

# Revised Draft of Proposed Rules

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

November 8, 2017

### Disclaimer:

The proposed draft rules have changed. This draft supersedes the Preliminary Draft that was issued with the Notice of Proposed Rulemaking on October 13, 2017. These revised proposed rules will be considered at the November 17, 2017 rulemaking hearing.

In accordance with the State Administrative Procedure Act, this revised copy of the proposed rules is made available to the public and posted on the Department of State's website.<sup>1</sup>

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
<del>Strikethrough</del>	Deletions
Shading	Revisions to previous draft
<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.

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

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<sup>1</sup> Section 24-4-103(4)(a), C.R.S. (2017). "[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."

1 2.14.4 Without written authorization from the Secretary of State, the county clerk may not run  
2 or schedule to run SCORE reports or exports that include voter or election detail during  
3 regular business hours beginning 22 days before election day and from 7:00 am to 7:00  
4 pm on election day. A COUNTY THAT USES AN AUTOMATED SIGNATURE VERIFICATION  
5 DEVICE MAY RUN THE EXP-004 REPORT DURING THIS TIME.

6 *New Rule 2.16.3:*

7 **2.16.3** IF A FEDERAL AGENCY NOTIFIES A COUNTY OF A DATA BREACH OF OR A TARGETED  
8 ATTACK ON ITS COUNTY NETWORK OR SCORE, OR PROVIDES ANY OTHER NOTICE  
9 CONCERNING AN ATTACK OR POTENTIAL ATTACK ON CRITICAL INFRASTRUCTURE, THE  
10 COUNTY MUST NOTIFY THE SECRETARY OF STATE IMMEDIATELY USING THE CONTACT  
11 INFORMATION PROVIDED BY THE SECRETARY OF STATE FOR THIS PURPOSE.

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

13 3.4.1 Files proof of organization with the Secretary of State BY MARCH 1 IN AN EVEN  
14 NUMBERED YEAR;

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

16 4.5.2 Each political subdivision must determine the order of the ballot issues for their political  
17 subdivision in accordance with the requirements of Colorado Constitution Article X,  
18 Section 20 and Title 1.

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

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

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

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

24 7.2.10 THE MAIL BALLOT PACKET REQUIRED UNDER SECTIONS 1-4-101(2)(B) AND 1-4-  
25 1203(4)(C), C.R.S. MUST CONTAIN ONLY THE BALLOTS OF EACH PARTICIPATING MAJOR  
26 POLITICAL PARTY.

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

4 7.2.12 IF AN UNAFFILIATED VOTER SELECTS A MAIL BALLOT PREFERENCE FOR A MAJOR OR  
5 MINOR POLITICAL PARTY THAT IS NOT PARTICIPATING OR THAT PROHIBITS UNAFFILIATED  
6 VOTERS FROM VOTING IN ITS PRIMARY ELECTION, THE COUNTY CLERK MUST SEND THE  
7 VOTER THE MAIL BALLOT PACKET DESCRIBED IN RULE 7.2.10.

8 7.2.13 A VOTER AFFILIATED WITH A QUALIFIED POLITICAL ORGANIZATION IS CONSIDERED AN  
9 UNAFFILIATED VOTER FOR THE PURPOSES OF THIS RULE 7.2.

10 7.2.14 A VOTER AFFILIATED WITH A POLITICAL PARTY THAT IS NOT PARTICIPATING IN THE  
11 PRIMARY ELECTION WILL NOT RECEIVE A MAIL BALLOT.

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

13 ~~7.2.10~~ 7.2.15 The mail ballot return envelope for each unaffiliated voter in a primary election  
14 may provide a means for the county to determine, before opening the envelope, which  
15 party's primary election ballot the elector returned. If the mail ballot return envelope does  
16 not provide such a means, or the county cannot determine which party's ballot the elector  
17 returned before opening the envelope, the county must follow the process outlined in  
18 Rule 7.5.13. The county's determination under this Rule may not rely solely on a voter's  
19 self-reported selection (for example, a checkbox).

20 ~~7.2.11~~ 7.2.16 Each mail ballot return envelope and mail ballot instruction for an unaffiliated  
21 voter in a primary election must include a statement instructing the voter to return only  
22 one ballot.

23 ~~7.2.12~~ 7.2.17 The county clerk must issue a replacement mail ballot packet to an unaffiliated  
24 elector in a primary election as follows:

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

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

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

31 7.5.1 The county clerk must adequately light all stand-alone drop-off locations and use either  
32 an election official or a video security surveillance recording system as defined in Rule  
33 ~~1.1.43~~ 1.1.45 to monitor each location.

