-12-114(1)(a), C.R.S.
- Amendments to Rule 7.1.1(b) to ensure county compliance with section 1-7.5-104.5, C.R.S.
- New Rule 7.2.5, which provides that each mail ballot return envelope and mail ballot instruction must inform electors that it is a violation of section 1-7.5-107(4)(b)(I)(B), C.R.S. to drop off more than ten ballots in any election.
- New Rule 7.2.6, which provides that each elector voting a mail ballot must affirm that he or she has voted in secret and has not been influenced in casting his or her the ballot.
- Repeal of Rule 7.4.7 because it is addressed by section 1-7.5-115, C.R.S., as amended by Senate Bill 14-161.

- New Rule 7.5.1(c), which requires that each drop-off location include signs informing electors that it is a violation of section 1-7.5-107(4)(b)(I)(B), C.R.S., to drop off more than ten ballots in any election.
- New Rule 7.5.1(d), which clarifies the hours that the minimum number of drop-off locations must be open.
- New Rule 7.5.7 clarifies that requirement that counties to disassociate voted ballots from mail ballot return envelopes in a manner that ensures no person is able to determine how an individual voted.
- Amendments to Rule 7.5.8 (renumbered as Rule 7.5.9) to require counties to disassociate batch numbers from any reports generated by tabulation software.
- New Rule 7.5.10, which establishes that a county that receives a ballot for another county must date stamp the ballot and forward it to the correct county. The Rule also establishes that the correct county must treat that ballot as received as of the date and time of the date stamp.
- New Rule 7.6, which provides that if a county receives a ballot in an envelope other than the official ballot return envelope, the county must send the voter the prescribed affidavit to determine the elector is eligible to vote in that election. If the county receives the signed affidavit no later than the eighth day after the election, the county must count the ballot.
- New Rule 7.8.9, which requires that each voter service and polling center must have a sign informing electors that it is a violation of section 1-7.5-107(4)(b)(I)(B), C.R.S. to drop off more than ten ballots in any election.
- Amendments to Rule 7.9 (renumbered as Rule 7.10) clarify that a county clerk must complete an accessibility survey for all drop-off and voter service and polling center locations annually.
- Amendments to Rule 7.11 (renumbered as Rule 7.12) to correspond to Senate Bill 161's revision of section 1-7-111(1)(a).
- Relocation of current Rule 10.10 to New Rule 7.13.
- Amendments to Rule 8.6 to clarify that watchers may not engage in any activity that would violate the watcher oath as provided in section 1-7-108(1), C.R.S. and current Rule 8.5.
- New Rule 9.2, which establishes a procedure for election judges to follow when a mail ballot is challenged under section 1-9-201, C.R.S.
- New Rule 10.1.1, which defines "ballots cast in an election" and "ballots cast in each precinct" for purposes of Article 10 of Title 1.
- Amendments to Rule 11.3.2 to clarify the steps county clerks must follow when preparing for, conducting, and completing the logic and accuracy test. Further, the amendments provide that after completing the logic and accuracy test, the testing board must watch the county clerk create a backup copy of the election database and the county

clerk may not change the programming of any voting device after the logic and accuracy test is completed.

