



## Notice of Temporary Adoption

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

February 3, 2020

### I. Adopted Rule Amendments

As authorized by Colorado Elections Law<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Election Rules<sup>3</sup> are adopted on a temporary basis and effective immediately. (SMALL CAPS indicate proposed additions to the current rules. Stricken type indicates proposed deletions from current rules. *Annotations* may be included):

*Current 8 CCR 1505-1 is amended as follows:*

*Amendments to current Rule 7.2.3(b) and new Rule 7.2.3(c), concerning ballots and ballot packets:*

- 7.2.3 In accordance with section 1-7.5-107(3), C.R.S., the county clerk must mail ballots no later than 18 days before election day.
- (a) The county clerk must process all new registration applications and updates received by the 22-day deadline to mail applicants a ballot in accordance with section 1-7.5-107(3), C.R.S.
  - (b) ~~THE BEGINNING THE 15<sup>TH</sup> DAY BEFORE ELECTION DAY, THE~~ county clerk must process ~~new online and in-person ALL~~ registration applications and ~~mail registration~~ updates ~~received by the eighth day before election day and mail a ballot within~~ one business day ~~after~~ OF receipt.
  - (c) BEGINNING THE 14<sup>TH</sup> DAY BEFORE ELECTION DAY, THE COUNTY CLERK MUST DELIVER ANY ORIGINAL OR REPLACEMENT BALLOT TO THE UNITED STATES POSTAL SERVICE WITHIN ONE BUSINESS DAY AFTER PROCESSING A REGISTRATION APPLICATION OR UPDATE.

*New Rule 7.2.17:*

- 7.2.17 THE COUNTY CLERK MUST SEND ALL MAIL BALLOTS BY FIRST-CLASS MAIL BEGINNING THE 11<sup>TH</sup> DAY BEFORE ELECTION DAY.

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2019).

<sup>2</sup> Section 24-4-103, C.R.S. (2019).

<sup>3</sup> 8 CCR 1505-1.

*New Rule 7.9.11, concerning voter service and polling centers:*

- 7.9.11 THE COUNTY CLERK OF ANY COUNTY THAT HAS A TRIBAL NATION HEADQUARTERS LOCATED WITHIN THE COUNTY BORDERS MUST NOTIFY THE TRIBAL COUNCIL BY LETTER THAT THE TRIBAL NATION HAS THE RIGHT TO REQUEST THAT A VOTER SERVICE AND POLLING CENTER BE LOCATED WITHIN THE BOUNDARIES OF THE TRIBAL NATION IN THE UPCOMING GENERAL ELECTION. THE COUNTY CLERK MUST SEND THIS NOTIFICATION BY MAIL NO LATER THAN 225 DAYS BEFORE THE DATE OF ANY GENERAL ELECTION.

*New Rule 7.17:*

7.17 CLOSURE OF VSPCs DUE TO EMERGENCY CONDITION

- 7.17.1 IF AS A RESULT OF AN EXTREME WEATHER EVENT, NATURAL DISASTER, ACT OF GOD, HUMAN MADE INCIDENT, OR DISRUPTION TO, OR THREAT OF DISRUPTION TO CRITICAL INFRASTRUCTURE, A COUNTY GOVERNMENT OR OTHER ENTITY CLOSES ALL DAY, CLOSES EARLY, OR DELAYS THE OPENING OF A BUILDING WHERE A VOTER SERVICE AND POLLING CENTER IS LOCATED, THEN THE COUNTY CLERK MAY CLOSE FOR THE DAY, CLOSE EARLY, OR DELAY THE OPENING OF ANY VOTER SERVICE AND POLLING CENTER LOCATED IN THOSE BUILDINGS AFFECTED.
- 7.17.2 THE COUNTY CLERK MUST IMMEDIATELY NOTIFY THE SECRETARY OF STATE AND THE PUBLIC OF ANY CLOSURE OR DELAYED OPENING OF A VOTER SERVICE AND POLLING CENTER UNDER THIS RULE.
- 7.17.3 A COUNTY CLERK MUST REQUEST APPROVAL FROM THE SECRETARY OF STATE BEFORE CLOSING OR DELAYING THE OPENING OF A VOTER SERVICE AND POLLING CENTER UNDER THIS RULE BEGINNING FOUR DAYS BEFORE ELECTION DAY THROUGH ELECTION DAY.
- 7.17.4 THE SECRETARY OF STATE MAY PETITION A COURT UNDER SECTION 1-7-101 (1)(B), C.R.S. TO EXTEND THE POLLING HOURS IN A COUNTY OR STATEWIDE IF VOTER SERVICE AND POLLING CENTERS ARE CLOSED OR DELAYED OPENING UNDER THIS RULE.
- 7.17.5 IF A COUNTY CLERK CLOSES OR DELAYS THE OPENING OF A VOTER SERVICE AND POLLING CENTER UNDER THIS RULE, THEN THE SECRETARY OF STATE AND COUNTY CLERK MUST ISSUE AN EMERGENCY BALLOT AVAILABLE UNDER SECTION 1-7.5-115, C.R.S. TO ANY VOTER WHO REQUESTS IT DUE TO THE DELAY OR CLOSURE.