34 *Repeal Current Rule 7.16:*

35 ~~7.16 — Cross jurisdictional voter service and polling center pilot program~~

36 ~~7.16.1 — The county clerk may apply to the Secretary of State to participate in a pilot program~~  
37 ~~allowing a county to agree with another county or counties to provide the county's~~

1 ~~services at the other county's voter service and polling centers. Beginning in 2018, the~~  
2 ~~Secretary of State must receive the application no later than 110 days before election day.~~

3 ~~7.16.2 In reviewing the county clerk's application, the Secretary of State will consider the~~  
4 ~~following:~~

5 ~~(a) The county's plan to provide all services outlined in section 1-5-102.9, C.R.S. for~~  
6 ~~each participating county at each voter service and polling center;~~

7 ~~(b) Whether the counties share a common border and the geographical location of~~  
8 ~~proposed multi-county voter service and polling centers;~~

9 ~~(c) Whether the county's plan provides more voter options and opportunities; and~~

10 ~~(d) Any public comment provided under section 1-5-102.9(1)(c)(II), C.R.S. and the~~  
11 ~~input, if any, of the governing board of the county.~~

12 ~~7.16.3 When designating voter service and polling centers, at least two-thirds of the voter~~  
13 ~~service and polling centers required under sections 1-5-102.9 and 1-7.5-107, C.R.S., must~~  
14 ~~be located within the county boundaries; except that each participating county must have~~  
15 ~~the minimum number of voter service and polling centers required under section 1-5-~~  
16 ~~102.9 and 1-7.5-107, C.R.S. open within its boundaries on the Monday before election~~  
17 ~~day and election day.~~

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

19 7.17 Within ~~90~~ 120 days after each election DAY, OR BEFORE THE FIRST DAY TO CONDUCT SIGNATURE  
20 VERIFICATION AT THE NEXT COUNTY OR MUNICIPAL MAIL BALLOT ELECTION, WHICHEVER IS  
21 SOONER, the county clerk must scan into SCORE the elector's signature and signature date on  
22 each accepted mail ballot return envelope and on any cure letter returned by the elector. IN A  
23 PRESIDENTIAL PRIMARY YEAR, THE DEADLINE FOR SCANNING SIGNATURES AND SIGNATURE  
24 DATES FROM ALL PRIOR ELECTIONS THAT YEAR IS EXTENDED TO 120 DAYS AFTER THE STATE  
25 PRIMARY ELECTION. A COUNTY THAT IS UNABLE TO SCAN THE SIGNATURE AND/OR SIGNATURE  
26 DATE INTO SCORE MAY APPLY TO THE SECRETARY OF STATE FOR A WAIVER FROM THESE  
27 REQUIREMENTS.

28 *Amendments to Rule 10.4 concerning canvass:*

29 10.4 No canvass board may certify official results until authorized to do so by the Secretary of State.  
30 The Secretary of State may extend the canvass deadline for one or more counties in order to  
31 complete the risk-limiting audit in accordance with Rule 25.2. Before certifying official results, a  
32 county that conducts a comparison audit as defined in Rule ~~25.1.4~~ 25.1.5 must manually adjust  
33 the preliminary results to ~~reflect all~~ ACCOUNT FOR discrepancies identified in the risk-limiting  
34 audit IF DIRECTED BY THE SECRETARY OF STATE.

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

36 11.3.2 Logic and Accuracy Test

37 (c) Preparing for the Logic and Accuracy Test

1 (2) The county must convene a Testing Board of one registered elector from  
2 each of the major political parties. Testing Board members must be  
3 registered to vote in the county AND BE SWORN IN AS ELECTION JUDGES.

4 (d) Conducting the Test

5 (4) The Testing Board and designated election official must count the test  
6 ballots as follows, if applicable:

7 (C) Ballot Marking Devices (BMDs):

8 (i) The Testing Board must RANDOMLY SELECT AND test at  
9 least one BMD.

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

11 15.1 The following requirements apply to candidate, statewide initiative, recall, and referendum  
12 petitions, unless otherwise specified.

13 15.1.1 PETITION TEMPLATE FOR STATE PETITIONS

14 (A) PETITION PROPONENTS MUST USE THE SECRETARY OF STATE'S FILLABLE .PDF  
15 PETITION TEMPLATE TO CREATE THEIR PETITION FORMAT.

16 (B) AFTER APPROVAL OF THE PETITION FORMAT AS TO FORM, PROPONENTS MUST  
17 PRINT ALL PETITION SECTIONS IN ACCORDANCE WITH THE SECRETARY OF  
18 STATE'S PETITION-PRINTING GUIDELINES.

19 (C) ANY SIGNATURE AFFIXED TO A PETITION SECTION THAT DOES NOT CONFORM TO  
20 THE REQUIREMENTS OF THIS RULE 15.1.1 IS NOT VALID.

21 ~~15.1.1~~ 15.1.2 The Secretary of State or DEO will not accept or count additional signatures after  
22 proponents file the original petition or addendum.

23 ~~15.1.2~~ 15.1.3 Circulator affidavit

24 (a) If a petition section does not have a completed circulator affidavit, the Secretary  
25 of State or DEO will reject the entire section.

26 (b) If a petition section does not have a completed notary clause, or if the date of the  
27 notary clause differs from the date the circulator signed the affidavit, the  
28 Secretary of State or DEO will reject the entire section.

29 (C) IF A STATE CANDIDATE IS CURING A CIRCULATOR AFFIDAVIT UNDER SECTION 1-  
30 4-912(2), C.R.S., THE CANDIDATE MUST USE THE CURE AFFIDAVIT PROVIDED BY  
31 THE SECRETARY OF STATE.

