

CCCA comments in response to the Department of State's June 30, 2023 Proposed Election Rules

These comments are presented in order of the proposed rules and combine the observations and concerns of CCCA-member counties.

- **Voter registration**
 - **UOCAVA:**
 - Proposed Rule 2.5.5. provides that a UOCAVA voter who updates an address with CDOR indicating that the voter is no longer overseas/military may not have UOCAVA status removed solely because of the change. Counties must instead send a notice by mail and email asking the voter to confirm that they are no longer covered. If no response, voter remains a UOCAVA voter.
 - **Comment/Recommendation:** It would be useful for counties if the Department would provide a letter template that can be generated in SCORE.
 - **Suggested clean-up edit:**
 - THE CLERK MUST INSTEAD SEND A NOTIFICATION VIA MAIL, AND EMAIL, IF AVAILABLE, . . . THE CLERK MAY NOT ~~MAKE~~ REMOVE THE ELECTOR'S COVERED VOTER STATUS.
 - **List maintenance:**
 - Amendment to renumbered Rule 2.11.1 removing the requirement that the Department of State provide NCOA data to counties by the fifth business day of each month.
 - **Comment/Recommendation:** Please Keep a specific day each month to provide this data to counties. Counties rely on the specificity in the current rule for several operational reasons, including planning for mailings and determining staffing needs. In addition, as elections approach, counties work hard to process record changes expeditiously and prefer the certainty provided under the current rule.
 - **Confidential voters:**
 - Repeal of Rule 2.12.3, which currently requires the Department to provide list of confidential voters to each major political party to determine affiliation for precinct caucuses.
 - **Comment/Recommendation:** The reason for repealing this rule is unclear. With this rule, counties will likely see a significant increase in one-off requests from parties on the day of caucus about voters' affiliations. Without further clarification, we prefer the state continue to provide this list to the state parties. It's more efficient to provide the state parties with one list from the state.

- **Coordinating entities and IGAs**

- Addition of new Rule 4.1.2 (c), which allows intergovernmental agreements to address limitations on, or requirements for, ballot content length and formatting.
 - **Comment/Recommendation:** This is a welcome addition that will help counties as they work with coordinating jurisdictions.
- Amendment to Rule 4.5.1 (b), which removes language giving the coordinated election official discretion to decline to print a coordinating jurisdiction’s full measure text on the ballot when there is not space.
 - **Comment/Recommendation:** Recommend keeping the rule in its current form. It will provide additional support for counties when negotiating IGAs under new Rule 4.1.2 (c).

- **Election judge recruitment and signature verification**

- **Appointment/assignment of election judges**

- Amendment to Rule 6.1.2, which requires counties to provide each major party by the Friday before caucuses an estimate of the number of judges needed for each position, and the dates and times judges will be needed. The estimate must include information for the upcoming two-year election cycle.
 - **Comment/Recommendation:** We respectfully request that this rule be changed to require counties to provide an estimate of the number of judges anticipated, along with the time period required for each judge duty (i.e. number of days a specific judge position may work each election). This is more relevant and feasible than providing exact dates and times for an election 18 months later.
- Amendment to Rule 6.1.3, which requires counties to “reasonably attempt to exhaust precinct caucus and updated list provided by the major parties by the 60th day before an election.” If by the 60th day the party lists have failed to produce enough available judges, counties may consider a supplemental list from the major parties. Only after this may the county supplement with additional judges, including minor party or unaffiliated judges.
 - **Comment:** This proposed amendment adds significant complexity and confusion to the already difficult process of recruiting quality election judges.
 - Counties need the authority to fill open judge positions without added steps that are unlikely to improve the pool of potential judges.
 - This proposed amendment would also further limit counties’ ability to hire and assign experienced, reliable judges who have served in past elections.
 - **Recommendation:** Provide simplicity by allowing counties to hire other major party, minor party, or unaffiliated judges as soon as they have exhausted the original precinct caucus list, plus discretionary language

allowing counties to request a supplemental list. We also respectfully request clarity regarding the “reasonably attempt to exhaust” language. We recommend language that requires counties to make two attempts (via email, phone, or USPS) to contact each judge candidate referred by the parties. After two attempts, counties can then seek to fill positions using other major party, minor party, or unaffiliated judges.

