



Regulatory Analysis of Proposed Election Rules

In accordance with section 24-4-103(4.5), C.R.S., this regulatory analysis of proposed amendments and revisions to Election Rules is provided as of April 26, 2007 for the public hearing on the proposed rules that will be held on May 1, 2007.

I. Regulatory Analysis of the proposed amendments to Rule 2.9

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed rule because it clarifies voter registration requirements. Specifically, the proposed rule would benefit Colorado's homeless voters by clarifying what may constitute a residence for such voters. The proposed rule would allow the use of a non-traditional residence for the purpose of voter registration and precinct assignment.

Though assessing the cost impact of the proposed rule is difficult given that counties already conduct voter registration, the proposed rule would not likely result in additional or different procedures and the cost impact should be negligible. Any costs associated with implementing the proposed rule would be borne by the counties and ultimately by the public.

2. Probable quantitative and qualitative impact of the proposed rule:

The proposed rule would allow homeless voters to use a non-traditional residence for voter registration purposes so long as their precinct can be established. This would clarify ambiguity in current Colorado law regarding the registration of homeless voters, and ensure that all eligible electors may register so long as they have a mailing address and their precinct can be determined by physical presence.

3. Cost to the agency of enforcement and effect on state revenues:

It is not anticipated that the proposed rule will result in any cost to the Secretary of State for enforcement or any impact on state revenues.

4. Cost/benefit analysis and cost of inaction:

The Secretary of State is charged with interpreting, with the assistance of the Attorney General, the provisions of Title 1, C.R.S. Current law is ambiguous regarding what may constitute a residence for the purposes of voter registration for homeless voters, and the Secretary is tasked with clarifying such ambiguities in rule. Because voter registration is already a function conducted by county clerk and recorders, clarification regarding residence provisions for homeless voters will not result in additional cost to the counties or the State. The ambiguity in current voter registration law has resulted in litigation,

thus, it may be reasonably presumed that inaction will result in further litigation. Clarification of the ambiguous provisions, however, will likely resolve the issue in the current litigation and reduce future costly litigation on the issue.

5. Less costly or less intrusive alternatives considered by the state:

Given that the Secretary of State is responsible for interpreting the provisions of Title 1, C.R.S., and that clarification of the ambiguous provisions will not result in additional costs to the counties or the State, the proposed rule embodies the best method of ensuring the enfranchisement of Colorado's homeless voters, and there are no less costly or less intrusive alternative methods of achieving that goal.

6. Alternative methods of achieving proposed results:

Given that the Secretary of State is responsible for interpreting the provisions of Title 1, C.R.S., and that clarification of the ambiguous provisions will not result in additional costs to the counties or the State, there are no reasonably feasible alternate methods of achieving the goal of the proposed rule.

II. Regulatory Analysis of the proposed amendments to Rule 10.4

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All candidates for statewide office will be affected by the proposed rule because the proposed amendment to this rule would change the deadline for providing an audio recording of the candidate's name to the Secretary of State for use in the audio ballot.

The cost impact of this proposed change is negligible and would fall to the Secretary of State and ultimately the public. All candidates for statewide office are already required to provide such audio recording to the Secretary of State to ensure proper pronunciation of their names on the audio ballot required for accessible voting machines in section 1-5-704, C.R.S. The Secretary of State will make available a toll-free number upon the request of any affected candidate and will continue to make the audio recording available to the counties on a secure page of the Secretary of State website

2. Probable quantitative and qualitative impact of the proposed rule:

This change would require candidates to submit their audio recording at the same time they submit all required candidacy paperwork to the Secretary of State. This change would provide candidates for statewide office with one consistent deadline for required submissions to the Secretary of State, and would provide counties and their vendors with necessary additional time to program the audio ballot for use in the election.

3. Cost to the agency of enforcement and effect on state revenues:

It is not anticipated that the amendments to Rule 10.4 will result in any cost to the Secretary of State for enforcement or any impact on state revenues because all candidates for statewide office already provide the required audio recording to the Secretary of State.

4. Cost/benefit analysis and cost of inaction:

The use of an audio ballot for accessible voting machines is statutorily mandated in section 1-5-704, C.R.S., and the existing requirement that candidates provide an audio recording to the Secretary of State ensures correct pronunciation of the candidates'

names. Adjusting the deadline to be consistent with the submission of required paperwork to the Secretary of State will not likely result in extra cost to the candidates or the State. Moreover, adjusting the deadline will allow the counties and their vendors additional necessary time to program the audio ballot prior to the election. Leaving the deadlines as they are currently set in the rule could result in costs to the counties to program the audio ballot in a shorter period of time prior to the election.

