



Notice of Proposed Rulemaking

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

May 15, 2013

I. Notice of hearing

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. A hearing is scheduled for **June 14, 2013 from 9:00 a.m. - 12:00 p.m.** in the Blue Spruce Conference Room on the 2nd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject of the proposed rulemaking

The Secretary is considering amendments to the election rules² in order to improve the administration and enforcement of Colorado elections law³ and to increase the transparency and security of the election process.

Specifically, the Secretary is considering amendments to the rules concerning certification and education of designated election officials. A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory authority for proposed rulemaking

The rule revisions and amendments are proposed in accordance with the following statutory provisions:

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 1-1-109(3), C.R.S., (2012) 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 specify what constitutes approved and acceptable forms

¹ Section 24-4-103(3)(a), C.R.S. (2012).

² 8 CCR 1505-1.

³ 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.

certified for use...and any rules necessary to establish uniformity regarding the use of forms.”

3. Section 1-1-301, C.R.S., (2012), which states that “(1) The secretary of state shall establish and operate or provide by contract a certification program for local election officials on the conduct of elections, the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq., and other topics related to elections.
 - (2) The secretary of state shall establish by rule a curriculum for the certification program, including core requirements and electives, the required number of hours, and methods for continuing education.
 - (3) The secretary of state shall provide staffing and support services for the certification program.
 - (4) The secretary of state shall appoint an advisory board to oversee the certification process and the development of the curriculum.”
4. 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].”

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130614.html.

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by June 7, 2013.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process, and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

All interested persons will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office anytime before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as

⁴ Section 24-4-103(3)(a), C.R.S. (2012). “Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130614.html.

Prior to posting online, contact information including home address, email address, and telephone number(s) will be redacted from submissions unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Blue Spruce Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 15th Day of May, 2013.



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

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

May 15, 2013

I. Basis and Purpose

This statement explains 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 elections administration in Colorado and to increase the transparency and security of the election process.

Specifically, the Secretary is considering amendments to the concerning certification and education of designated election officials. The amendments will improve and allow greater accessibility to the education and certification process. Details about changes to the rules follow:

- Amendments to Rule 40.3 clarify that the Secretary of State will develop and administer certification and continuing election education curriculum. Amendments remove specific course listings from rule. The Secretary will post curriculum requirements and course descriptions on the Secretary of State's website.
 - Current Rules 40.3.1 and 40.4, that generally list core and elective curriculum courses are repealed.
 - New Rule 40.3.3 establishes that a person must complete minimum curriculum prescribed by the Secretary of State including seven basic core courses, one core course relevant to primary job duty, and six electives.
 - New Rule 40.3.4 establishes that a person must complete at least five continuing elections education courses by July 31 of every even year to maintain certification.
- Current Rule 40.6, concerning credit for training offered by other agencies or organizations, is amended and relocated to New Rule 40.5.4. The rule establishes that

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.

no election official may receive credit toward Colorado certification for training offered by other agencies organizations.

- Current Rule 40.10, concerning credit for teaching classes, is amended and relocated to New Rule 40.5.3. The rule clarifies that a person who teaches or substantially assists with preparation of a class will automatically receive credit for the course and he or she is excused from the assessment requirements outlined in Rule.
- Current Rule 40.11 is amended and relocated to New Rule 40.4. The rule clarifies that the Secretary of State will provide web-based training and classroom training. For certification, a person must complete at least one classroom training.
- Other changes to rules not specifically listed are entirely non-substantive and necessary for consistency with Department rulemaking format/style. Some words and phrases are changed to simplify or clarify, but the meaning is not intended to be altered unless as described above. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The rule revisions and amendments are proposed in accordance with the following statutory provisions:

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 1-1-109(3), C.R.S., (2012) 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 specify what constitutes approved and acceptable forms certified for use...and any rules necessary to establish uniformity regarding the use of forms.”
3. Section 1-1-301, C.R.S., (2012), which states that “(1) The secretary of state shall establish and operate or provide by contract a certification program for local election officials on the conduct of elections, the federal "Help America Vote Act of 2002", Pub.L. 107-252, codified at 42 U.S.C. sec. 15301 et seq., and other topics related to elections.
 - (2) The secretary of state shall establish by rule a curriculum for the certification program, including core requirements and electives, the required number of hours, and methods for continuing education.
 - (3) The secretary of state shall provide staffing and support services for the certification program.
 - (4) The secretary of state shall appoint an advisory board to oversee the certification process and the development of the curriculum.”

4. 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].”

