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2013 Departmental Regulatory Agenda
Office of the Secretary of State
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To: The Staff of Legislative Council

Re: Colorado Department of State – 2013 Departmental Regulatory Agenda

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INTRODUCTION

The Colorado Secretary of State submits the following 2013 Departmental Regulatory Agenda for the Department of State to the General Assembly in accordance with state laws concerning legislative oversight of principal departments.[1]

DEPARTMENT REGULATORY AGENDA

8 CCR 1505-1: Elections

A) New or revised rules that the department expects to propose in the next calendar year and the purpose for the rules

The Secretary of State may commence rulemaking to consider amendments to the Election Rules in order to improve the administration and enforcement of and to answer questions arising under Colorado elections law.[2]

Specifically, this office may propose and consider the following rule amendments:

- Amendments to Rule 40, concerning certification and education of designated election officials, as recommended by elections staff and the Colorado election official certification advisory board.

- Permanent adoption of current temporary rules:
  - New Rule 10.8, concerning the use of serial numbers on ballots. The Secretary received credible evidence that a unique number or bar code containing a unique serial number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it. The purpose of this rule is to ensure that no ballot is printed with a number that can be used for this purpose. While there may be technological means of randomizing the numbers, it is essential that all Colorado voters have confidence in the processes and procedures for the upcoming Presidential election. After voted ballots have been separated from return envelopes and the ballot stubs are removed, unique numbers may be used for accounting and auditing purposes, including risk limited auditing and duplication of damaged ballots. The rule also requires that counties redact unique numbers or barcodes containing unique numbers from any ballots printed before the adoption of the rule that are provided in response to a request under the Colorado Open Records Act.

  - Amendments to Rule 26 establish provisional ballot procedures for an elector whose name is not listed in the statewide voter registration database or pollbook because of an issue with the State's online voter registration system. Changes to the programming of the Secretary of State's GoVoteColorado.com site created intermittent problems with the mobile site collecting the data and adding it to the

[1] Section 2-7-202(2.3), C.R.S.; implemented by House Bill 12-1008.
[2] 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.

state's voter registration system between September 14 and 24, 2012. As a result, individuals who submitted an application using a mobile device or tablet during that timeframe may not have successfully completed a registration.

Additionally, the Secretary of State may commence rulemaking as necessary to implement amendments to Colorado laws made during the 2013 regular session of the 69th General Assembly, to answer questions or to implement recommendations from county clerk and recorders, the public, and other interested parties/organizations; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

B) Statutory or other basis for adopting those rules

1. Section 1-1-107(2)(a), C.R.S., (2012), 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 1-1-301(2), C.R.S., (2012), which requires the Secretary of State to "establish by rule a curriculum for the certification program, including core requirement sand electives, the required number of hours, and methods for continuing education."

3. Section 1-1.5-104(1)(e), C.R.S., (2012), 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]."

4. Section 1-5-407(7), C.R.S. (2012), which states that "[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

5. Section 1-8.5-112, C.R.S., (2012), 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.]."

Depending on the subject matter of unanticipated rulemaking, additional statutory and constitutional authority may apply.

C) Contemplated schedule for adopting the rules

This office estimates commencement of rulemaking during the first quarter of 2013 to address known issues and additional rulemaking in the summer to address legislative changes, if necessary. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.[3]

D) Identification of persons or parties that may be positively or negatively affected by the rules

The anticipated rulemaking is intended to positively affect the following persons/parties:

[3] Section 24-4-103(3)(a), C.R.S. (2012).

- Electors and the general public;
- County clerk and recorders;
- Local designated election officials;
- Elections staff;
- Colorado election official certification advisory board; and
- Other interested parties and organizations.

E) Current/2012 rulemaking information

For temporary and permanent rulemaking conducted in 2012 regarding the Election Rules, please visit the Secretary of State website at:
http://www.sos.state.co.us/pubs/rule_making/rules.html.

8 CCR 1505-2: Bingo and Raffles Games

A) New or revised rules that the department expects to propose in the next calendar year and the purpose for the rules

The Secretary of State may commence rulemaking to consider amendments to Bingo and Raffles Games Rules in order to improve the administration and enforcement of and to answer questions arising under Colorado bingo raffles laws.[4]

Specifically, this office may propose and consider the following rule amendments:

- Repeal of Rule 1. The current rule provides an introduction, authority, and statement of scope and purpose which is unnecessary.

- Amendments to Rule 2 to define "call fulfillment center." This rule is necessary to clarify the term and applicability under proposed new sub-rules under current rule 8.

- Amendments to Rule 3 to clarify that a games manager must be present during a raffle drawing. The revisions are proposed by staff members of the Secretary of State's bingo-raffle unit. The rules are intended to clarify and ease confusion concerning when a game manager must be present.

