



Notice of Proposed Rulemaking

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

February 14, 2020

I. Hearing Notice

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **March 23, 2020 at 1:00 p.m.** in the Aspen Conference Room on the 3rd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject

The Secretary is considering amendments to the election rules² to improve the administration and enforcement of Colorado election law.³

Specifically, the Secretary proposes permanent adoption of temporary rules, adopted on February 3, 2020. The Secretary is also considering rule revisions necessary to ensure the proper administration of elections and risk-limiting audits statewide; certify elections equipment; eliminate obsolete provisions; organize existing rules for clarity; simplify the language of existing rules; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

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

III. Statutory authority

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provisions:

¹ Section 24-4-103(3)(a), C.R.S. (2019).

² 8 CCR 1505-CCR 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.

- 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 1-5-613(1), C.R.S., (2019), which requires the Secretary of State to “adopt uniform rules...for the purchase and sale of voting equipment in the state.”
- 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.
- Section 1-8.5-112, C.R.S., (2019), which requires the Secretary of State to adopt rules governing the issuance of provisional ballots statewide.

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/2020/ElectionsRulesHearing20200323.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 March 18, 2020.

V. Opportunity to testify and submit written comments

⁴ Section 24-4-103(3)(a), C.R.S. (2019). “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.”

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.

Everyone 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 any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as 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/2020/ElectionsRulesHearing20200323.html.

We will redact contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, 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 14th Day of February, 2020.



Jenny Flanagan
Deputy Secretary of State

For

Jena Griswold
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

February 14, 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,¹ improve elections administration in Colorado, and increase the transparency and security of the election process.

Specific proposed changes include:

- New Rule 1.1.17 to establish minimum standards for the certification of electronic voting systems in the state.
- Amendments to Rule 6.4.1 to clarify existing rules regarding signature verification.
- 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.

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.

- Amendments to Rule 17.1.2 to further implement HB 19-1278 and to ensure that the HAVA requirement that provisional ballots be issued to voter’s whose eligibility cannot be immediately determined is followed.
- New Rule 21.1.1(c) to further establish minimum standards for the certification of electronic voting systems in the state.
- 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.

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 1-5-613(1), C.R.S., (2019), which requires the Secretary of State to “adopt uniform rules...for the purchase and sale of voting equipment in the state.”
- 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.

- Section 1-8.5-112, C.R.S., (2019), which requires the Secretary of State to adopt rules governing the issuance of provisional ballots statewide.

Preliminary Draft of Proposed Rules

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

February 14, 2020

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 March 23, 2020 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 **March 18, 2020**.²

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

Amendments to 8 CCR 1505-1 follow:

New Rule 1.1.17, concerning definitions:

1.1.17 "DE MINIMIS CHANGE" MEANS A CHANGE TO VOTING SYSTEM HARDWARE THAT IS SO MINOR IN NATURE AND EFFECT THAT IT REQUIRES NO ADDITIONAL TESTING BY A VSTL.

[Not shown: renumbering current Rules 1.1.17-1.1.50 to Rules 1.1.18-1.1.51]

Amendments to Rule 6.4.1 concerning election judges:

6.4 Except for UOCAVA ballots and ballots received for counting after election day:

6.4.1 Absent written consent by each major party county chair, a county with 5,000 OR more ~~than 5,000~~ active electors on the 90th day before election day may not use regular staff as signature verification judges.

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2019). 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. (2019). "[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."

- 6.4.2 A county with fewer than 5,000 active electors on the 90th day before election day may use regular county staff that are sworn in as election judges to conduct signature verification.

Amendments to Rule 7.2.3, including new Rule 7.2.3(c), concerning ballots and ballot packets for elections conducted by the County Clerk and Recorder:

- 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.~~ PROCESSING DEADLINES
- (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 15TH 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 14TH 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 11TH DAY BEFORE ELECTION DAY.

Amendments to Rule 7.5.1 update a cross-reference:

- 7.5.1 The county clerk must adequately light all drop box locations and use a video security surveillance recording system as defined in ~~Rule 1.1.44~~ RULE 1.1.45 to monitor each location.
- 7.9 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 CLOSURES 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 8.7.4 update a cross-reference:

- 8.7.4 Watchers must remain outside the immediate voting area while an elector is voting. The six-foot limit in ~~Rule 1.1.30~~ RULE 1.1.31 applies only to voting.