Preliminary Draft of Proposed Rules

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

May 15, 2013

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the June 14, 2013 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **June 7, 2013**.²

SMALL CAPS indicate proposed additions to the current rules.

Stricken type indicates proposed deletions from current rules.

(Annotations) may be included.

Amendments to Rule 40:

Rule 40. Rules Concerning Certification and Education of Designated Election Officials

40.1 Purpose and Definitions:

40.1.1 The Secretary of State recognizes that the oversight of elections is a profession that requires thorough knowledge of complex state and federal election law and election procedures. ~~It is recognized that state~~ CONSIDERING THE COMPLEXITY OF STATE and federal law, voting equipment, and election procedures ~~are complex, and therefore necessitates extensive training,~~ EXTENSIVE TRAINING IS NECESSARY. The ~~purpose of the~~ certification program ~~is to standardize~~ STANDARDIZES election procedures and education. ~~so that~~ THE PROGRAM ALSO PROMOTES Colorado voters ~~have a greater~~ VOTERS' confidence in their election officials and the election process.

40.1.2 ~~“local~~ LOCAL election official” ~~for the purpose of section 1-1-301(1), C.R.S., shall mean~~ MEANS a county clerk and recorder. (SECTION 1-1-301(1), C.R.S.)

40.1.3 “Persons required to complete certification” ~~for the purpose of section 1-1-302, C.R.S., and this rule shall mean~~ MEANS:

(a) The county clerk and recorder; and

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2012). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2012). “[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

- 1 (b) Employees in the clerk and recorder's office who are directly responsible for
2 overseeing election activities, including but not limited to: voter registration,
3 candidate qualifications and ballot certification, poll worker training, ballot
4 design and setup, ballot counting, and canvassing.

5 (SECTION 1-1-302, C.R.S.)

6 40.2 ~~Advisory Board created.~~

7 ~~40.2.1 The Secretary of State shall create an advisory board to oversee the certification~~
8 ~~program and curriculum.~~

9 ~~40.2.2~~ 40.2.1 The advisory board ~~shall~~ MUST meet at least twice each calendar year to approve
10 the curriculum and make necessary changes. The advisory board ~~shall~~ MUST also review
11 evaluations and recommend changes to the certification program.

12 ~~40.2.2~~ 40.2.2 The advisory board ~~shall~~ MUST review individual applications for certification
13 and ~~shall~~ MUST approve applications that are accurate and complete. The advisory board
14 ~~shall have the authority to~~ MAY take into account special circumstances in reviewing
15 and approving applications.

16 ~~40.2.3~~ 40.2.3 The advisory board ~~shall include the following members appointed by the~~
17 Secretary of State WILL APPOINT THE FOLLOWING AS BOARD MEMBERS:

18 (a) Four county clerks or designated staff members;

19 (b) Two Secretary of State Office representatives; AND

20 (c) Any individual(s) whom the Secretary of State believes could make a valuable
21 contribution to the Board.

22 ~~40.2.4~~ 40.2.4 Board members ~~shall be appointed by the Secretary of State to serve AT LEAST a~~
23 ~~two-year term. Board members may be terminated~~

24 ~~40.2.5~~ 40.2.5 THE SECRETARY OF STATE MAY TERMINATE BOARD MEMBERS without cause.
25 Failure to attend meetings or meaningfully contribute may result in termination.

26 40.3 ~~Cere~~ Curriculum.

27 40.3.1 THE SECRETARY OF STATE WILL DEVELOP THE CORE AND ELECTIVE CURRICULUM
28 OFFERED FOR CERTIFICATION AND CONTINUING ELECTIONS EDUCATION. THE
29 SECRETARY WILL POST CURRICULUM INFORMATION ON THE SECRETARY OF STATE'S
30 WEBSITE.

31 40.3.2 THE SECRETARY OF STATE WILL DEVELOP AND ADMINISTER ALL TRAINING OUTLINED
32 IN THIS RULE 40.

33 [Current Rules 40.3.1 and 40.4.1 are amended and relocated to New Rule 40.3.2]

34 40.3.3 TO OBTAIN COLORADO CERTIFICATION, A PERSON MUST COMPLETE THE FOLLOWING
35 MINIMUM CURRICULUM PRESCRIBED BY THE SECRETARY OF STATE:

- (A) SEVEN BASIC CORE COURSES;
- (B) ONE CORE COURSE RELEVANT TO PRIMARY JOB DUTY; AND
- (C) SIX ELECTIVES.

40.3.4 TO MAINTAIN COLORADO CERTIFICATION, A PERSON MUST COMPLETE AT LEAST FIVE CONTINUING ELECTIONS EDUCATION COURSES BY JULY 31 OF EVERY EVEN YEAR.