5. Less costly or less intrusive alternatives considered by the state:

Given that the use of an audio ballot is statutorily mandated, and there is a strong public interest in consistent and audible recorded names, there are no less costly or less intrusive methods of achieving the audio ballot.

6. Alternative methods of achieving proposed results:

Given that the use of an audio ballot is statutorily mandated, and there is a strong public interest in consistent and audible recorded names, there are no reasonably feasible alternatives to the proposed rule.

III. Regulatory Analysis of the proposed amendments to Rule 11.5.4

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed revisions to rule 11.5.4 because the amendments clarify that the post election audit will be performed on devices actually used in the election. All Colorado voters will benefit from the proposed rule. Ensuring that any post-election audit is conducted on the equipment used in the election strengthens public confidence in the audit process and in the election.

Assessing the cost impact of this proposed rule is difficult given that counties currently conduct a post election audit in accordance with section 1-7-514, C.R.S. The proposed rule would clarify that audits conducted in accordance with section 1-7-514 will be conducted on equipment that was used in the election. Consequently, the proposed rule should not result in significant additional costs to implement. Any additional costs associated with the requirements in the proposed rule would fall to the counties and ultimately the public.

2. Probable quantitative and qualitative impact of the proposed rule:

The proposed rule will ensure that the post-election audit is conducted on equipment used in the election. This requirement should positively impact public confidence in the audit and as a result in the election generally.

3. Cost to the agency of enforcement and effect on state revenues:

The Secretary of State is required by section 1-7-514 to initiate the random audit and to randomly select the equipment to be audited. The proposed rule will not result in additional costs beyond those already associated with the audit process. It is not anticipated that the proposed rule will have any effect on state revenues.

4. Cost/benefit analysis and cost of inaction:

The Secretary of State is statutorily required to initiate the post-election audit and to randomly select the equipment to be audited, and the counties are similarly required to

conduct the audit. The proposed rule clarifies which equipment that is subject to the audit and will not result in additional procedures or costs to the counties or the State. Inaction would leave the requirement subject to interpretation, and while there is no cost associated with inaction, the public interest weighs toward ensuring that the audit is conducted in a manner that enhances public confidence in the process.

5. Less costly or less intrusive alternatives considered by the state:

Given that the Secretary of State is statutorily required to initiate the post-election audit and to randomly select the equipment to be audited, and the counties are similarly required to conduct the audit, there are no less intrusive alternatives available. The proposed rule will not result in additional costs; therefore, the proposed rule contains the most cost-effective method currently available.

6. Alternative methods of achieving proposed results:

As previously stated, the Secretary of State is statutorily required to initiate the post-election audit and to randomly select the equipment to be audited, and the counties are similarly required to conduct the audit. The only available alternative is to leave the requirement subject to interpretation. This option was rejected because there is a strong public interest in ensuring that the devices used in the election are the devices audited. Auditing the machines actually used in the election increases voter confidence in the process.

IV. Regulatory Analysis of the proposed amendments to Rule 11.6.3

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

The proposed revision to the rule is a correction of numbering. As such, there is no tangible cost or benefit to be considered.

2. Probable quantitative and qualitative impact of the proposed rule:

The proposed revision to the rule is a correction of numbering. As such, there is no quantitative or qualitative impact to be considered.

3. Cost to the agency of enforcement and effect on state revenues:

The proposed revision to the rule is a correction of numbering. As such, there is no additional cost of enforcement or impact on state revenues.

4. Cost/benefit analysis and cost of inaction:

The proposed revision to the rule is a correction of numbering. As such, there is no cost/benefit analysis or cost of inaction to be considered.

5. Less costly or less intrusive alternatives considered by the state:

The proposed revision to the rule is a correction of numbering. As such, there are no less costly or less intrusive methods to be considered.

6. Alternative methods of achieving proposed results:

The proposed revision to the rule is a correction of numbering. As such, there are no reasonable alternative methods to the proposed revision of the rule.

V. Regulatory Analysis of the proposed amendments to Rule 12

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed rule because it clarifies the statutory provisions for conducting an election by mail ballot. Specifically, the amendments to Rule 12 requiring at least one accessible polling place equipped with an accessible voting system in every election conducted by mail ballot, would benefit Colorado's disability community. This requirement would allow members of the disability community the same opportunity to choose to vote in a private and independent manner that they are afforded in a polling place election.

Assessing the cost impact of this proposed rule is difficult given that counties have already purchased accessible equipment in compliance with the Help America Vote Act of 2002 ("HAVA"), P.L. 107-252. The costs associated with implementing the requirement of an accessible polling place and voting system will fall to the jurisdiction conducting the election, and ultimately the public will bear such costs.