*Amendments to Rule 11.3.2(e), including new Rule 11.3.2(e)(2), concerning logic and accuracy test:*

- (e) Completing the test
- (1) The county must keep all test materials, when not in use, in a durable, secure box. Each member of the Testing Board must verify the seals and initial the chain-of-custody log maintained by the county clerk. If the records are opened for inspection, at least two election officials must verify the seals and initial the chain-of-custody log.
  - (2) THE COUNTY MUST BACKUP AND PRESERVE THE ELECTION DATABASE OR PROJECT CONTAINING TEST RESULTS, AND EXPORT AND PRESERVE THE TEST RESULTS AND CVR FILES. THE COUNTY MUST PREPARE AND PRESERVE A BALLOT MANIFEST CORRESPONDING TO THE TEST CVR FILE.

- ~~(2)~~(3) The county must upload the TEST results FILE ~~from all tested scanners and DREs to the tabulation software, export, and save the tabulation results for~~ DURING the ENR test required under Rule 11.9.3. THE COUNTY MUST HASH AND UPLOAD THE CVR AND BALLOT MANIFEST TO THE RLA SOFTWARE DURING THE RLA PRACTICE PERIOD, AS REQUIRED UNDER RULE 25.2.2(B).
- ~~(3)~~(4) After testing, the Testing Board must watch the county reset and seal each voting device, if applicable.
- ~~(4)~~(5) The Testing Board and the county clerk must sign a written statement attesting to the qualification of each device successfully tested, the number of the seal attached to the voting device at the end of the test, if applicable, any problems discovered, and any other documentation necessary to provide a full and accurate account of the condition of a given device.
- ~~(5)~~(6) The county may not change the programming of any voting device after completing the logic and accuracy test for an election, except as required to conduct a recount or as authorized by the Secretary of State.

*Amendments to Rule 25.2.2, including new Rules 25.2.2(b) and 25.2.2(c)(2), concerning risk limiting audit:*

#### 25.2.2 Preparing for the audit

- (a) Risk limit. No later than 32 days before election day, the Secretary of State will establish and publish on the Audit Center the risk limits that will apply in RLAs for that election. The Secretary of State may establish different risk limits for comparison audits and ballot polling audits, and for audits of statewide and countywide contests. In comparison audits the risk limit will not exceed five percent for statewide contests, and ten percent for countywide contests.
- (B) PRACTICE PERIOD. BEGINNING 20 DAYS BEFORE THE ELECTION COUNTIES MAY PRACTICE CONDUCTING THE AUDIT. THE COUNTY MUST, AT A MINIMUM, HASH AND UPLOAD THE BALLOT MANIFEST AND CVR FILE FROM THE LOGIC AND ACCURACY TEST TO THE RLA SOFTWARE.
- ~~(b)~~(C) Audit board. No later than 15 days before election day, the designated election official must appoint an audit board to conduct the risk-limiting audit. The audit board must consist of electors nominated by the major political party county chairpersons. The designated election official must give written notice to the county chairpersons of their obligation to nominate audit board members and may designate appropriately affiliated electors as audit board members if one or both county chairpersons fail to do so in a timely manner.
- (1) At least two canvass board members must observe AT LEAST THE FIRST ROUND OF the RLA, and members of the canvass board may serve as members of the audit board. The designated election official, members of his or her staff, and other duly appointed election judges may assist the audit board in conducting the audit. To the extent practicable, the audit board should not consist of individuals who participated in ballot

resolution or adjudication during the election being audited. Each member of the audit board must take the election judge oath.