~~40.3.1 The certification program shall include core requirements. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification shall complete at least eight core classes. The core classes shall generally include but are not limited to:~~

- ~~(a) Navigating election laws and procedures~~
- ~~(b) Testing and maintenance of voting equipment~~
- ~~(c) Canvass procedures~~
- ~~(d) Mail in voting~~
- ~~(e) Pollworker training and recruiting~~
- ~~(f) Overseas and military voting~~
- ~~(g) Ethics~~
- ~~(h) Mail ballot elections~~
- ~~(i) Accessibility for people with disabilities~~
- ~~(j) Provisional voting~~
- ~~(k) Issues in voter registration~~

~~40.3.2 The classes may be offered as a whole or in sections.~~

~~40.4 Elective Curriculum~~

~~40.4.1 The certification program shall include electives as part of the certification program. All training outlined herein shall be provided under the direction of the Secretary of State. Persons applying for certification shall select and complete at least six elective courses. The elective courses shall generally include but are not limited to:~~

- ~~(a) Voter outreach~~
- ~~(b) Media relations and the Colorado Open Records Act (CORA)~~
- ~~(c) Elections refresher course~~
- ~~(d) Petitions~~

- ~~(e) Recall elections~~
- ~~(f) Security planning~~
- ~~(g) SCORE functional training~~
- ~~(h) Polling place set up/management~~
- ~~(i) Vote Center training~~
- ~~(j) Budgeting~~
- ~~(k) Recounts and election contests~~
- ~~(l) Other timely, relevant topics as determined by the Secretary of State~~

~~40.4.2 The classes may be offered as a whole or in sections.~~

40.4 TRAINING FORMAT.

40.4.1 WEB-BASED TRAINING MAY BE CONDUCTED LIVE OR BY REVIEWING MATERIAL PREVIOUSLY PRESENTED BY THE SECRETARY OF STATE. IN EITHER CASE, PARTICIPANTS MUST ACHIEVE A SATISFACTORY SCORE ON ASSESSMENTS BEFORE RECEIVING CREDIT FOR THE COURSE.

40.4.2 THE SECRETARY OF STATE WILL PROVIDE CLASSROOM TRAINING. FOR CERTIFICATION, A PERSON MUST COMPLETE AT LEAST ONE COURSE IN-CLASS.

[Current Rule 40.11 is amended and relocated to New Rule 40.4]

40.5 ~~Credit for training offered by the Secretary of State.~~

40.5.1 Individuals applying for certification ~~shall have received at least eight unique core credits and six unique elective credits~~ MUST SUCCESSFULLY COMPLETE THE CURRICULUM PRESCRIBED BY THE SECRETARY OF STATE. ~~The~~ If AN APPLICANT SUBMITS DUPLICATE COURSEWORK, THE advisory board may reject applications. ~~THE APPLICATION for certification if any of the core or elective credit requirements have been achieved through a duplication of course credits.~~

~~40.5.2 The advisory board shall not accept applications for certification if more than two SCORE functional training elective credits are submitted to achieve the six elective credit requirement.~~

~~40.5.3 One credit shall be awarded after successful completion of any course scheduled for two hours or less. Two credits shall be awarded for successful completion of any course scheduled for more than two hours. However, only one elective credit shall be awarded for each four hours of SCORE Functional Training.~~

~~40.5.4~~ 40.5.2 Training assessment.

- (a) To receive certification credit for any course presented by the Secretary of State ~~in accordance with~~ UNDER this rule, ~~participants shall~~ A PARTICIPANT MUST

successfully complete a training assessment with a minimum score of 85%.

(b) ~~Participants failing~~ A PARTICIPANT WHO FAILS to achieve a score of at least 85% may retake the assessment.

(c) ~~Assessments may be administered by the~~ THE Secretary of State MAY ADMINISTER EITHER PAPER OR ELECTRONIC ASSESSMENTS ~~during or after presentation of the course, either by a paper assessment or by utilizing electronic assessment software.~~

40.5.3 CREDIT FOR TEACHING CLASSES. A PERSON WHO TEACHES OR SUBSTANTIALLY ASSISTS WITH PREPARATION OF A CLASS OFFERED FOR CERTIFICATION IS EXCUSED FROM THE ASSESSMENT REQUIREMENT OUTLINED IN RULE 40.5.2 AND WILL RECEIVE CREDIT FOR THE COURSE.