- **Signature verification training**

- Addition of new Rule 6.2.2, which requires counties to “review any data available” regarding the quality of a signature verification judge’s past work and requires counties to bar them if they’ve had an “unexplained, irregular acceptance or rejection rate.”
 - **Comment/Recommendation:** The terms in this proposed rule are vague, as is the standard for removal of a verification judge. Compliance with this rule would be difficult. Furthermore, many judges now may work in multiple counties from election to election. Are counties now required to gather data from other counties? Also, there are no current definitions/standards of irregular acceptance or rejection rates. Recommend removing, adding additional clarification, or considering SCORE enhancement to track the information sought in this rule.
- Amendments to Rules 6.7 and 6.8 concerning election judge training, which require additional approval of county training content.
 - **Comment/Recommendation:** Counties are concerned about the feasibility of timely approval of supplemental training by the Department of State within an already tight election timeline. Some counties provide hours-long video training for signature verification. This rule could slow the training process. The proposed amendments also do not specify the process/timeline for submittal and approval of county trainings. What is the experience/expertise of the person(s) who approve the trainings in this area? If approval is necessary, recommend county involvement in review/approval process. Also recommend changing training course review to a 2-year review cycle, not every year.

- **Ballots in a primary election**

- Removal of Rule 7.2.4 (2) concerning voiding ballots after the vendor has printed ballots but not mailed them.
 - **Comment:** This is a welcome change as there are other checks in place without this rule.
- Cleanup of Rules 7.2.6 – 7.2.14.
 - **Comment:** These are welcome changes. One note: will these changes require SCORE development?

- **Drop boxes**

- Amendment to Rule 7.4.1(e), which extends the deadline to retain drop box video recordings to 120 days (instead of 60) following the deadline to certify an election, or the conclusion of any election contest.
 - **Comment:** The statutory requirement for retaining video is now 25 months. This rule appears to conflict with statute and the current security grants.

- **Intercounty ballot transfer**

- Amendment to renumbered Rule 7.4.10, which imposes a detailed process for intercounty ballot exchange.
 - **Comment:** Counties have several concerns about this proposed rule:
 - It is unclear whether this rule would apply to statewide ballots issued at VSPCs. If so, this process would need further clarification.
 - The timeframes laid out in this proposed rule will require counties to divert resources normally devoted to processing ballots at the most critical time in the election.
 - The proposed rule requires the inclusion of a time stamp (in addition to the date stamp) on each transferred ballot. Recommend removing the time-stamp requirement in favor of a general certification that all transferred ballots were received by 7pm on election day.
 - The proposed rule requires that transferred ballots be sent to the address on the ballot envelop. That address is often a P.O. Box, which limits use of non-USPS services to quickly transfer ballots.
 - The two-day mailing/delivery deadline will be difficult for some counties to meet.
 - **Comment about ballot pickup at the USPS General Mail Facility**
 - The logging provisions in the proposed rule could jeopardize the current process led by Denver to collect ballots at the GMF before 7pm on election night. In general elections, there can be thousands of ballots to retrieve.

- **Recommendation:**

Chain of Custody (CoC) is vitally important. However, this proposed rule seems to assume no CoC currently exists. We would support a joint SOS/CCCA working group to study this and propose rules that are better informed by existing practices and addresses any gaps identified through that study.

SCORE development that would allow counties to batch-scan in SCORE all ballots that will be transferred. This would provide an accessible record of all ballots intended for transfer and could enhance the effectiveness of BallotTrax for voters who submitted a ballot to the wrong county.

Exempt the election-night GMF process from the requirements of 7.4.10.