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 17.1.2, including New Rule 17.1.2(b), concerning provisional voting in a voter service and polling center:

17.1.2 ISSUANCE OF MAIL BALLOTS INSTEAD OF PROVISIONAL BALLOTS

- (A) If a voter service and polling center loses connectivity to SCORE an election judge must attempt to verify the elector's eligibility.
- (1) Eligibility may be determined by reviewing or receiving information produced from the statewide voter registration system either in real-time or within the preceding 24 hours; except if the time for voting is extended beyond 7 p.m. on election day by a court order, in which case eligibility may be determined by reviewing or receiving information produced from the statewide voter registration system either in real-time or no earlier than the day prior.
- (2) If the elector's eligibility can be determined, the judge must issue the elector a mail ballot or replacement mail ballot. If an elector's eligibility cannot be determined, the election judge must issue the voter a provisional ballot.
- (B) A COUNTY CLERK MUST KEEP A PAPER OR ELECTRONIC BACKUP OF THE COUNTY'S VOTER REGISTRATION LIST PRODUCED WITHIN THE PRECEDING 24 HOURS FOR THE PURPOSE OF DETERMINING ELIGIBILITY UNDER THIS RULE.

New Rule 21.1.1(c), concerning voting system standards for certification:

- (C) A VOTING SYSTEM PROVIDER MAY APPLY FOR MODIFICATION TO A CURRENTLY CERTIFIED VOTING SYSTEM TO ADDRESS DE MINIMIS COMMERCIAL OFF-THE-SHELF HARDWARE CHANGES USING THE PROCESS LAID OUT IN THIS RULE.
- (1) THE PROVIDER MUST SUBMIT AN APPLICATION PACKAGE THAT INCLUDES AN APPLICATION FOR MODIFICATION PROVIDED BY THE SECRETARY OF STATE, INTERNAL TESTING DOCUMENTATION, VSTL DETERMINATION OF DE MINIMIS CHANGES, SPECIFICATION DOCUMENTS FOR EXISTING AND NEW EQUIPMENT, UPDATED TDP DOCUMENTS AS APPLICABLE, OTHER ENGINEERING CHANGE ORDER DOCUMENTS, AN INTEGRATION TESTING PLAN, AND ANY OTHER DOCUMENTATION REQUESTED BY THE SECRETARY OF STATE. IF THE SUBMITTED APPLICATION PACKAGE IS INCOMPLETE THE SECRETARY OF STATE WILL IDENTIFY THE DEFICIENCIES AND THE VOTING SYSTEM PROVIDER MUST REMEDY THE DEFICIENCIES WITHIN TEN DAYS.
- (2) IF THE SECRETARY OF STATE REVIEWS THE APPLICATION PACKAGE AND DETERMINES THAT THE MODIFICATION REQUIRES ANY ADDITIONAL TESTING FROM THE VSTL, THE PROVIDER WILL WORK WITH THE SECRETARY OF STATE TO CREATE A TEST PLAN FOR THE MODIFICATION. THE SECRETARY OF STATE MAKES THE FINAL DETERMINATION AS TO WHETHER THE CHANGE IS DE MINIMIS OR NOT.
- (3) IF THE SECRETARY OF STATE REVIEWS THE APPLICATION PACKAGE AND DETERMINES THAT THE MODIFICATION DOES NOT REQUIRE TESTING BY THE

VSTL, THE PROVIDER WILL COORDINATE WITH THE SECRETARY OF STATE TO PERFORM INTEGRATION TESTING OVERSEEN BY THE SECRETARY OF STATE USING THE PLAN PROVIDED IN THE APPLICATION PACKAGE.

- (4) UPON COMPLETION OF TESTING THE SECRETARY OF STATE WILL REVIEW THE OUTCOMES OF THE INTEGRATION TESTING AND DETERMINE IF THE MODIFICATION COMPLIES WITH SECTION 1-5-618(1.5), C.R.S. AND APPROVE OR DENY THE MODIFICATION REQUEST.

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)]