

# Working Draft of Proposed Rules

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

September 29, 2017

Harvie Branscomb comments in red. Note line numbers and page numbers will have changed with these comments added. 10/6/2017

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### Disclaimer:

The following is a working draft concerning the Election Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by 5:00 PM on October 6, 2017. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

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

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1 *Amendments to 8 CCR 1505-1 follow:*

2 *Amendments to Rule 2.5.3 concerning changes to an elector's existing voter registration record:*

3           2.5.3   If an elector submits a change to his or her voter registration record and leaves the  
4                    affiliation OR BALLOT PREFERENCE section blank, the county clerk ~~must make no~~ MAY  
5                    NOT change to the voter's EXISTING affiliation OR BALLOT PREFERENCE in the registration  
6                    record.

7 *Technical amendments to Rule 2.10 concerning new voter notifications:*

8   2.10   ~~New voter notification under section 1-2-509(3), C.R.S.~~ During the 22 days before an election,  
9           the county clerk must defer processing undeliverable new voter notifications. After the election is  
10           closed, the clerk must determine an applicant "not registered" under section 1-2-509(3), C.R.S.,  
11           only if the applicant did not vote in the election.

*This rule is made necessary by a defect of same day registration- the addresses on undeliverable envelopes suggest a problem with the registration but how can the system deal with these justly when the information comes back at an uncertain time and some but not all electors could be affected by a decision to change to "not registered" and some but not all would have time to cure that change.. Better not to let very recent registrants vote*

*by mail, and instead only vote in-person. That will require a statutory change. This rule just prevents rushed chaos by officials. The real problem is the CO implementation of same day registration in a mail ballot system. Same day registration fits with in -person voting.*

12 *Amendments to Rule 2.14.4 concerning voter registration records and data:*

13           2.14.4 Without written authorization from the Secretary of State, the county clerk may not run  
14           or schedule to run SCORE reports or exports that include voter or election detail during  
15           regular business hours beginning 22 days before election day and from 7:00 am to 7:00

1 pm on election day. A COUNTY THAT USES AN AUTOMATED SIGNATURE VERIFICATION  
2 DEVICE MAY RUN THE EXP-004 REPORT DURING THIS TIME.

3 *Amendments to Rule 3.4.1 concerning qualified political organizations:*

4 3.4.1 Files proof of organization with the Secretary of State BY MARCH 1 IN AN EVEN  
5 NUMBERED YEAR;

6 *Amendments to Rule 4.5.2(e)(3) regarding order of ballot issues:*

7 4.5.2 Each political subdivision must determine the order of the ballot issues for their political  
8 subdivision in accordance with the requirements of Colorado Constitution Article X,  
9 Section 20 and Title 1.

10 (e) Ballot issues from the various political subdivisions must be ordered on the ballot  
11 as provided in section 1-5-407(5), C.R.S:

12 (3) Each category of local referred ballot issues and questions must be  
13 designated by a letter or a number and a letter in the following series:

1A-1Z	County Issues
2A-2Z	Municipal Issues WHOLLY WITHIN A COUNTY
3A-3Z	MUNICIPAL ISSUES GREATER THAN A COUNTY
3A-3Z 4A-4Z	School District Issues WHOLLY WITHIN A COUNTY
5A-5Z	SCHOOL DISTRICT ISSUES GREATER THAN A COUNTY
4A-4Z 6A-6Z	Ballot Issues and Questions for other political subdivisions <del>greater than a county</del> WHOLLY WITHIN A COUNTY
5A-5Z 7A-7Z	Ballot Issues and Questions for other political subdivisions which are <del>wholly within a county</del> GREATER THAN A COUNTY

14 Apparently, Dominion doesn't flow text of issues from page to page, thus large white spaces appear on  
ballots and Denver is printing 2 and 3 card ballots in this election. The current form of ballot statute  
requires all candidates contests to be printed first and then issues after. Better practice would be for all  
precinct based contests (candidate and questions) to come first on their own page (two sides if needed) and  
these are reflected on a separate CVR for the card. Then a page break followed by muni, special and school  
districts candidates and then questions on a separate card independent second card. These two cards can be  
treated as independent cards, but tabulated at the same time. They will produce two CVRs that do not have  
to be matched together and do not want to be for anonymity reasons. Likewise the two cards of ballots are  
best kept independent (separated after opening and credit for voting is given). This is a beneficial direction  
to push for to solve ballot real estate, anonymity, privacy and election process problems. There may be a  
reason for specifying the order of contests to be related to intra- county wide and multi county. I don't  
know that reason but see no problem with it.