2. Probable quantitative and qualitative impact of the proposed rule:

The requirement that an accessible polling location equipped with an accessible voting system be established in every mail ballot election would provide options and further ensure the enfranchisement of persons with disabilities. Without this provision, the ability of certain members of the disability community to vote their ballot in a private and independent manner as anticipated under HAVA and state law would be inhibited.

Counties must provide accessible walk-in locations under HAVA, and have purchased the equipment necessary to provide these locations. Although this requirement would change the manner that counties have become accustomed to conducting mail ballot elections, the requirement is mandated by federal law.

3. Cost to the agency of enforcement and effect on State revenues:

The Secretary of State is required by HAVA and section 1-1.5-104, C.R.S. to administer and enforce the provisions of HAVA, including ensuring compliance with the accessibility provisions of HAVA. It is not anticipated that the implementation of these procedures will have an impact on state revenues.

4. Cost /benefit analysis and cost of inaction:

As stated above, the cost of implementing the requirement will fall to the counties and ultimately to the public, however, the counties must comply with the provisions in order to be in full compliance with the accessibility provisions of HAVA. Given the requirements under both federal and state law for accessibility accommodation, it may be reasonably presumed that inaction would lead to costly litigation. The expense of such litigation could fall to the counties and the State, and ultimately the public would bear the costs.

5. Less costly or less intrusive alternatives considered by the state:

Given the requirements under HAVA for accessible polling locations and equipment, the proposed revisions to Rule 12 contain the most cost-effective and least intrusive methods available.

6. Alternative methods of achieving proposed results:

The U.S. Election Assistance Commission, which is responsible for the administration of HAVA, has clearly stated that accommodations for accessible polling places and equipment are mandated by HAVA. The commissions has indicated that although HAVA did not define “polling place,” it “is any place where a voter appears in person to cast a ballot” that is “sanctioned and operated by the state, county, or local office conducting the election.” (EAC Advisory 2007-001)

VI. Regulatory Analysis of the proposed amendments to Rule 14

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed rule because it establishes procedures for conducting a recount on a Direct Recording Electronic Device (DRE). The amendments to Rule 14 specifically address testing procedures prior to the recount that can be implemented uniformly throughout the state. Such consistent procedures enhance voters’ confidence in the electoral process.

Assessing the cost impact of these procedures is difficult given that there is no method of predicting whether a recount will be required or requested in a particular election. However, because the amendments to Rule 14 simply expand current recount requirements to include procedures for DREs, the cost impact should be minimal. Any costs associated with implementing these procedures will be borne by the jurisdiction conducting the election. In cases of non-mandatory recounts, such costs may be transferred to the party requesting the recount; otherwise, the public will ultimately bear the burden of such costs.

2. Probable quantitative and qualitative impact of the proposed rule:

The recount and pre-recount testing procedures for DREs established in Rule 14 are mandated by section 1-10.5-102, C.R.S. The pre-recount testing procedures in the proposed revisions to Rule 14 ensure the accuracy of any recount conducted under the rules and as a result increase public confidence in elections. Because the procedures must be conducted in accordance with Article 10.5 of Title 1, the counties will not be subject to additional costs or procedures beyond those already associated with conducting a recount.

3. Cost to the agency of enforcement and effect on state revenues:

Pursuant to section 1-10.5-102(c), C.R.S., the Secretary of State is required to promulgate rules to establish recount and pre-recount test procedures. It is not anticipated that the implementation of such procedures will result in additional costs associated with enforcement or have any impact on state revenues.

4. Cost/benefit analysis and cost of inaction:

The Secretary of State is required to adopt rules governing recount and pre-recount testing pursuant to section 1-10.5-102(c), C.R.S., consequently, inaction is not a reasonable alternative. Given the statutory mandate to promulgate such rules, we may presume that the General Assembly has afforded sufficient consideration to the cost/benefit analysis.

5. Less costly or less intrusive alternatives considered by the state:

Given the statutory mandate to adopt rules governing recount and pre-recount testing, the proposed rules contain the most cost-effective and least intrusive approach currently available.

6. Alternative methods of achieving proposed results:

Given the statutory mandate to adopt rules governing recount and pre-recount testing, no reasonably feasible alternatives are available.

VII. Regulatory Analysis of the proposed amendments to Rule 32

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed rule because it changes the manner in which the total number of signatures needed to petition for a school board director recall is calculated.

The amendment to Rule 32 would not result in any additional costs beyond those already associated with a school board director recall petition. This amendment merely clarifies the method of calculating the total number of signatures needed for a recall petition.

