



Notice of Temporary Adoption

Colorado Department of State Election Rules 8 CCR 1505-1

September 22, 2023

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Department of State gives notice that the following amendments to the Election Rules³ 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):

Amendments to 8 CCR 1505-1 follow:

New Rule 6.2.2 requiring a county clerk to review any data available from an election judge's previous election's signature verification work before assigning that election judge to perform signature verification:

- 6.2.2 PRIOR TO ASSIGNING AN ELECTION JUDGE TO PERFORM SIGNATURE VERIFICATION, THE COUNTY CLERK MUST REVIEW ANY DATA AVAILABLE FROM THAT JUDGE'S SIGNATURE VERIFICATION WORK IN A PREVIOUS ELECTION IN THE SAME COUNTY. IF THE JUDGE HAD AN UNEXPLAINED, IRREGULAR ACCEPTANCE OR REJECTION RATE THE CLERK MAY NOT ASSIGN THAT JUDGE TO CONDUCT SIGNATURE VERIFICATION.

[Not shown: current Rule 6.2.2 renumbered to Rule 6.2.3.]

Amendments to Rule 6.8 specifying that signature verification judge training must be successfully completed prior to each election and from the Department:

- 6.8 A signature verification judge must SUCCESSFULLY complete a training course conducted by the county clerk PRIOR TO EACH ELECTION ~~at least once per election cycle~~. The county clerk must use the Secretary of State's provided training AND MAY PROVIDE ADDITIONAL ~~or provide their own~~ training. If the county clerk provides their own training, it must be approved by the Secretary of State EACH YEAR before its first use. A SIGNATURE VERIFICATION TRAINING APPROVED IN THE CALENDAR YEAR BEFORE A PRESIDENTIAL PRIMARY IS VALID FOR THE PRESIDENTIAL PRIMARY.

Repeal and replacement of Rule 7.4.11 for clarity, concerning intercounty transfer process of ballots if an elector delivers a ballot to a county in which they do not reside:

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2023)

² Section 24-4-103, C.R.S. (2023)

³ 8 CCR 1505-1

~~7.4.11 If an elector delivers a ballot to the wrong county, that county must date stamp the ballot envelope and timely forward it to the correct county. Beginning the Monday before election day, the county must notify the correct county of receipt by secure electronic transmission with a scanned image of the outside of the mail ballot envelope including the signature, and forward it to the correct county no later than the next business day. A county that physically delivers ballots to another county no later than the next business day, or immediately transmits them by next-day delivery, is not required to scan the envelope. The correct county must treat the ballot as received as of the date and time of the date stamp. The county receiving the image may perform signature verification upon receipt of the image.~~ INTERCOUNTRY TRANSFER OF BALLOTS

- (A) IF AN ELECTOR DELIVERS A STATEWIDE OR MAIL BALLOT TO THE COUNTY IN WHICH THEY DO NOT RESIDE, THE COUNTY WHO INITIALLY RECEIVED THE BALLOT MUST TAKE THE FOLLOWING ACTIONS:
- (1) IF RECEIVED BEFORE 7:00 P.M. ON ELECTION DAY, DATE STAMP THE BALLOT ENVELOPE WITH A STAMP THAT IDENTIFIES THAT THE BALLOT WAS RECEIVED BEFORE 7:00 P.M. ON ELECTION DAY, AND NOTING THE COUNTY WHERE THE BALLOT WAS RECEIVED;
 - (2) FORWARD THE BALLOT TO THE CORRECT COUNTY;
 - (A) ON AND AFTER ELECTION DAY, THE BALLOT MUST BE PHYSICALLY DELIVERED, SENT BY NEXT-DAY DELIVERY IF AVAILABLE, OR SENT BY FIRST CLASS MAIL IF NEXT-DAY DELIVERY IS NOT AVAILABLE TO THE CORRECT COUNTY.
 - (B) BALLOTS MUST BE PHYSICALLY DELIVERED OR MAILED NO LATER THAN TWO DAYS AFTER ELECTION DAY.
 - (C) BALLOTS THAT ARE MAILED MUST BE SENT TO THE MAILING ADDRESS PROVIDED BY THE RECEIVING COUNTY CLERK.
 - (3) IF THE BALLOT WILL BE MAILED, NOTIFY THE COUNTY WHERE THE BALLOT WILL BE SENT VIA EMAIL WHEN THE BALLOT HAS BEEN PLACED IN THE MAIL, THE BALLOT TRACKING NUMBER, AND THE METHOD OF DELIVERY FOR THE BALLOT; AND
 - (4) BEGINNING THE DAY BEFORE ELECTION DAY, SEND, BY SECURE ELECTRONIC TRANSMISSION, A SCANNED IMAGE OF THE OUTSIDE OF THE MAIL BALLOT ENVELOPE, INCLUDING THE SIGNATURE, TO THE COUNTY WHERE THE BALLOT WILL BE SENT. A COUNTY THAT PHYSICALLY DELIVERS BALLOTS TO ANOTHER COUNTY NO LATER THAN THE NEXT BUSINESS DAY, OR IMMEDIATELY TRANSMITS THEM BY NEXT-DAY DELIVERY, IS NOT REQUIRED TO SCAN THE ENVELOPE. THE COUNTY RECEIVING THE IMAGE MAY PERFORM SIGNATURE VERIFICATION UPON RECEIPT OF THE IMAGE.
- (B) THE CORRECT COUNTY MUST TREAT THE BALLOT AS RECEIVED AS OF THE DATE AND TIME OF THE DATE STAMP.