32 ~~15.1.3~~ 15.1.4 Verifying individual entries

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

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

3 *Amendments to Rule 15.5 concerning initiative petition verification:*

4 15.5 Statewide initiative petition verification

5 15.5.1 Verification by random sample.

6 ~~15.5.2 Preliminary count and random number generation.~~

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

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

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

16 ~~15.5.3(B) Random sample.~~ The database will generate a series of random numbers equal to  
17 4,000 signatures or five percent of the total number of signatures, whichever is greater.  
18 Staff will check the validity of the random signatures in accordance with this Rule. Staff  
19 will maintain a master record of each accepted and rejected entry, along with the reason  
20 code for each rejected entry.

21 *New Rule 15.7 concerning signature verification of petitions:*

22 15.7 SIGNATURE VERIFICATION ON STATE CANDIDATE PETITIONS

23 15.7.1 THE SECRETARY OF STATE WILL COMPARE THE SIGNATURE ON EACH PETITION ENTRY  
24 WITH THE ELECTOR'S SIGNATURE IN SCORE IN ACCORDANCE WITH THE SECRETARY OF  
25 STATE'S SIGNATURE VERIFICATION GUIDE. THE SECRETARY OF STATE MAY USE AN  
26 AUTOMATED SIGNATURE VERIFICATION DEVICE.

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

29 (B) IF UPON INITIAL REVIEW THE SIGNATURES DO NOT MATCH, THE SECRETARY OF  
30 STATE MUST CONDUCT FURTHER REVIEW OF THE ENTRY. A TEAM OF TWO STAFF  
31 MEMBERS WHO ARE NOT AFFILIATED WITH THE SAME POLITICAL PARTY MUST  
32 REVIEW THE SIGNATURES, CONDUCT ADDITIONAL RESEARCH IN SCORE IF  
33 NECESSARY, AND, UNLESS BOTH STAFF MEMBERS AGREE THAT THE SIGNATURES  
34 DO NOT MATCH, ACCEPT THE ENTRY IF IT IS OTHERWISE VALID.

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

36 *Amendments to Rule 16.1.6 concerning military and overseas electors:*

1 16.1.6 The county clerk must send a minimum of one correspondence no later than 60 days  
2 before the ~~Primary Election or Presidential Primary Election, if applicable,~~ FIRST  
3 PRIMARY ELECTION IN AN EVEN NUMBERED YEAR to each elector whose record is marked  
4 “Inactive.” The correspondence may be sent by email or mail and, at a minimum, must  
5 notify the electors of:

- 6 (a) The status of the elector’s record and ballot request;
- 7 (b) The upcoming federal elections;
- 8 (c) How to update the elector’s mailing information and request a ballot; and
- 9 (d) Any other information the county clerk deems appropriate.

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

11 16.1.7 No later than 45 days before an election, the county clerk must report to the Secretary of  
12 State the number OF ballots transmitted to military and overseas electors by the 45-day  
13 deadline.

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

15 16.2.3 The self-affirmation must include the standard oath required by the Uniformed and  
16 Overseas Citizen Voting Act (~~42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)~~–52 U.S.C. SEC.  
17 20301(B)(7) AND 20302(A)(5)), the elector’s name, date of birth, signature, and the  
18 following statement: I also understand that by returning my voted ballot by electronic  
19 transmission, I am voluntarily waiving my right to a secret ballot and that Colorado law  
20 requires that I return this ballot by a more secure method, such as mail, if available and  
21 feasible. (Sections 1-8.3-113 and 1-8.3-114, C.R.S.)

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

23 16.2.4 If the county clerk transmits a ballot packet to an elector by fax OR EMAIL and the  
24 transmission is unsuccessful, the county clerk must attempt to fax OR EMAIL the ballot at  
25 least two more times. IF ELECTRONIC TRANSMISSION IS UNSUCCESSFUL, THE COUNTY  
26 CLERK MUST MAIL THE BALLOT AND REMOVE THE ELECTRONIC TRANSMISSION FLAG IN  
27 SCORE UNDER RULE 16.2.1(E).

28 *Amendments to Rule 25.2.2(g) concerning conducting the risk limiting audit:*

29 25.2.2 Preparing for the audit

- 30 (g) Ballot polling audit uploads. No later than 11:59 p.m. MT on the ninth day after  
31 election day, each county conducting a ballot polling audit must submit or  
32 upload:
  - 33 (1) Its verified and hashed ballot manifest, and the ballot manifest’s hash  
34 value, by email to the Secretary of State’s office; ~~and~~
  - 35 (2) ITS CUMULATIVE TABULATION REPORT, BY EMAIL TO THE SECRETARY  
36 OF STATE’S OFFICE; AND

1                                   (2)-(3) Its RLA tabulation results export to the Secretary of State's election  
2                                   night reporting system.

3    *Amendments to Rule 25.2.4 and 25.2.5 concerning conducting the risk limiting audit:*

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

10                   25.2.5 ~~For the 2017 coordinated election, the~~ THE Secretary of State may, by order, alter any of  
11                   the requirements outlined in Rule 25.2.