- **Ballots/registrations from correctional facilities**
 - Amendment to renumbered Rule 7.4.11, which changes the requirements for data tracking related to confined voters.
 - **Comment:** The purpose for this change is unclear. It is also unclear why the rule is amended to include reporting only in elections not conducted in November.

- **Signature verification procedures/judge monitoring**
 - Amendment to Rule 7.7.3, which adds the standard that a signature match is “one that is more likely than not to be the signature of the voter.”
 - **Comment:** It is unclear how this proposed change is meant to alter or aid the review process. This standard would need to be addressed in training.

 - Amendment to Rule 7.7.8, which adds additional requirements for auditing, in real time, signature verification judges’ acceptance/rejection rates. which judges are accepting/rejecting signatures.
 - **Comment/Recommendation:** This proposed rule is poorly constructed. Signature verification data and auditing is the major focus of the CCCA Election Initiatives Committee at this time. The Colorado Department of State has multiple members on this committee. We recommend delaying any new rules in this area until a formal, clear, concise, and appropriate plan can be developed. **Comment/Recommendation:** Recommend SCORE development to properly track this information for both tier one and tier two review. This is the most efficient and accurate way to track this data.

 - Amendment to Rule 7.7.10, which adds a requirement for counties with a ballot sorter to capture an image of the full back of the ballot envelope rather than just the envelope signature.
 - **Comment:** The proposed language is unclear. Is the intent that the device must capture an image of both sides of the mail ballot envelope? Many ballot sorters are currently incapable of providing a scanned image of the full envelope. To comply with the rule mandating capturing an image of both sides, many counties would have to manually scan envelopes in a separate new process.

- **Voter Service and Polling Centers**
 - Amends Rule 7.8.2 to require that a county “take into consideration” the “voter center citing tool...provided by the Department of State” to identify VSPCs.
 - **Comment:** Statute already contains requirements for VSPC siting. Many if not most counties have not seen the updated siting tool and have not had an opportunity to provide feedback. When this tool was socialized with clerks and staff in 2019, there was great concern about the quality/accuracy of the data in the tool.

- **District, position, and ballot style naming conventions in SCORE**
 - New Rule 7.17, which adds data-entry standards for district, position, and ballot style naming in SCORE.
 - **Comment:** Some counties have already executed IGAs with coordinating jurisdictions that define how the district will be identified on the ballot. Recommend considering a later effective date to provide counties time to amend IGAs for compliance with these proposed requirements.

- **Ballot duplication**
 - Amendment to Rule 18.4.1, which requires periodic review duplicated ballots with a separate team of election judges.
 - **Comment:** The Department’s explanation for this proposed amendment is to comply with changes to SB23-276. However, the bill’s change to section 1-7-508, C.R.S., appears to be a simple language cleanup to clarify that a bipartisan team of election judges duplicate ballots. The added language to this proposed rule amendment adds an unnecessary additional step for duplication and would require more election judges, which goes against the intent of the legislative change in SB23-276. The proposed rule is unnecessary as current processes and audits already do this. The current duplication process is already conducted by two bipartisan judges who check each other’s work. Furthermore, the RLA should help identify any widespread duplication errors.
 - New rule 18.4.6, which requires a county clerk to batch duplicated ballots separately from all other ballots.
 - **Comment:** The reason for this rule is unclear. Batching duplicated ballots separately may cause issues with ballot anonymity.

- **Camera Surveillance**
 - Addition of new Rule 20.4.2 (e), which allows counties to temporarily cease video surveillance of voting system components for planned maintenance of the video surveillance system.
 - **Comment:** This is a welcome change. However, counties will require guidance from the Department concerning the notification process, what needs to be included in the required plan, and the timeframe for approval by the Department.
 - Addition of new Rule 20.11.1 (f), which requires counties to develop a contingency plan if camera systems go down and check at “regular intervals” to make sure equipment is operational.
 - **Comment:** Counties will require guidance regarding the contingency plan, and what is meant by “regular intervals.”