



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State Election Rules 8 CCR 1505-1

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I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State Election Rules [8 CCR 1505-1]. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of federal and Colorado election laws,¹ improve elections administration in Colorado and implement Senate Bill 23-276, enacted June 6, 2023.

Specific changes include:

- New Rule 7.2.17 bars a county from using a ballot return envelope that has a hole or any other opening in which the target area for any contest on the ballot may be seen. A county clerk who uses a hole or other opening in a ballot return envelope must provide a written certification to the Department that any envelope with a hole or other opening has been inspected and tested to verify that no target area can be seen through that hole or opening. Beginning July 1, 2024, the rule bars a county from using a ballot return envelope that has a hole or any other opening.
- New Rule 7.2.18 requires that a county clerk must work with a mail ballot printing vendor to establish a quality control process for all printed materials.
- Amendments to Rule 7.14 specify those county costs which are and are not necessary and reasonable under section 1-5-505.5, C.R.S., and are thus reimbursable by the Department of State, beginning July 1, 2024.
 - Amendment to Rule 7.14.1 requires counties to submit documentation supporting their expenditures along with their request for reimbursement.
 - New Rule 7.14.2 lists those costs which are necessary and reasonable for conducting an election and are thus reimbursable beginning July 1, 2024. This includes:

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.

- Salary or hourly wages for staff, election judges and canvass board members that meet specific criteria;
 - Costs attributable to the hiring, training, and support of election judge work;
 - Printing and mailing costs for that election which meet the criteria specified in the rule;
 - Ballot programming and election service costs for that election which are deemed necessary to the execution of the election;
 - Voter service and polling center costs;
 - Expenses for election security which are not separately covered by grants or other funding;
 - Translation costs; and
 - Other additional incremental direct costs which the county can clearly document as directly attributable to the conduct of the election.
- New Rule 7.14.3 outlines the costs that are deemed not necessary and reasonable for conducting an election and are thus not reimbursable beginning July 1, 2024. This includes:
 - Cost that is above the fair market value of the goods or services, where the fair market value is established by a competitive solicitation or other method for establishing a competitive price;
 - Annual voting system fees;
 - Annual preventative maintenance expenses;
 - Non-voting system equipment annual agreements;
 - Ballot issue notices;
 - Regular overhead expenses incurred by the county;
 - Purchase or lease of equipment or materials which can be used for more than one election; and
 - Cost for observers or supervisors appointed by the Secretary of State, unless otherwise ordered by the Secretary of State.
- New Rule 7.14.4 describes what supporting documentation must be included when submitting a request for reimbursement of election expenses.
- New Rule 7.14.5 describes the review and audit process for reimbursement requests submitted under the rule. This includes:

- The Department will review and evaluate reimbursement requests and provide payment once it is satisfied that the request meets all of the requirements outlined in Rule 7.14;
 - The Department may seek documentation to determine the fair market value of a good or service for which the county seeks reimbursement; and
 - The Department reserves the authority to clawback any portion of a reimbursement payment that is subsequently found to have been inconsistent or unauthorized with the requirements of Rule 7.14.
- New Rule 7.14.6 establishes that the Department may only reimburse counties up to the amount authorized by the Joint Budget Committee. In the event that eligible reimbursable expenses exceed those authorized by the Joint Budget Committee, reimbursement requests will be approved on a first-submitted, first-approved basis. The Department will notify the General Assembly of the fact that reimbursable expenses have exceeded those authorized within five business days of reaching the cap of spending authority. The Department will hold those requests that exceed the cap set by the General Assembly until additional spending authority is approved.

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 authority is as follows:

- Senate Bill 23-276, enacted June 6, 2023.
- Section 1-1-107(2)(a), C.R.S., (2023), 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.”
- Section 1-1-110(1), C.R.S., (2023), which requires county clerks to, “follow the rules and order promulgated by the secretary of state pursuant to this code.”
- Section 1-1.5-104(1)(e), C.R.S., (2023), which gives the Secretary of State the power to “[p]romulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA and of [Article 1.5].”
- Section 1-5-505.5(1)(a), C.R.S., (2023), which authorizes the Secretary of State to “adopt rules for determining which costs are necessary and reasonable and therefore reimbursable by the state”
- Section 1-7.5-104, C.R.S., (2023), 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.”

- Section 1-7.5-105(3), C.R.S., (2023), which requires the county clerk and recorder to "supervise the distribution, handling, and counting of ballots and the survey of returns in accordance with rules promulgated by the secretary of state..."
- Section 1-7.5-106(2), C.R.S., (2023), which authorizes the Secretary of State to, "adopt rules governing procedures and forms necessary to implement [mail ballot elections]..."
- Section 1-7.5-107(1), C.R.S. (2023), which requires ballots to be prepared, "by law or rules promulgated by the secretary of state."
- Section 1-7.5-107.3(5.5), C.R.S. (2023), which requires the secretary of state to adopt rules regarding ballot return envelopes, "to ensure the privacy of each elector's vote."