15  
16 *New Rules 7.2.10 through 7.2.14 concerning ballots and ballot packets:*

17 7.2.10 THE MAIL BALLOT PACKET REQUIRED UNDER SECTION 1-4-1203(4)(C), C.R.S. MUST  
18 CONTAIN ONLY THE BALLOTS OF EACH PARTICIPATING MAJOR POLITICAL PARTY.

19 7.2.11 AN UNAFFILIATED VOTER WHO WANTS TO RECEIVE THE MAIL BALLOT OF A  
20 PARTICIPATING MINOR POLITICAL PARTY IN THE MAIL MUST DECLARE A MAIL BALLOT  
21 PREFERENCE FOR THAT PARTY IN ACCORDANCE WITH SECTION 1-2-204(2)(J.5), C.R.S.

22 7.2.12 IF AN UNAFFILIATED VOTER SELECTS A MAIL BALLOT PREFERENCE FOR A MAJOR OR  
23 MINOR POLITICAL PARTY THAT IS NOT PARTICIPATING OR THAT PROHIBITS UNAFFILIATED  
24 VOTERS FROM VOTING IN ITS PRIMARY ELECTION, THE COUNTY CLERK MUST SEND THE  
25 VOTER THE MAIL BALLOT PACKET DESCRIBED IN RULE 7.2.10.

26 7.2.13 A VOTER AFFILIATED WITH A QUALIFIED POLITICAL ORGANIZATION IS CONSIDERED AN  
27 UNAFFILIATED VOTER FOR THE PURPOSES OF THIS RULE 7.2.

28 7.2.14 A VOTER AFFILIATED WITH A POLITICAL PARTY THAT IS NOT PARTICIPATING IN THE  
29 PRIMARY ELECTION WILL NOT RECEIVE A MAIL BALLOT.

1 *Renumbering Current Rules 7.2.10 through 7.2.12 to Rules 7.2.15 through 7.2.17:*

2 ~~7.2.10~~ 7.2.15 The mail ballot return envelope for each unaffiliated voter in a primary election  
3 may provide a means for the county to determine, before opening the envelope, which  
4 party's primary election ballot the elector returned. If the mail ballot return envelope does  
5 not provide such a means, or the county cannot determine which party's ballot the elector  
6 returned before opening the envelope, the county must follow the process outlined in  
7 Rule 7.5.13. The county's determination under this Rule may not rely solely on a voter's  
8 self-reported selection (for example, a checkbox).

9 ~~7.2.11~~ 7.2.16 Each mail ballot return envelope and mail ballot instruction for an unaffiliated  
10 voter in a primary election must include a statement instructing the voter to return only  
11 one ballot.

12 ~~7.2.12~~ 7.2.17 The county clerk must issue a replacement mail ballot packet to an unaffiliated  
13 elector in a primary election as follows:

14 (a) If the elector has not declared a mail ballot preference, the county clerk must  
15 issue a packet containing the ballots of all participating major political parties.

16 (b) If the Elector has timely declared a mail ballot preference, the county clerk must  
17 issue the elector's preferred political party's ballot; or upon the elector's request,  
18 a packet containing the ballots of all participating major political parties.

19 *Technical amendments to Rule 7.5.1 concerning receipt and processing of ballots:*

20 7.5.1 The county clerk must adequately light all stand-alone drop-off locations and use either  
21 an election official or a video security surveillance recording system as defined in Rule  
22 ~~1.1.43~~ 1.1.45 to monitor each location.

