



Revised Draft Statement of Basis, Purpose, and Specific Statutory Authority

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

November 8, 2017

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:

- Amendments to Rule 2.5.3 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- Amendments to Rule 2.10 to delete superfluous language.
- Amendments to Rule 2.14.4 to ensure proper administration of the statewide voter registration database.
- New Rule 2.16.3 (Temporary Rule 2.16.3, adopted on October 20, 2017) is necessary to provide clear guidance to county clerks regarding election systems security requirements.
- Amendments to Rule 3.4.1 to provide clarity regarding filing deadlines.
- Amendments to Rule 4.5.2(e)(3) to establish uniformity in the order and numbering of ballot measures.
- New Rules 7.2.10 through 7.2.14 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- Renumber of current Rules 7.2.10 through 7.2.12 to 7.2.15 through 7.2.17.

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.

- Amendment to Rule 7.5.1 to correct an incorrect cross-reference.
- Current Rule 7.16 is repealed to establish uniformity in, and provide for proper administration and implementation of current law,
- Amendments to Rule 7.17 to establish uniformity in the administration of current law.
- Amendments to Rule 10.4 to correct an incorrect cross-reference and ensure proper administration of risk-limiting audits.
- Amendments to Rule 11.3.2 to establish uniformity in the administration of current law.
- New Rules 15.1.1, 15.1.3(c), and 15.1.4(d)(13) to ensure proper administration HB 17-1088.
- Amendments to Rule 15.5.2 to establish uniformity in the administration of current law.
- New Rule 15.7 to ensure proper administration of HB 17-1088.
- Amendments to Rule 16.1.6 to organize existing rules for clarity.
- Amendments to Rule 16.2.3 to update a statutory citation.
- Amendments to Rule 16.2.4 to establish uniformity in the administration of current law.
- Amendments to Rule 25.2.2(g) to ensure proper administration of risk-limiting audits.
- Amendments to Rule 25.2.4 and 25.2.5 to ensure proper administration of post-election audits.

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.

On September 29, 2017, the Secretary issued a request for public comment to help our office develop preliminary draft rules. The comments we received in anticipation of rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/ruleComments.html. Additional comments received during the formal rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/hearings/2017/ElectionsRulesHearing20171107.html. All comments are incorporated into the official rulemaking record.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2017), 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.”
2. Section 1-1.5-104(1)(b), C.R.S., (2017), which authorizes the Secretary of State to “[p]romulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title.”
3. Section 1-1.5-104(1)(e), C.R.S., (2017), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. §§ 15301-15545] of [Article 1.5 of Title 1].”
4. Section 1-4-101(2)(b), C.R.S., (2017), which authorizes the Secretary of State to “by rule adopt additional ballot requirements necessary to avoid voter confusion in voting in primary elections.”
5. Section 1-4-1203(6), C.R.S. (2017), which authorizes the Secretary of State to “by rule adopt additional ballot requirements necessary to avoid voter confusion in voting in presidential primary elections.”
6. Section 1-4-908(1.5)(b)(III), C.R.S. (2017), which authorizes the Secretary of State to “promulgate rules, in accordance with article 4 of title 24, to implement” candidate petition signature verification.
7. Section 1-4-912(3), C.R.S. (2017), which authorizes the Secretary of State to “promulgate rules, in accordance with article 4 of title 24, to implement” a cure process for candidate petitions.
8. Section 1-7-515(4), C.R.S. (2017), which requires the Secretary of State to promulgate rules necessary to implement and administer risk-limiting audits.
9. Section 1-7.5-104, C.R.S. (2017), 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.”
10. Section 1-7.5-105, C.R.S. (2017), 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 as provided in section 1-7.5-106(2).”
11. Section 1-7.5-106, C.R.S., (2017), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting “rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]”