



## **Notice of Proposed Permanent Rulemaking**

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

**May 24, 2018**

### **I. Hearing Notice**

As required by the State Administrative Procedure Act,<sup>1</sup> the Secretary of State gives notice of proposed rulemaking. The hearing is scheduled for **July 9, 2018 from 1:00 p.m. to 3:00 p.m.** in the Blue Spruce Conference Room on the 2nd floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

### **II. Subject**

The Secretary is considering amendments to the election rules<sup>2</sup> to improve the administration and enforcement of Colorado election law.<sup>3</sup>

Specifically, the Secretary proposes permanent adoption of temporary Rules 2.18 (adopted on May 16, 2018) and 7.7.5 (adopted on April 25, 2018). Additionally, the Secretary proposes new rules concerning voter registration at county jails and ballot transmission to county jails and detention facilities. The Secretary may consider additional rule amendments including revisions necessary to ensure proper administration of legislation recently passed by the Colorado General Assembly; establish uniformity in the administration of current law; eliminate obsolete provisions; simplify the language of existing rules; remove language that is duplicative of statute or constitutional provisions; and ensure consistency with Department rulemaking standards. The Secretary may consider additional rule amendments.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

<sup>1</sup> Section 24-4-103(3)(a), C.R.S. (2017).

<sup>2</sup> 8 CCR 1505-CCR 1.

<sup>3</sup> 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.

### **III. Statutory authority**

The Secretary proposes the rule revisions and amendments in accordance with the following statutory provisions:

- 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.”
- 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.”
- 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).”

### **IV. Copies of draft rules**

A preliminary draft of the proposed rules is posted on the Secretary of State’s rules and notices of rulemaking website at:

[www.sos.state.co.us/pubs/rule\\_making/hearings/2018/ElectionsRulesHearing20180709.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2018/ElectionsRulesHearing20180709.html).

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,<sup>4</sup> if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by July 3, 2018.

### **V. Opportunity to testify and submit written comments**

The Secretary values your feedback in our rulemaking process and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

Everyone will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office any time before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

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<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2017). “Any 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.”

All written comments will be posted online at the Secretary of State website: [www.sos.state.co.us/pubs/rule\\_making/hearings/2018/ElectionsRulesHearing20180709.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2018/ElectionsRulesHearing20180709.html).

We will redact contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor.

**VI. Broadcast and audio recording of hearing**

If you are unable to attend the hearing, you may listen to the live broadcast from the Aspen Conference Room online at [www.sos.state.co.us/pubs/info\\_center/audioBroadcasts.html](http://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html). After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

**VII. Office contact**

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at [SoS.Rulemaking@sos.state.co.us](mailto:SoS.Rulemaking@sos.state.co.us) or (303) 894-2200 ext. 6329.

Dated this 24<sup>th</sup> Day of May, 2018.



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Suzanne Staiert  
Deputy Secretary of State

For

Wayne W. Williams  
Colorado Secretary of State





## **Draft Statement of Basis, Purpose, and Specific Statutory Authority**

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

**May 24, 2018**

### **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,<sup>1</sup> improve elections administration in Colorado, and increase the transparency and security of the election process.

On April 25, 2018, 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](http://www.sos.state.co.us/pubs/rule_making/ruleComments.html) and are incorporated into the official rulemaking record.

Specific proposed changes include:

- Amendments to Rule 2.3.2(a) clarify acceptable government documents for identification. Specifically, new subsection (4) provides that a government document includes written correspondence from the county sheriff or his or her designee to the county clerk indicating that the elector is confined in a county jail or detention facility
- Renumbering and permanent adoption of temporary Rule 2.18, adopted on 5/16/18, as New Rule 2.9. The rule concerns registered electors absent from the state and is necessary to ensure uniform application of the law throughout the state regarding residency for voter registration purposes.
- New Rule 2.19 establishes rules concerning registration of electors who are confined in a county jail or detention facility.
- New Rule 7.5 establishes requirements concerning ballot transmission to county jails and detention facilities.

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<sup>1</sup> 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.