23 *Amendments to Rule 7.17 concerning scanning elector's signatures:*

24 7.17 Within ~~90~~ 120 days after each election DAY, OR BEFORE THE FIRST DAY TO CONDUCT SIGNATURE  
25 VERIFICATION AT THE NEXT COUNTY OR MUNICIPAL MAIL BALLOT ELECTION, WHICHEVER IS  
26 SOONER, the county clerk must scan into SCORE the elector's signature and signature date on  
27 each accepted mail ballot return envelope and on any cure letter returned by the elector. A  
28 COUNTY THAT IS UNABLE TO SCAN THE SIGNATURE DATE INTO SCORE MAY APPLY TO THE  
29 SECRETARY OF STATE FOR A WAIVER FROM THIS REQUIREMENT. *Signatures on paper, signed in the  
presence of an official should be the first signatures used for signature verification, and ideally the  
only signatures used when other less credible signatures have been collected. SCORE must be  
improved to record and report the provenance and credibility of the signature so that the most  
appropriate and effective signature can be used for initial signature verification. The accessible  
metadata must include the date the signature was signed. Signatures from cure letters have  
uncertain credibility when they are (often) not signed in front of an official. The most credible of  
signatures are those signed on paper in front of an official and we should encourage the collection  
of those signatures in our election system. Clearly though if the cure is underway, the signature  
that needed cure should not be included as a first sample in SCORE or if so, it should be indicated  
to have caused a cure in the past. This is an important topic that requires improvements to process  
and SCORE. I don't know the reason for the problem with the signature date addressed in this rule  
change. I guess some counties have the date under a flap when the sorter takes the picture. I do  
know that at least one county has allowed ballots to count when SCORE does not have an image of  
the signature yet for comparison. That seems to be a less than best practice policy employed in a  
previous election. I have alerted the county to the problem. Signature verification requires  
considerable attention beyond the scope of this rule change.*

30 *Amendments to Rule 10.4 concerning canvass:*

31 10.4 No canvass board may certify official results until authorized to do so by the Secretary of State.  
32 The Secretary of State may extend the canvass deadline for one or more counties in order to  
33 complete the risk-limiting audit in accordance with Rule 25.2. Before certifying official results, a  
34 county that conducts a comparison audit as defined in Rule 25.1.4 must manually adjust the  
35 preliminary results to ~~reflect all~~ ACCOUNT FOR discrepancies identified in the risk-limiting audit IF  
36 DIRECTED BY THE SECRETARY OF STATE. *Comparison audit is defined in 25.1.5. 25.1.4 is ballot  
polling audit. I think CDOS means 25.1.5. The transfer of responsibility to the SOS is significant  
and perhaps justified, given that the audit data is not necessarily fully public (yet). Is it possible  
that a county could problematically use the audit as a way to change election results by selecting  
auditors who will prefer a particular candidate and make judgements along those lines? To avoid  
that there must be good oversight on audit operations in the counties and the SOS is appropriate  
to do this in case the public does not or is not yet allowed to do so.*

37 *Amendments to Rule 11.3.2(c) and (d) concerning logic and accuracy testing:*

38 11.3.2 Logic and Accuracy Test

- 1 (c) Preparing for the Logic and Accuracy Test
- 2 (2) The county must convene a Testing Board of one registered elector from
- 3 each of the major political parties. Testing Board members must be
- 4 registered to vote in the county AND BE SWORN IN AS ELECTION JUDGES.
- 5 (d) Conducting the Test
- 6 (4) The Testing Board and designated election official must count the test
- 7 ballots as follows, if applicable:
- 8 (C) Ballot Marking Devices (BMDs):
- 9 (i) The Testing Board must RANDOMLY SELECT AND test at
- 10 least one BMD.

11 *Amendments to Rule 15.1.1 through 15.1.4 concerning preparation, filing, and verification of petitions:*

12 15.1 The following requirements apply to candidate, statewide initiative, recall, and referendum  
 13 petitions, unless otherwise specified.