- (2) IF THE SECRETARY OF STATE RANDOMLY SELECTS FIVE OR FEWER BALLOTS FOR ANY AUDIT ROUND AFTER THE FIRST, THE DESIGNATED ELECTION OFFICIAL MAY APPOINT AS THE AUDIT BOARD MEMBERS OF STAFF OF DIFFERENT PARTY AFFILIATIONS TO CONDUCT AND SIGN OFF ON THE AUDIT ROUND IN QUESTION. THE DESIGNATED ELECTION OFFICIAL MUST GET APPROVAL FROM THE SECRETARY OF STATE BEFORE APPOINTING STAFF AS THE AUDIT BOARD. THE DESIGNATED ELECTION OFFICIAL MAY NOT APPOINT THEMSELVES TO CONDUCT ANY AUDIT ROUND.

*[Not shown: Rules 25.2.2(c)-(k) are renumbered accordingly to 25.2.2(d)-(l)]*

**II. Basis, Purpose, and Specific Statutory Authority**

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

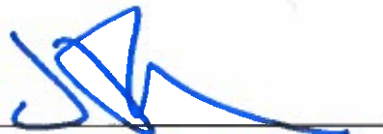
**III. Statement of Justification and Reasons for Adoption of Temporary Rules**

A statement of the Secretary of State's findings to justify the immediate adoption of this new rule on a temporary basis follows this notice and is incorporated by reference.<sup>4</sup>

**IV. Effective Date of Adopted Rules**

These rule amendments are effective immediately.

Dated this 3<sup>rd</sup> day of February, 2020,



Jenny Flanagan  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

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<sup>4</sup> Section 24-4-103(6), C.R.S. (2019).



## **Statement of Basis, Purpose, and Specific Statutory Authority**

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

**February 3, 2020**

### **I. Basis and Purpose**

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The Secretary is considering other amendments to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws,<sup>1</sup> improve elections administration in Colorado, and increase the transparency and security of the election process.

Specific proposed changes include:

- Amendments to Rule 7.2.3 to ensure proper administration of mail ballot elections statewide.
- New Rule 7.2.17 to ensure proper administration of mail ballot elections statewide.
- New Rule 7.9.11 to implement and ensure proper administration of HB 19-1278 and mail ballot elections statewide.
- New Rule 7.17 to ensure proper administration of mail ballot elections statewide, specifically in regards to the operation of voter service and polling centers.
- Amendments to Rule 11.3.2 further prescribing the manner of performing logic and accuracy testing.
- Amendments to Rule 25.2.2 further prescribing the manner of performing risk-limiting audits statewide.

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.

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<sup>1</sup> 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.

## II. Rulemaking Authority

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2019), 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 1-1.5-104(1)(e), C.R.S., (2019), 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.”
- Section 1-5-601.5, C.R.S., (2019), which allows the Secretary of State to “require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002.”
- Section 1-5-616, C.R.S., (2019), which requires the Secretary of State to adopt rules “that establish minimum standards for electronic and electromechanical voting systems.”
- Section 1-7-510(6), C.R.S., (2019), which requires the Secretary of State to promulgate rules to implement the section regarding election setup records.
- Section 1-7-515 (4), C.R.S., (2019), which requires the Secretary of State to promulgate rules “necessary to implement and administer,” risk-limiting audits.
- Section 1-7.5-106(2), C.R.S., (2019), which allows the Secretary of State to adopt rules governing procedures and forms necessary to implement” mail ballot elections.



## **Statement of Justification and Reasons for Adoption of Temporary Rules**

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**February 3, 2020**

Amended Rules: 7.2.3(b), 11.3.2(e), 25.2.2 (includes renumbering 25.2.2(c)-(k)).

New Rules: 7.2.3(c), 7.2.17, 7.9.11, 7.17, 11.3.2(e)(2), 25.2.2(b) and (c)(2).

In accordance with Colorado election law,<sup>1</sup> the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Adoption of these rules on a temporary basis is necessary given the approaching March 3, 2020, Presidential Primary Election. These rules address specific issues identified during the 2019 coordinated election that must be addressed prior to this election. Rule 7.9.11 is also needed on a temporary basis to ensure that the rights of tribal nations under Colorado law are protected for the upcoming general election. The rules are immediately effective as is necessary to provide clear guidance to interested parties, including, but not limited to: county clerks and the general public.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that temporary adoption of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.<sup>2</sup>

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<sup>1</sup> Sections 1-1-107 (1) (c), 1-1-107(2) (a), 1-7.5-104, C.R.S. (2019).

<sup>2</sup> Section 24-4-103(3) (6), C.R.S. (2019).