- Amendments to Rule 4 to clarify that seats or playing spaces may be reserved only for players with disabilities. Our office receives questions about when seats and playing spaces may be reserved. The revisions are intended to clarify that this practice is only allowed to accommodate players with disabilities. Additional amendments would increase the maximum number of bingo occasions per calendar year, as suggested by Dan Gincig, chairman of the Colorado bingo-raffle advisory board.

- Amendments to Rule 6 to establish that a bingo-raffle licensee may maintain a separate cash fund for operation of a pull tab games at a bar and that the fund balance may not exceed $2,000. The rule is intended to better reflect common practices and to clarify current law.

[4] Article 9 of Title 12, C.R.S., and Article XVIII of the Colorado Constitution.

- Amendments to Rule 7 to increase the number of faces a bingo player may play from 36 to 54, as requested by the Colorado bingo-raffle advisory board. The increase should give players additional options and potentially increase profits for bingo licensees.

- Amendments to Rule 8 to allow for the use of a call fulfillment center for the sale of raffle tickets. Several large raffles require the use of a call center to process ticket purchases. The rule is necessary to clarify proper implementation and administration of a call fulfillment center, and to establish licensee and call center management requirements. Additional edits to Rule 8 address administration of a progressive raffle drawing and distribution of jackpots. These revisions are intended to ease confusion and to give a licensee more explicit direction.

- Amendments to Rule 9 to allow people working at a call fulfillment center a reasonable salary. The revision is necessary to authorize the use of paid call center workers. Current regulations are unclear on whether the use of paid workers is authorized for this specific purpose. Additional amendments to this rule would change the threshold for special raffle requirements (as requested by Colorado Friends of NRA), as well as clarify requirements and procedures for large raffles in which presence is required to win a prize (as requested by 5050 Central, a manufacturer and distributor of electronic raffle equipment).

- Amendments to Rule 10 would increase the maximum aggregate bingo occasion prize from $2,000 to $5,000. This suggestion was made by Dan Gincig of the Colorado bingo-raffle advisory board.

- Amendments to Rule 13 to require software manufacturers to obtain a manufacturer's license. Historically, manufacturers only produce hardware for use in operations. New technology allows some manufacturer to distribute only software. The rule is intended to clarify that a software producer is considered a manufacturer.

- Non-substantive technical amendments to clarify words and phrases.

- Citation updates and cross-reference corrections.

- Renumbering of rules, as is necessary for consistency with Department rulemaking format and style.

Additionally, the Secretary of State may commence rulemaking as necessary to implement amendments to Colorado laws made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

B) The statutory or other basis for adopting those rules

1. Section 12-9-103(1)(b), C.R.S. (2012), which authorizes the Secretary of State "[t]o supervise the administration and enforcement of this article, and in consultation with the board, to adopt, amend, and repeal rules governing the holding, operating, and conducting of games of chance…".

2. Section 12-9-107(13)(a), C.R.S. (2012), which requires the Secretary of State to "establish by rule the method of play and amount of prizes that may be awarded…".

3. Section 12-9-107(28)(c), C.R.S. (2012), which authorizes the Secretary of State to establish by rule the maximum number of bingo cards that a player can use with an electronic bingo aid device.

4. Section 12-9-202(2)(a)-(c), C.R.S. (2012), which requires the Colorado bingo-raffle advisory board to offer advice for rules regarding the types of charitable games to be conducted, the rules for those games, the number of occasions per year, and the licensing requirements of all types of licenses required for the conduct of charitable gaming to the Secretary of State.

Depending on the subject matter of unanticipated rulemaking, additional statutory and constitutional authority may apply.

C) Contemplated schedule for adopting the rules

Regarding anticipated rulemaking, this office estimates commencement of rulemaking as early as December of 2012. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Act.

D) Identification of persons or parties that may be positively or negatively affected by the rules

The anticipated rulemaking is intended to positively affect the following persons/parties:

- Bingo-raffle players;
- Bingo-raffle hall owners;
- Bingo-raffle Licensees, including religious, fraternal, labor, voluntary firemen, and veteran's organizations;
- Bingo software manufacturers;
- Bingo-raffle licensees that wish to use a call fulfillment center for processing raffle ticket sales; and
- The Colorado bingo-raffle advisory board.

8 CCR 1505-3: Rules Governing General Policies and Administration

The Secretary of State does not anticipate, however, may commence rulemaking as necessary to implement amendments to Colorado laws made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

8 CCR 1505-6: Rules Concerning Campaign and Political Finance

The Secretary of State does not anticipate rulemaking regarding the Rules Concerning Campaign and Political Finance Rules, however, may commence rulemaking as necessary to improve the administration and enforcement of and to answer questions arising under Colorado campaign finance law;[5] implement amendments to Colorado campaign finance law made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

For temporary and permanent rulemaking conducted in 2012 regarding the Rules Concerning Campaign and Political Finance, please visit the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/rules.html.