14 15.1.1 PETITION TEMPLATE FOR STATE PETITIONS

- 15 (A) PETITION PROPONENTS MUST USE THE SECRETARY OF STATE’S FILLABLE .PDF
- 16 PETITION TEMPLATE TO CREATE THEIR PETITION FORMAT.
- 17 (B) AFTER APPROVAL OF THE PETITION FORMAT AS TO FORM, PROPONENTS MUST
- 18 PRINT ALL PETITION SECTIONS IN ACCORDANCE WITH THE SECRETARY OF
- 19 STATE’S PETITION-PRINTING GUIDELINES.
- 20 (C) ANY SIGNATURE AFFIXED TO A PETITION SECTION THAT DOES NOT CONFORM TO
- 21 THE REQUIREMENTS OF THIS RULE 15.1.1 IS NOT VALID.

22 ~~15.1.1~~ 15.1.2 The Secretary of State or DEO will not accept or count additional signatures after  
 23 proponents file the original petition or addendum.

24 ~~15.1.2~~ 15.1.3 Circulator affidavit

- 25 (a) If a petition section does not have a completed circulator affidavit, the Secretary
- 26 of State or DEO will reject the entire section.
- 27 (b) If a petition section does not have a completed notary clause, or if the date of the
- 28 notary clause differs from the date the circulator signed the affidavit, the
- 29 Secretary of State or DEO will reject the entire section.
- 30 (C) IF A STATE CANDIDATE IS CURING A CIRCULATOR AFFIDAVIT UNDER SECTION 1-
- 31 4-912(2), C.R.S., THE CANDIDATE MUST USE THE CURE AFFIDAVIT PROVIDED BY
- 32 THE SECRETARY OF STATE.

33 ~~15.1.3~~ 15.1.4 Verifying individual entries

- 34 (d) Secretary of State or DEO staff will reject the entry if:

(13) THE SIGNER'S INFORMATION APPEARS OUTSIDE OF A NUMBERED SIGNATURE BLOCK ON A PETITION SECTION.

*Amendments to Rule 15.5 concerning initiative petition verification:*

15.5 Statewide initiative petition verification

15.5.1 Verification by random sample.

~~15.5.2 Preliminary count and random number generation.~~

~~(a) After counting the entries on each petition section, Secretary of State staff will enter the petition identification number, the petition section number, the page number, and the number of entries on the page into the database.~~

~~(b)-(A) Staff will then create a record for each entry ON THE PETITION that contains the petition identification number, petition section number, page number, and the entry number. Staff will AND tally the total number of entries.~~

~~(c) If the number of entries is less than the total number of signatures required to certify the measure to the ballot, the Secretary of State will issue a statement of insufficiency.~~

15.5.3(B) ~~Random sample.~~ The database will generate a series of random numbers equal to 4,000 signatures or five percent of the total number of signatures, whichever is greater. Staff will check the validity of the random signatures in accordance with this Rule. Staff will maintain a master record of each accepted and rejected entry, along with the reason code for each rejected entry.

*New Rule 15.7 concerning signature verification of petitions:*

15.7 SIGNATURE VERIFICATION ON STATE CANDIDATE PETITIONS

15.7.1 THE SECRETARY OF STATE WILL COMPARE THE SIGNATURE ON EACH PETITION ENTRY WITH THE ELECTOR'S SIGNATURE IN SCORE IN ACCORDANCE WITH THE SECRETARY OF STATE'S SIGNATURE VERIFICATION GUIDE. THE SECRETARY OF STATE MAY USE AN AUTOMATED SIGNATURE VERIFICATION DEVICE.

(A) IF THE SIGNATURES MATCH AND THE ENTRY IS OTHERWISE VALID, THE SECRETARY OF STATE MUST ACCEPT THE ENTRY.