[Current Rule 40.10 is amended and relocated to New Rule 40.5.3]

40.5.4 NO ELECTION OFFICIAL MAY RECEIVE CREDIT TOWARD HIS OR HER COLORADO CERTIFICATION FOR TRAINING OFFERED BY OTHER AGENCIES OR ORGANIZATIONS.

~~40.6 Credit for training offered by other agencies or organizations.~~

~~40.6.1 Persons may apply to the advisory board to request credit towards Colorado certification for training provided by other agencies or organizations.~~

~~40.6.2 The Board shall grant core or elective hours if such trainings are elections related and provide an appropriate level of specificity and applicability as similar courses provided by the Secretary of State.~~

~~40.6.3 The Board may review agendas, materials, and other documentation for training not provided by the Secretary of State prior to granting core or elective credit.~~

~~40.6.4 For initial certification, the Board may grant up to one core and two elective credits to any participant for training provided by other agencies or organizations.~~

~~40.6.5 Successful completion of an assessment shall not be required for training provided by other agencies or organizations.~~

~~40.7 Continuing Elections Education (CEE)~~

~~40.7.1 In order to maintain certification, a person shall attend and complete at least two electives or one core class every calendar year.~~

~~40.7.2 Credit received for duplicate classes within the same calendar year may be applied only once toward maintaining certification. No more than two SCORE functional training elective credits may be submitted within the same calendar year towards maintaining certification.~~

~~40.7.3 After a person has completed the requirements for maintaining certification, he or she shall submit an application for continuing certification to the Secretary of State's office on the form approved by the Secretary of State.~~

1 ~~40.8~~ 40.6 ~~Completing Colorado certification~~ APPLICATION REVIEW, CERTIFICATION, AND
2 MAINTENANCE OF RECORDS.

3 40.6.1 ONCE A PERSON COMPLETES THE REQUIRED COURSEWORK, HE OR SHE MUST PROMPTLY
4 SUBMIT AN APPLICATION FOR CERTIFICATION OR CONTINUING CERTIFICATION TO THE
5 SECRETARY OF STATE'S OFFICE ON THE FORM APPROVED BY THE SECRETARY OF STATE.

6 ~~40.8.1 After a person has completed the requirements for certification, the person shall submit~~
7 ~~an application for Colorado certification to the Secretary of State's office on the form~~
8 ~~approved by the Secretary of State.~~

9 ~~40.8.2 Repealed.~~

10 ~~40.8.3~~ 40.6.2 The Secretary of State ~~shall~~ MUST review the application with reference to the
11 Secretary of State records. If the application is complete and accurate, the Secretary of
12 State ~~shall~~ MUST forward it to the advisory board for its review and approval. Upon
13 approval by the advisory board, the Secretary of State ~~shall~~ MUST issue a certificate that
14 the person is a Certified Colorado Election Official.

15 ~~40.8.4~~ 40.6.3 The Secretary of State ~~shall~~ MUST track attendance at all classes and keep records
16 of attendance, continuing elections education, and records of those persons who are
17 certified and persons who are in the certification process.

18 40.9 Decertification.

19 ~~40.9.1 Repealed.~~

20 ~~40.9.2 If a certified election official fails to satisfy continuing elections education requirements~~
21 ~~in one calendar year, then the election official shall have a maximum of 12 months to~~
22 ~~complete continuing education requirements for the previous calendar year and the~~
23 ~~current calendar year.~~

24 ~~40.9.3 Failure~~ A PERSON WHO FAILS to satisfy continuing education requirements for two
25 consecutive years shall result in de-certification WILL LOSE CERTIFICATION.

26 ~~40.10 Credit for Teaching Classes.~~

27 ~~40.10.1 Any person who teaches or substantially assists with preparation of a class offered for~~
28 ~~certification may receive the equivalent of two core or three elective credits.~~

29 ~~40.10.2 The participant shall submit a written request to the Secretary of State's office~~
30 ~~requesting either two core or three elective credits.~~

31 ~~40.10.3 The Secretary of state shall forward the application to the advisory board, which shall~~
32 ~~determine whether the applicant is eligible to receive the requested credits.~~

33 ~~40.11 Web-based training.~~

34 ~~40.11.1 The Secretary of State may utilize web-based technology to make certification and~~
35 ~~training more accessible. Virtual and web-based training may be provided for any~~
36 ~~course the Secretary of State deems appropriate.~~

1 ~~40.11.2 Web-based training may be conducted live or by reviewing material previously~~
2 ~~presented by the Secretary of State. In either case, participants must achieve a~~
3 ~~satisfactory score on assessments prior to receiving credit for the course.~~