- Renumbering and permanent adoption of temporary Rule 7.7.5, adopted on 4/25/18, as New Rule 7.8.5. The rule is necessary to ensure uniform application of the law throughout the state regarding mail ballot cure procedures.

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.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

- 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.”
- 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.”
- 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).”

# Preliminary Draft of Proposed Rules

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

May 25, 2018

### Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.<sup>1</sup>

This is a preliminary draft of the proposed rules that may be revised before the July 9, 2018 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **July 3, 2018**.<sup>2</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                               |
| <i>Italic blue font text</i> | Annotations                             |

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

2 *Amendments to Rule 2.3.2 concerning acceptable identification:*

3           2.3.2 As used in section 1-1-104(19.5), C.R.S., government document means a document  
4           issued by a city, county, state, or federal government.

5           (a) A government document includes:

6                           (4) WRITTEN CORRESPONDENCE FROM THE COUNTY SHERIFF OR HIS OR HER  
7                           DESIGNEE TO THE COUNTY CLERK INDICATING THAT THE ELECTOR IS  
8                           CONFINED IN A COUNTY JAIL OR DETENTION FACILITY.

9 *New Rule 2.9 concerning registered electors absent from the state (proposed renumbering and permanent*  
10 *adoption of temporary Rule 2.18, adopted on 5/16/18):*

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<sup>1</sup> Sections 24-4-103(2.5) and (3)(a), C.R.S. (2017). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

<sup>2</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 2.9 REGISTERED ELECTORS ABSENT FROM THE STATE

2 2.9.1 A REGISTERED ELECTOR WHO IS ABSENT FROM THE STATE BUT WHO MAINTAINS  
3 COLORADO RESIDENCY IS ELIGIBLE TO BE REGISTERED AND TO VOTE WITHOUT HOLDING  
4 A PROPERTY INTEREST IN A FIXED HABITATION IN THE STATE.

5 2.9.2 AN ABSENT ELECTOR'S VOTER REGISTRATION ADDRESS IS THE ELECTOR'S LAST  
6 RESIDENCE ADDRESS OR THE ADDRESS THE ELECTOR INTENDS TO RETURN TO IN THE  
7 STATE.

8 *Re-numbering of Rules 2.9 through 2.17 to 2.10 through 2.18*

9 *New Rule 2.19 concerning voter registration at county jails:*

10 2.19 REGISTRATION OF ELECTORS WHO ARE CONFINED IN A COUNTY JAIL OR DETENTION FACILITY

11 2.19.1 BEFORE EACH ELECTION, BEGINNING WITH THE 2018 GENERAL ELECTION, THE COUNTY  
12 CLERK MUST MAKE EFFORTS TO COORDINATE WITH THE SHERIFF OR HIS OR HER  
13 DESIGNEE AT EACH COUNTY JAIL OR DETENTION CENTER IN THE COUNTY TO PROVIDE  
14 CONFINED ELIGIBLE INDIVIDUALS AN OPPORTUNITY TO REGISTER TO VOTE.

15 *Cross-reference updates:*

16 7.2.15 The mail ballot return envelope for each unaffiliated voter in a primary election may  
17 provide a means for the county to determine, before opening the envelope, which party's  
18 primary election ballot the elector returned. If the mail ballot return envelope does not  
19 provide such a means, or the county cannot determine which party's ballot the elector  
20 returned before opening the envelope, the county must follow the process outlined in  
21 Rule ~~7.5.13~~-7.6.13. The county's determination under this Rule may not rely solely on a  
22 voter's self-reported selection (for example, a checkbox).

23 7.4.6 Upon receipt of the ballot, election judges must verify the signature on the affidavit under  
24 Rule ~~7.8~~-7.9. After the signature on the affidavit has been verified, a bipartisan team of  
25 election judges must duplicate the ballot following the procedures outlined in Rule 18.  
26 Duplicating judges must not reveal how the elector has cast his or her ballot.

27 *[Current Rule 7.5.1(d), renumbered to Rule 7.6.1(d)]*

28 (d) The minimum number of drop-off locations must be open during reasonable  
29 business hours as defined in Rule ~~7.9.1(a)~~-7.10.1(A) and from 7:00 a.m. through  
30 7:00 p.m. on election day.