(B) IF UPON INITIAL REVIEW THE SIGNATURES DO NOT MATCH, THE SECRETARY OF STATE MUST CONDUCT FURTHER REVIEW OF THE ENTRY. A TEAM OF TWO STAFF MEMBERS MUST REVIEW THE SIGNATURES, CONDUCT ADDITIONAL RESEARCH IN SCORE IF NECESSARY, AND, UNLESS BOTH STAFF MEMBERS AGREE THAT THE SIGNATURES DO NOT MATCH, ACCEPT THE ENTRY IF IT IS OTHERWISE VALID.

*Yes, it would be reasonable to make these staff members be registered in different party affiliation status, but note that the auto sig and then a single judge will be doing most of the accepting. Only rejecting will be done by the pair, if I understand correctly and it matches the usage by counties for ballot envelopes.*

*[Not shown: renumbering of Rule 15.7 to 15.8]*

*Amendments to Rule 16.1.7 concerning military and overseas electors:*



1 16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of  
2 State the number OF ballots transmitted to military and overseas electors by the 45-day  
3 deadline.

4 ~~(a) The status of the elector's record and ballot request;~~

5 ~~(b) The upcoming federal elections;~~

6 ~~(c) How to update the elector's mailing information and request a ballot; and~~

7 ~~(d) Any other information the county clerk deems appropriate.~~

8 *Amendments to Rule 16.2.3 concerning correction of citation:*

9 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and  
10 Overseas Citizen Voting Act (~~42 U.S.C. sec. 1973ff(b)(7) and 1(a)(5)~~ 52 U.S.C. SEC.  
11 20301(B)(7) AND 20302(A)(5)), the elector's name, date of birth, signature, and the  
12 following statement: I also understand that by returning my voted ballot by electronic  
13 transmission, I am voluntarily waiving my right to a secret ballot and that Colorado law  
14 requires that I return this ballot by a more secure method, such as mail, if available and  
15 feasible. (Sections 1-8.3-113 and 1-8.3-114, C.R.S.)

16 *Amendments to Rule 16.2.4 concerning electronic transmission to military and overseas electors:*

17 16.2.4 If the county clerk transmits a ballot packet to an elector by fax OR EMAIL and the  
18 transmission is unsuccessful, the county clerk must attempt to fax OR EMAIL the ballot at  
19 least two more times. IF ELECTRONIC TRANSMISSION IS UNSUCCESSFUL, THE COUNTY  
20 CLERK MUST MAIL THE BALLOT.

21 *Amendments to Rule 25.2.4 concerning conducting the risk limiting audit:*

22 25.2.4 Concluding the audit. No later than the third business day following the expiration of the  
23 deadline to request a recount under section 1-10.5-107(2), C.R.S. or the completion of  
24 any recount, whichever is later, a county that conducted a comparison audit must review  
25 its CVR file and redact voter choices corresponding to any ballot card susceptible to  
26 being personally identified with an individual voter BEFORE SENDING IT TO THE  
27 SECRETARY OF STATE, as required by section 24-72-205.5(4)(b)(iii), C.R.S.

*This rule is curious and deserves modification.*

- 1) *The application of CORA 24-72-205.5 to election auditing process seems questionable and inappropriate. Under best practices, the information to used in the audit ought to be made public and at a time prior to the use of a random number generator by CDOS to sample the ballots. The first step is for the county to provide the CVR and ballot manifest material to the SOS. Apparently two separate releases of the CVRs is quietly, confusingly contemplated here. One would presumably be a full upload of CVRs to the SOS for the purpose of commitment and creation of the statewide ballot manifest and then, upon sampling a list of ballots to be used as the sample. Apparently a second upload for purposes of eventual public release of redacted CVRs is anticipated. It is beneficial to have the SOS act as a custodian of these CVRs with respect to the public after the anonymity of them has been arranged.*
- 2) *The means of redaction that is anticipated is not the one that is best suited to transparency of the election record. For purposes of arranging the anonymity of the uploaded record, the best and most efficient way is to redact entire contests that lead to styles in the election with instances of 9 or less. That way, the remaining CVRs, all of them, can be made public without creating a style that interferes with privacy. Also the*