8 CCR 1505-7: UCC Filing Office Rules

The Secretary of State does not anticipate rulemaking concerning the UCC Filing Office Rules, however, may commence rulemaking as necessary to improve the administration and enforcement of and to answer questions arising under Colorado's Uniform Commercial Code;[6] implement amendments to Colorado's Uniform Commercial Code made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

For permanent rulemaking conducted in 2012 regarding the UCC Filing Office Rules, please visit the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/rules.html.

8 CCR 1505-8: Rules Concerning Lobbyist Regulation

The Secretary of State does not anticipate rulemaking regarding the Rules Concerning Lobbyist Regulation, however, may commence rulemaking as necessary to improve the administration and enforcement of and to answer questions arising under Colorado laws regarding lobbyist regulation;[7] implement amendments to Colorado laws regarding lobbyist regulation made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

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[5] Article 45 of Title 1, C.R.S., and Article XXVIII of the Colorado Constitution.
[6] Article 9 of Title 4, C.R.S.
[7] Part 3 of Article 6 of Title 24, C.R.S.

For permanent rulemaking conducted in 2012 regarding the Rules Concerning Lobbyist Regulation, please visit the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/rules.html.

8 CCR 1505-9: Rules for the Administration of the Colorado Charitable Solicitations Act

A) New or revised rules that the department expects to propose in the next calendar year and the purpose for the rules

The Secretary of State may commence rulemaking to consider amendments to the Rules for the Administration of the Colorado Charitable Solicitations Act in order to improve the administration and enforcement of and to answer questions arising under Colorado Charitable Solicitations laws.[8]

Specifically, this office may propose and consider re-codification of the rules, including reorganization and establishment of distinct regulations in accordance with registrant type; non-substantive and technical amendments to clarify words and phrases; and renumbering of rules, as is necessary for consistency with Department rulemaking format and style.

Additionally, the Secretary of State may commence rulemaking necessary to implement amendments to the Colorado Charitable Solicitations Act made during the 20132 regular session of the 69th General Assembly and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

B) The statutory or other basis for adopting those rules

1. Section 6-16-104(3), C.R.S., (2012) which authorizes the Secretary of State to "promulgate rules concerning the acceptance of a uniform multistate registration statement, such as a unified registration statement, in lieu of the registration statement described in subsection (2) of this section. As soon as practicable, the secretary of state shall take steps to cooperate in a joint state and federal electronic filing project involving state charity offices and the internal revenue service to enable and promote electronic filing of uniform multistate registration statements and federal annual information returns."

2. Section 6-16-110.5(3), C.R.S., (2012), which authorizes the Secretary of State "to promulgate rules as needed for the effective implementation of this section, including but not limited to:
   (a) Providing for the extension of filing deadlines;
   (b) Providing for the online availability of forms required to be filed pursuant to sections 6-16-104 to 6-16-104.6;
   (c) Providing for the electronic filing of required forms, including the acceptance of electronic signatures;

[8] Article 16 of Title 6, C.R.S.

(d) Mandating electronic filing and providing, in the secretary of state's discretion, for exceptions to mandatory electronic filing; and
(e) Setting fines for noncompliance with this article or rules promulgated pursuant to this article. The fine for soliciting while unregistered shall not exceed three hundred dollars per year for charities or one thousand dollars per year for paid solicitors."

3. Section 6-16-111(6)(b), C.R.S., (2012), that requires the Secretary of State to "promulgate rules to provide for expedited deadlines to govern [hearing proceedings concerning denial, suspension, or revocation of registration]…".

4. Section 6-16-114, C.R.S., (2012), that requires the Secretary of State to promulgate rules to establish a fine or late filing fee amount.

Depending on the subject matter of unanticipated rulemaking, additional statutory and constitutional authority may apply.

C) Contemplated schedule for adopting the rules

Regarding anticipated rulemaking, this office estimates commencement of rulemaking by the fall of 2013. The Secretary of State will commence additional rulemaking as necessary in a timely manner and in accordance with the State Administrative Act.

D) Identification of persons or parties that may be positively or negatively affected by the rules

The anticipated rulemaking is intended to positively affect the following persons/parties:

- Charitable organizations;
- Paid solicitors
- Paid fundraising consultants;
- Registration service providers;
- Grant writers;
- Persons soliciting on behalf of named individuals;
- Colorado Nonprofit Association;
- Colorado Association of Funders;
- Community Resource Center;
- Center for Nonprofit Excellence.