2. Probable quantitative and qualitative impact of the proposed rule:

The proposed amendments to Rule 32 clarify the number of signatures needed to petition for the recall of a school board director. Currently the law regarding the calculation of signatures needed is ambiguous and could be read to require more signatures to petition to recall a school board director than the number of votes cast to elect the director.

3. Cost to the agency of enforcement and effect on state revenues:

The proposed amendment to Rule 32 clarifies the signature requirement and it is not anticipated that the amendment will result in any cost to the Secretary of State for enforcement or any impact on state revenues.

4. Cost/benefit analysis and cost of inaction:

The proposed amendment to Rule 32 clarifies the method of calculating the number of signatures required to recall a school board director and it will not result in additional costs to the State or counties in implementation. Inaction, on the other hand, could result in litigation. The current method of calculation could result in more signatures required to petition for a director's recall than the number of votes cast to elect the director, creating a burden on the petitioners.

5. Less costly or less intrusive alternatives considered by the state:

Given that the proposed amendment to Rule 32 will not result in additional costs to the counties or to the State, there are no less costly alternatives available. The proposed amendment also represents the least intrusive alternative given that the current method could result in a higher burden on petitioners.

6. Alternative methods of achieving proposed results:

There are no reasonably feasible alternative methods available.

VIII. Regulatory Analysis of the proposed amendments to Rule 43

1. Classes of persons who will be affected by, bear the cost of, or benefit from the proposed rule:

All Colorado voters will be affected by the proposed rule because it revises the minimum security procedures that counties are required to follow to ensure the integrity of the election. Specifically, the proposed rule addresses security concerns raised in recent litigation as well as national studies that have evaluated threats and vulnerabilities to voting systems. All Colorado voters will benefit from the implementation of the procedures because the procedures will increase voter confidence.

Evaluating the cost impact of the proposed rule is difficult, given that counties implemented many of the procedures outlined in the rule prior to the 2006 General Election. Thus, it is not anticipated that the implementation of the proposed security procedures would result in significant increases in cost. Any additional costs of implementing the procedures will be borne by the counties and ultimately the public.

2. Probable quantitative and qualitative impact of the proposed rule:

The proposed revisions to the county security procedures will ensure that uniform, effective security procedures are in place throughout the state to protect the integrity of Colorado elections. The use of consistent, statewide procedures will positively impact public confidence in elections.

3. Cost to the agency of enforcement and effect on state revenues:

It is not anticipated that the proposed rule will result in additional costs to the State for enforcement because counties are required by section 1-5-616(5), C.R.S., to submit security plans to the Secretary of State for review. There is no anticipated impact on state revenues as a result of the implementation of the proposed rule.

4. Cost /benefit analysis and cost of inaction:

Counties are required by statute to file county security plans with the Secretary of State for approval. The proposed rule addresses security concerns that have been raised and provides counties with minimum standards for ensuring the security of voting systems. The proposed rule also establishes uniform minimum standards that will be implemented statewide, and the implementation of such standards serves to increase public confidence in elections.

Given that security concerns have led to litigation in Colorado, it may be reasonably assumed that inaction would similarly lead to costly litigation. Further, inaction is not a reasonable alternative because the State is mandated under section 1-5-616, C.R.S., to establish minimum standards for security and counties are required to submit their security procedures to the Secretary of State for approval.

5. Less costly or less intrusive alternatives considered by the state:

The Secretary of State is statutorily required to establish minimum security requirements and the counties are similarly required to file security plans with the Secretary of State. The counties also implemented many of the requirements in the proposed rule prior to the 2006 General Election. The Secretary of State has worked closely with the counties to

ensure that the proposed rule contains the most cost-effective approach possible. Given the statutory requirements of the State and counties regarding security, the proposed rule contains the least intrusive approach currently possible.

6. Alternative methods of achieving proposed results:

In developing uniform statewide standards, the Secretary of State has worked to ensure the most cost-effective method of compliance, including researching products and procedures used in other states. The alternatives considered in drafting the proposed rules were 1) to make no change to Rule 43 as it existed prior to the 2006 General Election, and 2) to implement in whole the 2006 Uniform Security Standards, which were developed prior to the 2006 General Election by court order.

The first option of making no changes to the rule as it existed prior to the 2006 General Election was rejected as inadequate. There is a clear public interest in ensuring the security of voting systems and thereby increasing public confidence in elections. The second option of adopting the 2006 security procedures in whole was considered and ultimately rejected after input from the counties that certain provisions were infeasible, or presented a considerable cost or time burden. The proposed rule contains many of the provisions of the 2006 Uniform Security Standards, while taking into consideration the practical considerations of implementing such procedures.