*original style designation must not be included with the CVR. This technique corresponds to moving the problematic contests to a separate card and separate CVR, in fact such a separate CVR can also be uploaded to the SOS and made public if it does not correlate to the first CVR upload. This is far better than removing entire CVR records from the election that renders the resultant CVR file relatively useless for verification.*

- 3) Even better techniques exist to render the CVRs and paper ballots and images anonymous by simply avoiding to include them in batches if that would make them unique within a batch (or more rigorously, extant as less than 10 in a batch), such that they can be associated with the identifiable envelope in a related batch of envelopes. This is done by sorting the ballots, ideally while in envelopes but can also be done one by sorting out rare styles once the ballots have been removed from envelopes. At least Boulder and Jefferson counties anticipate using their envelope sorters to aggregate envelopes from rare styles such that they do not become unique in any batch. This is a highly desirable technique that has benefits for privacy as well as ability to locate the rare contests later for purposes of recount, etc.*
- 4) The rule ( and law behind it ) should have a provision not for redaction as a solution, but sorting and design of ballot so that the anonymity does not become an issue. Solution at the source is the answer, not redaction. Even 205.5 CORA has a provision for allowing request of portions of the ballot, or in this case, parts of the CVR that do not result in identifiable ballots (9 or fewer unique style in the election). So the rule could require making an edit of the CVR so that these rare forms do not exist within a specific data file. This ideally (for now) requires removing columns from the CVR for all choices for problematic contests (and placing them in a separate CVR file that does not link to the first). Also any indication of the original district/precinct split that was in the CVR file must be removed (as well as the Counting Group).*
- 5) The issue of SCORE/envelope batches being identical or close to identical to tabulation batches is we hope being addressed by rule 7.5.10 but only if “practicable”. I have recommended a mixing/redefinition of batches that stay complete within boxes by for example removing the batch separators and creating new batches within a single box. Also the order of ballots within the boxes can change. The box contents count and box contents can be allowed to match between SCORE and tabulation as long as the box contains at least (conservatively) 10 of each specific style of ballot. Large counties often fill boxes of ballots in counts of about 2000 (in multiple batches). They can use their sorters to know if they have less than 10 of a style in a box at the time of opening and can arrange to sort out the rare styles so as to maintain this minimum number in a box. Jeffco and Boulder are both using sorter bins to hold back rare styles so that they can be accumulated into the same batch. This is a best practice.*
- 6) Under separate cover (I hope separately linked) a paper written by audit advisors has been provided to DSOS for inclusion in this pre-rulemaking testimony that discusses the anonymity of the CVR and means to protect it. It is entitled CORLA Anonymity of CVR.*
- 7) A better text for the rule (there is no need for the deadline to be end of recount, the real deadline is the upload to the SOS. This method of redaction of contest should be a simple operation on the spreadsheet that can be executed in minutes once the offending contests are located. SCORE should be able to produce a report shortly after election night that identifies the contests that will cause full election CVRs to have rare styles, so there will be plenty of time to determine which contests to separate in the CVR file when the time comes to upload to the SOS. Precinct of course need not and should not be identified in the CVR even if it is printed onto the face of the ballot.*

~~Concluding the audit. No later than the third business day following the expiration of the deadline to request a recount under section 1-10.5-107(2), C.R.S. or the completion of any recount, whichever is later, A county that conducted a comparison~~  
**audit must review its CVR file and IF NECESSARY REMOVE ONE OR MORE CONTESTS FROM THE FILE SUCH THAT REMAINING COORDINATED**

**CONTESTS WILL PRODUCE THE EFFECT OF A SET OF DISTRICT STYLES WITH LESS THAN 10 INSTANCES OCCURRING WITHIN THE FILE ~~redact voter choices corresponding to any ballot card susceptible to being personally identified with an individual voter~~ BEFORE SENDING IT TO THE SECRETARY OF STATE, as required by section 24-72-205.5(4)(b)(iii), C.R.S. THE REMOVED CONTESTS MAY BE PROVIDED IN A SEPARATE CVR FILE IF THE BALLOTS REPRESENTED IN THE TWO FILES CANNOT BE MATCHED.**

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