Repeal of Rule 7.4.12 as a result of the amendments to current Rule 7.4.11:

~~7.4.12 The county clerk must date stamp each ballot envelope as received on or before 7:00 PM on election day and immediately forward it to the correct county. The correct county must treat the ballot as received as of the date and time of the date stamp.~~

[Not shown: renumbering of current Rules 7.4.13 through 7.4.15 to Rules 7.4.12 through 7.4.14.]

Amendments to Rule 7.7.3 concerning standards for accepting or rejecting a signature on a mail ballot envelope:

- 7.7.3 An election judge conducting signature verification must compare the SELF-AFFIRMATION signature ~~on the self-affirmation~~ on each ballot return envelope with the elector's signature in SCORE in accordance with the Secretary of State's Signature Verification Guide. A SIGNATURE ON A MAIL BALLOT ENVELOPE THAT IS CONSISTENT WITH A SIGNATURE FOR THE VOTER IN SCORE IS ONE THAT IS MORE LIKELY THAN NOT TO BE THE SIGNATURE OF THE VOTER. A SIGNATURE THAT IS CONSISTENT MUST BE ACCEPTED AS A MATCH.

Amendments to Rule 7.7.8 establishing additional monitoring of signature verification judges by the county clerk:

- 7.7.8 The county clerk must ~~periodically~~ audit THE signature verification judges—DETERMINATIONS OF ANY SIGNATURE VERIFICATION JUDGE WHO CONDUCTS SIGNATURE VERIFICATION EACH DAY THAT THE JUDGE CONDUCTS SIGNATURE VERIFICATION WORK. If a judge or team of judges has an unexplained, irregular acceptance, ~~or~~ rejection, OR OVERTURN rate, the county clerk must retrain or remove that judge or team of judges from conducting signature verification.

Amendments to Rule 8.8 specifying the use of watchers in a nonpartisan, coordinated election since the passage of SB23-276 incorporates these requirements for watchers in other elections and stylistic changes to Rule 8.8.3:

- 8.8 The minimum number of watchers the county clerk must accommodate for each appointing entity IN A NONPARTISAN, COORDINATED ELECTION is as follows:

Amendments to Rule 8.10.2 including new section (d).

- 8.10.2 Watchers must be permitted access that would allow them to attest to the accuracy of election-related activities. This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens and reasonable proximity to hear election-related discussions between election judges and electors.

[Not shown: no changes to sections (a) through (c).]

- (D) THE COUNTY CLERK MUST ALLOW A WATCHER TO POSSESS A MOBILE PHONE TO SEND OR RECEIVE TEXT MESSAGES WHILE WATCHING ELECTION ACTIVITIES AS LONG AS THE WATCHER IS NOT LOCATED WHERE PERSONALLY IDENTIFIABLE INFORMATION IS WITHIN VIEW AS REQUIRED BY SECTION 1-7-108(4), C.R.S.