- Amendments to Rule 11.10.1 to repeal the requirement that counties provide contest names in all uppercase letters for purposes of election night reporting.
- Amendments to Rule 11.10.2 to require counties to submit election-night-reporting zero reports to the Secretary of State 14 days before the election, which will allow counties more time to practice uploading and publishing results before election day.
- Amendments to Rule 11.10.3 to change the deadline for counties to upload election results to the election night reporting system from 7:30 p.m. to 8:00 p.m.
- Amendments to Rule 11.10.4 to require counties to upload official election results to the election night reporting system by the first business day after completing the canvass.
- Repeal of Rule 12, the content of which is now addressed by Senate Bill 158's revision of section 1-12-118, C.R.S.
- Amendments to Rule 13.1.5 to provide that the Secretary of State's office may convene a hearing on an election complaint.
- New Rule 13.2.7, which provides an alternative dispute resolution process under Section 1-1.5-105(2)(j), C.R.S.
- New Rule 14.4.6, which prohibits voter registration drive organizers from highlighting or otherwise marking the voter registration drive application form, except for the voter registration drive number and circulator information.
- Amendments to Rule 15, which organizes the rule to ensure that each provision of the rule applies to the proper petition type, and clarifies which portions of the rule apply to statewide petitions and which portions apply to county petitions.
- Amendments to Rule 16.1.3, which remove the requirement that a military and overseas voter has to submit a ballot application to receive a ballot. With these revisions, military and overseas voters only have to affirm their covered status to automatically receive a ballot.
- Repeal of current Rule 16.1.4 because requiring a military or overseas voter to submit an application for registration is obsolete in light of section 1-2-217.7, C.R.S.
- Amendments to Rule 16.2.1(c) to clarify that if an elector returns his or her ballot by fax or email, another more secure method of transmission is not available as required by section 1-8.3-113(1), C.R.S.
- New Rule 16.2.1(e), which provides that a military or overseas voter who requests to receive a ballot by electronic transmission will receive his or her ballot electronically for all covered elections until the voter requests otherwise.
- Amendments to Rule 18.3.2(d)(6) to remove the requirement that counties must include the seal numbers for each sealed box that contains write-in votes on the final summary.
- Amendment to current Rule 21.5.4(1) (now proposed Rule 21.4.4(a)) to remove the requirement that an independent analysis must include penetration testing according to industry standards. Penetration testing is still required, the amendment simply removes

the requirement that it must be done according to current industry standards because the voting system certification industry does not currently have industry standards for penetration testing.

- Repeal of current Rule 21.5.5(d), which currently requires voting systems to provide for the tabulation of votes cast in combined precincts at remote sites.

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., (2013), 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 1-1-109(3), C.R.S., (2013), which requires the Secretary of State to promulgate rules in accordance with the requirements of article 4 of title 24, C.R.S., “as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify what constitutes approved and acceptable forms certified for use by eligible voters, campaigns, and voter registration drives and acceptance by election officials and any rules necessary to establish uniformity regarding the use of forms.”
3. Section 1-1.5-104(1)(b), C.R.S., (2013), 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.”
4. Section 1-1.5-104(1)(e), C.R.S., (2013), 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].”
5. Section 1-1.5-105, C.R.S., (2013), which authorizes the Secretary of State to “establish by rule a uniform administrative complaint procedure to remedy grievances brought under Title III of HAVA.”
6. Section 1-2-217.7(7), C.R.S., (2013), 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.
7. Section 1-5-407(7), C.R.S. (2013), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

8. Section 1-5-504.5(1)(e), C.R.S., (2013) 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.
9. Section 1-7-509(1)(b), C.R.S., (2013), which states that “(b) The designated election official shall conduct at least three tests on all electronic and electromagnetic voting equipment, including a hardware test, a public logic and accuracy test conducted in accordance with subsection (2) of this section, and a postelection test or audit conducted in accordance with rules promulgated by the secretary of state. Each type of ballot, including mail, provisional, and audio ballots, shall be tested in accordance with rules promulgated by the secretary of state.”
10. Section 1-7-509(6), C.R.S., (2013), which requires the Secretary of State to “promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of performing the logic and accuracy testing required by this section.”
11. Section 1-7.5-104, C.R.S. (2013), 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.”
12. Section 1-7.5-106, C.R.S., (2013), 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.]”
13. Section 1-8.3-105(2), C.R.S., (2013), 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.”
14. Section 1-8.5-112, C.R.S., (2013), 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.]”
15. Section 1-10-104.5, C.R.S. (2013), which authorizes the Secretary of State to “promulgate rules...for the purpose of establishing equitable uniformity in the appointment and operation of canvass boards.”
16. Section 1-40-132, C.R.S. (2013), which states that “The secretary of state shall have the authority to promulgate rules as may be necessary to administer and enforce any provision of this article that relates to initiated or referred measures and state constitutional amendments.”