E) Current/2012 rulemaking information

For permanent rulemaking conducted in 2012 regarding the Rules for the Administration of the Colorado Charitable Solicitations Act, please visit the Secretary of State website at: http://www.sos.state.co.us/pubs/rule_making/rules.html.

8 CCR 1505-10: Rules Concerning the Electronic Recording Technology Grant Program

The Secretary of State does not anticipate, however, may commence rulemaking as necessary to implement amendments to Colorado laws regarding the clerk and recorder technology fund[9]

[9] Section 30-10-422, C.R.S.

made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

8 CCR 1505-11: Notary Program Rules

A) New or revised rules that the department expects to propose in the next calendar year and the purpose of the rules

The Secretary of State may commence rulemaking to consider amendments to the Notary Program Rules in order to improve the administration and enforcement of and to answer questions arising under Colorado Notaries Public Act.[10]

Specifically, this office may propose and consider:

- Rules necessary to implement amendments to the Notaries Public Act made during the 2012 second regular session of the 68th General Assembly;
  - Current Rule 2(4)(a)(1) states that an electronic log constitutes the journal referenced in section 12-55-104(2), C.R.S. House Bill 12-1274, however, removed language concerning a journal from that specific statutory provision. Current Rules 2(4)(d) and 5 reference the journal as well. The Secretary of State may propose rulemaking including revisions to the statutory reference in these rules.

- Amendments to Rule 7.2.4.(I), concerning vendor reporting of persons who attend notary instruction. Currently, the rule requires an approved vendor to provide our office with a list of persons who attend each session of an approved course of instruction within ten days after completion of the course. This Secretary of State may propose rule amendments to establish monthly reporting on a set date.

- to issue, amend, or repeal of a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.; and

- Non-substantive and technical revisions to simplify or clarify words and phrases and to make technical revisions, including reorganization and renumbering of rules, as is necessary for consistency with Department rulemaking format and style.

B) The statutory or other basis for adopting those rules;

1. Section 12-55-103.5(2), C.R.S. (2012), which authorizes the Secretary of State to "promulgate rules to require notaries public to complete a training program."

[10] Article 55 of Title 12, C.R.S.

2. Section 12-55-104(5), C.R.S. (2012), which authorizes the Secretary of State to "promulgate rules for use of the electronic filing system in accordance with article 4 of title 24, C.R.S."

3. Section 12-55-106.5(1), C.R.S. (2012), which requires that "[a] notary's electronic signature shall conform to any standards promulgated by the secretary of state."

4. Section 12-55-106.5(2), C.R.S. (2012), which requires the Secretary of State to "promulgate rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature."

Depending on the subject matter of unanticipated rulemaking, additional statutory and constitutional authority may apply.

C) Contemplated schedule for adopting the rules;

Regarding anticipated rulemaking, this office estimates commencement of rulemaking by the summer of 2013. The Secretary of State will commence additional rulemaking as necessary in a timely manner and in accordance with the State Administrative Act.

D) Identification of persons or parties that may be positively or negatively affected by the rules

Possible changes to Rules 2 and 5, clarifying a statutory reference, would neutrally affect individuals registered as electronic notaries.

Proposed amendments to Rule 7.2.4(I), establishing a monthly deadline for reporting training attendee lists, is intended to positively affect approved vendors.

8 CCR 1505-12: Public Records Pursuant to the Colorado Open Records Act (CORA)

The Secretary of State does not anticipate, however, may commence rulemaking as necessary to improve the administration and enforcement of and to answer questions arising under the Colorado Open Records Act;[11] implement amendments to the Colorado Open Records Act made during the 2013 regular session of the 69th General Assembly; to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

8 CCR 1505-14: Rules Concerning Conflict of Interest Disclosures

The Secretary of State does not anticipate, however, may commence rulemaking as necessary to improve the administration and enforcement of and to answer questions arising under Colorado standards of conduct law;[12] implement amendments to Colorado laws regarding standards of

[11] Article 72 of Title 24, C.R.S.
[12] Article 18 of Title 24, C.R.S.

conduct made during the 2013 regular session of the 69th General Assembly; and to issue, amend, or repeal a rule in accordance with a petition for rulemaking submitted under section 24-4-103(7), C.R.S.

Statutory and constitutional authority may depend on the subject matter of rulemaking. The Secretary of State will commence rulemaking as necessary in a timely manner and in accordance with the State Administrative Procedure Act.

PUBLICATION AND AVAILABILITY TO THE PUBLIC

On November 1, 2012, the Secretary of State will post this document on the Department's website at: www.sos.state.co.us/pubs/rule_making/agendas/2013CDOSRegAgenda.pdf.

Additionally, the Secretary of State filed this agenda for publication in the November 10, 2012 Colorado Register.