Amendments to Rule 18.4.1 due to the passage of SB23-276 requiring a county clerk to review of the duplication process of ballots with a separate team of two election judges:

- 18.4.1 A resolution board must duplicate a voter's choices or selections on a damaged ballot onto a blank ballot of the same ballot style in accordance with Rule 18.4. During the duplication process, and to the extent necessary, the resolution board must also resolve overvotes, write-in votes, and ambiguous markings in accordance with Rule 18.5. ~~During ballot duplication, two election judges must observe or review the work of each resolution board. In a partisan election, the observing election judges must be representatives of each major political party~~

- (A) THE COUNTY CLERK MUST TRAIN RESOLUTION BOARD MEMBERS TO RESOLVE VOTER INTENT ISSUES IN ACCORDANCE WITH THE SECRETARY OF STATE'S VOTER INTENT GUIDE.

- (B) THE COUNTY CLERK MUST PERIODICALLY REVIEW DUPLICATED BALLOTS TO ENSURE DUPLICATION IS BEING CONDUCTED CONSISTENT WITH COLORADO LAW AND RULE 18.4.

New Rule 20.4.2(e) concerning planned maintenance of video surveillance systems:

20.4.2 Surveillance of secure areas

[Not shown: no changes to sections (a) through (d).]

- (E) PLANNED MAINTENANCE OF VIDEO SURVEILLANCE
- (1) IF NECESSITY REQUIRES IT, A COUNTY CLERK MAY TEMPORARILY CEASE VIDEO SURVEILLANCE OF VOTING SYSTEM COMPONENTS OR OTHER AREAS FOR PLANNED MAINTENANCE OF THE VIDEO SURVEILLANCE SYSTEM, BUT ONLY FOR SO LONG AS THE INTERRUPTION OF SURVEILLANCE IS REQUIRED.
 - (2) BEFORE THE PLANNED OUTAGE, THE COUNTY CLERK MUST NOTIFY AND SUBMIT DETAILED PLANS TO THE SECRETARY OF STATE WHICH DESCRIBE SECURITY MEASURES THE CLERK WILL TAKE TO ENSURE THE SECURITY OF THE VOTING SYSTEM COMPONENTS OR AREAS DURING THE PLANNED OUTAGE.
 - (3) AFTER REVIEW OF THE PLANS, THE SECRETARY OF STATE MAY REQUIRE A COUNTY CLERK TO TAKE ADDITIONAL OR DIFFERENT ACTIONS TO ENSURE THE SECURITY OF VOTING SYSTEM COMPONENTS OR AREAS DURING THE PLANNED OUTAGE.

Amendments to Rule 20.11.1 concerning new section (f) that requires a county clerk to develop a contingency plan in cases of an unexpected outage of required video surveillance:

20.11.1 Contingency plans

[Not shown: no changes to sections (a) through (e).]

- (F) THE COUNTY CLERK MUST DEVELOP CONTINGENCY PLANS WHICH ADDRESS AN UNEXPECTED OUTAGE OF ANY REQUIRED VIDEO SURVEILLANCE. THE PLAN MUST INCLUDE REGULAR INTERVALS AT WHICH THE COUNTY WILL CONFIRM THAT ALL REQUIRED VIDEO SURVEILLANCE IS OPERATIONAL.

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

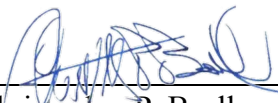
A statement of the Department of State's findings to justify the immediate adoption of these new and amended rules on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These rule amendments are effective immediately.

⁴ Section 24-4-103(6), C.R.S. (2023)

Temporarily adopted on September 22nd,
2023



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State



Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State Election Rules 8 CCR 1505-1

September 22, 2023

I. Basis and Purpose

This statement explains amendments to the Colorado Department of State Election Rules. 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 increase the transparency and security of the election process.

