



Revised Statement of Basis, Purpose, and Specific Statutory Authority

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

July 28, 2011

I. Basis and Purpose

This statement is about proposed amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve the administration of elections in Colorado, to increase the transparency and security of the election process, and to answer questions arising under State election laws as follows:

- The amendments to Rule 2.11 clarify the treatment of a signature stamp by an elector with a disability.
- The amendments to Rule 2.12 implement changes to Part 2 of Article 21 of Title 24, C.R.S., by HB 11-1080. Specifically, HB 11-1080 reallocated the Colorado Address Confidentiality Program (ACP) from the Secretary of State to the Department of Personnel. The amendments to the rule are necessary to indicate the transfer in statutory authority.
- The amendments to Rule 2.18 allow counties to mark a record inactive – returned mail based upon a forwarding notice from USPS. Although counties receive these currently as a result of the USPS-required forwarding endorsement, they are charged \$0.50 for each card and cannot use the card to update the elector's record in any way. This change allows the county to generate a forwardable confirmation card and would stop mailings to an address that the USPS has indicated is no longer deliverable for that elector.
- The changes to Rule 6.2 clarify the process for assigning ballot order to measures for political subdivisions that cross county lines. The rule was written prior to full SCORE implementation and contains processes that are not workable in SCORE. However, the rule is still necessary to designate a “controlling county” for the purposes of coordinating the assignment of the ballot number/letter. The change in how the controlling county is designated is based upon feedback from counties that they have historically done this

¹ 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.

according to where the administrative office is located rather than where the largest number of electors reside.

- The revisions to Rule 12.1.1 streamline and clarify the requirements for a mail ballot secrecy sleeve and voter instructions. In particular, the amendment accommodates the newer version of the approved form that includes a version specifically for ID required electors and a difference version for non-ID required electors.
- Repeal of Rule 12.4.1(b)(1) is appropriate because an amendment to section 1-7.5-105, C.R.S, harmonized the deadline for special district plans with the deadline for plans for coordinated and other non-partisan elections. Because this 55-day deadline falls after the date that a special district may cancel the election, there is no longer a need for a filing extension for this reason.
- The revisions to Rule 12.5.5 clarify the purpose of the notice required on the outgoing ballot envelope and instructions regarding other elections that may be held on the same day. Section 1-7-116(1), C.R.S., requires any jurisdiction conducting an election on the same day in November to either coordinate with the county or conduct a mail ballot election. The rule as originally written was somewhat misleading with respect to whether other polling place elections might be held on the same day.
- The amendments to Rule 12.11 outline the procedures and requirements for a request for a ballot by an inactive voter in a coordinated or other non-partisan mail ballot election.
- The changes to Rules 12.12.1 and 12.12.2 clarify when an elector may surrender a mail ballot in accordance with section 1-7.5-107(3), C.R.S. The revisions also clarify that an elector who “surrenders” a mail ballot to vote on the DRE in a mail ballot election does not need to physically surrender the ballot, but that it will be voided before the DRE ballot is issued. This change reflects current policy and process and would harmonize the rule with the corresponding rule regarding mail-in ballots.
- The amendment to the header of Rule 14.5 clarifies the applicability of the rule, which addresses the procedure for recounting ballots where the initial count was done by hand.
- The amendments to Rule 15.1 clarify the petition entity registration process.
- The amendments to Rule 15.3.2 clarify the definition of permanent “residence” or “domicile”. This clarification is necessary to address questions raised following the adoption of the rule which references “residence” and HB11-1072, which references “domicile”. Specifically, the rule clarifies that both terms have the same meaning as permanent residence as defined in section 1-2-102(1)(a)(I), C.R.S.
- The revisions to Rule 25 implement the changes enacted by HB11-1219, which created a new article containing all statutes relating to registration and voting by military and overseas electors. Additionally, the bill extended email transmission and late ballot return to all military and overseas electors, eliminated the special write-in ballot and expanded use of the federal write-in ballot, and eliminated federal precincts.

- The revisions to Rule 26.5.3 are necessary to clarify that the provisional ballot acceptance code ACP applies to any move within the state, including moves within the same county.
- The revisions to Rule 27 clarify recount procedures for write-in races. Specifically, these amendments eliminate a conflict between the initial count and recount regarding how write-in races are reviewed. In either count, the ballot would only be reviewed if the appropriate target area was marked.
- The amendments to Rule 29.1.2 provide military and overseas electors and other absent electors the opportunity to cure an unsigned ballot by fax or email since these electors cannot appear in the county clerk’s office to sign the ballot envelope in person.
- The revisions to Rule 42.11 clarify the procedures for an administrative emergency ballot under section 1-8-115(2), C.R.S.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2010), 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., (2010), 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].”