31 *New Rule 7.5 concerning ballot transmission to county jails and detention facilities:*

32 7.5 BEGINNING IN THE 2018 GENERAL ELECTION, THE COUNTY CLERK MUST MAKE EFFORTS TO  
33 COORDINATE WITH THE SHERIFF OR HIS OR HER DESIGNEE AT EACH COUNTY JAIL OR DETENTION  
34 CENTER TO FACILITATE VOTING FOR ALL CONFINED ELIGIBLE ELECTORS.

35 7.5.1 THE COUNTY CLERK MUST DESCRIBE THE FOLLOWING IN ITS MAIL BALLOT PLAN:

1 (A) HOW THE COUNTY CLERK WILL PROVIDE EACH COUNTY JAIL OR DETENTION  
2 CENTER VOTER INFORMATION MATERIALS CONSISTENT WITH MATERIALS  
3 PROVIDED TO NON-CONFINED ELIGIBLE ELECTORS, INCLUDING AT A MINIMUM A  
4 LIST OF ACCEPTABLE FORMS OF IDENTIFICATION UNDER SECTION 1-1-104(19.5),  
5 C.R.S., AND THE INFORMATION REQUIRED BY SECTIONS 1-40-124.5 AND 1-40-  
6 125, C.R.S.

7 (B) THE PROCESS BY WHICH THE COUNTY CLERK AND THE SHERIFF OR HIS OR HER  
8 DESIGNEE WILL FACILITATE VOTER REGISTRATION, AND DELIVERY AND  
9 RETRIEVAL OF MAIL BALLOTS FOR CONFINED ELIGIBLE ELECTORS.

10 *Re-numbering of Rules 7.5 through 7.7 to 7.6 and 7.8*

11 *Cross-reference updates:*

12 ~~7.5.5~~7.6.5 The county clerk may request a waiver from the Secretary of State for remote drop off  
13 locations, exempting them from the ballot collection requirements in Rule ~~7.5.4~~7.6.4. If  
14 the Secretary of State grants the waiver:

15 *[Current Rule 7.5.14(a), renumbered to Rule 7.6.14(a)]*

16 (a) If the bipartisan team determines the elector voted in only one party's primary  
17 election, the election judge with access to the envelope must record the party  
18 chosen in SCORE under Rule ~~7.5.13(e)~~7.6.13(C) and the ballot must be counted.  
19 The county must retain any unvoted ballot as an election record.

20 ~~7.7.1~~7.8.1 If a mail or provisional ballot return envelope lacks a signature, the county clerk must  
21 follow the procedures for discrepant signatures outlined in section 1-7.5-107.3(2)(a),  
22 C.R.S., except as provided in Rule ~~7.7.4~~7.8.4.

23 *New Rule 7.8.5 (proposed renumbering and permanent adoption of temporary Rule 7.7.5, adopted on*  
24 *4/25/18):*

25 7.8.5 THE COUNTY CLERK MUST ACCEPT ANY COMPLETED CURE FORM FOR A MISSING OR  
26 DISCREPANT SIGNATURE, OR A MISSING ID, THAT THE COUNTY RECEIVES BY 11:59 PM  
27 MT ON THE EIGHTH DAY AFTER THE ELECTION.

28 *Re-numbering of Rules 7.7 through 7.16 to 7.9 through 7.17*

29 *Cross-reference updates:*

30 ~~7.9.10~~7.10.10 Each county required to measure under Rule ~~7.9.9~~7.10.9 must report its results  
31 to the Secretary of State no later than 30 days after the election.

32 ~~7.11.3~~7.12.3 Every voter service and polling center designated by the county clerk must meet  
33 the minimum security procedures for transmitting voter registration data as outlined in  
34 section 1-5-102.9, C.R.S., and Rule ~~2.16~~2.17.

35 16.2.6 Upon receipt of a voted ballot sent by electronic transmission, the county clerk must  
36 verify the elector's signature in accordance with Rule ~~7.8~~7.9. After the affidavit has been

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verified, a bipartisan team of judges must duplicate the ballot. Duplicating judges must not reveal how the elector voted.