Specific changes include:

- Amendments to Rule 6 concerning election judges.
 - New Rule 6.2.2 concerns the assignment of elections judges to perform signature verification. The amendments require county clerks to consider past election judge performance of signature verification duties in that county before hiring that judge to conduct signature verification in a new election. Current Rule 6.2.2 is renumbered to Rule 6.2.3.
 - Amendments to Rule 6.8 require election judges who conduct signature verification to take training provided by the Department of State prior to each election and to successfully complete that training. The amendments also clarify that additional signature verification training approved by the Department of State is only valid for the calendar year it is approved. It is also valid for a presidential primary in the case it is approved in the previous calendar year.
- Amendments to Rule 7 concerning elections conducted by the county clerk and recorder.
 - Amendments to Rule 7.4 concern the receipt and processing of ballots.
 - Amendments to current Rule 7.4.11 include the repeal and replacement of

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.

original language. This new rule language requires county clerks to take several steps when they receive a ballot for a voter who does not reside in their county. The actions the county must take includes transferring the ballot by a set deadline and method, notifying the voter's home county that a ballot will be delivered, and sending an image of a signature to the voter's home county. Rule 7.4.12 is repealed and reincorporated in Rule 7.4.11.

- Amendments to Rule 7.7
 - Amendments to Rule 7.7.3 clarify that a signature on an envelope which is consistent with a voter's signature in SCORE is one that is more likely than not to be the signature of the voter. The rule also clarifies that a consistent signature must be accepted as a matching signature.
 - Amendments to Rule 7.7.8 requires county clerks to audit all signature verification judges each day that a judge conducts signature verification. A judge with an unexplained, irregular acceptance, rejection, or overturn rate must be retrained or removed.
- Amendments to Rule 8 concerning watchers.
 - Amendments to Rule 8.8 specify that the rule is for use in non-partisan, coordinated elections. The passage of SB23-276 incorporated into law the requirements of the current rule in all other elections.
 - Amendments to Rule 8.10.2 clarify that watchers may possess a phone to send or receive text messages as long as no personally identifiable information is within view of the watcher.
- Amendments to Rule 18 concerning uniform counting standards for paper ballots.
 - Amendments to Rule 18.4 to reflect Department rulemaking standards.
 - Amendments to Rule 18.4.1 removes language which is now contrary to statute after the passage of SB23-276 and adds language which requires the county clerk to train resolution boards to resolve voter intent in accordance with the Secretary of State's Voter Intent Guide, and to periodically review the ballot duplication process being conducted.
- Amendments to Rule 20 concerning county security procedures.
 - Amendments to Rule 20.4.2 alter language which is no longer applicable due to the passage of SB22-153. New section (e) allows a county clerk to temporarily cease video surveillance of their voting system components if planned maintenance requires video surveillance to be temporarily brought down.
 - Amendments to Rule 20.11.1 require a county clerk to develop a contingency plan to address an unexpected outage of any required video surveillance, including how often the county clerk will confirm that all required video surveillance is operational.

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 1-7-513.5(6), C.R.S., (2023), which requires the Secretary of State to promulgate rules necessary to implement the section regarding voting system equipment security and surveillance.
- 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 [Article 7.5 of Title 1, C.R.S.]”
- Section 1-7.5-107(6), C.R.S., (2023), which requires that mail ballots be counted as provided in “rules promulgated by the secretary of state.”



Statement of Justification and Reasons for Adoption of Temporary Rules

Colorado Department of State Election Rules 8 CCR 1505-1

September 22, 2023

Amended Rules: 6.8; 7.4.11; 7.4.12; 7.7.3; 7.7.8; 8.8; 18.4.1

New Rules: 6.2.2; 8.10.2(d); 20.4.2(e); 20.11.1(f)

Repealed: 7.4.12

In accordance with Colorado law,¹ the Department of State finds that certain amendments to the existing election rules are imperatively necessary and, as a result, must be adopted and effective immediately to ensure compliance with the uniform and proper administration and enforcement of Colorado and federal election laws.

Adoption of these rules on a temporary basis is necessary given the quickly approaching coordinated election on November 7, 2023. Adopting these rules with immediate effect will provide interested parties, including, but not limited to county clerks, watchers, and the general public with the rules necessary to comply with state and federal law in the upcoming election. Because these rules are necessary for the upcoming state election, failing to adopt these rules for the upcoming election would be contrary to the public interest.

For these reasons, and in accordance with the State Administrative Procedure Act, the Department of State finds that temporary adoption of the amendments to existing election rules is imperatively necessary to comply with state and federal law and failure to adopt these rules immediately would be contrary to the public interest.²

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-7.5-104, 24-4-103 (6)(a) C.R.S. (2023)

² Section 24-4-103(6), C.R.S. (2023)