



## Notice of Proposed Rulemaking

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

Date of notice: May 15, 2020

Date and time of public hearing: June 15, 2020 at 9:00 a.m.

#### 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 June 15, 2020 at 9:00 a.m. **This meeting will be conducted via webinar; no in-person option is available.** Details regarding how to join the webinar and testify during the hearing are outlined in section VI of this notice.

#### 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, adopted on May 8, 2020. The Secretary is also considering rule revisions necessary to ensure the proper administration of elections and risk-limiting audits statewide; certify elections equipment; ensure proper administration of HB 19-1278 and mail ballot elections statewide; ensure proper administration of logic and accuracy testing; ensure proper issuance of provisional ballots; eliminate obsolete provisions; organize existing rules for clarity; simplify the language of existing rules; 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.

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<sup>1</sup> Section 24-4-103(3)(a), C.R.S. (2019).

<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., (2019), 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 1-1.5-104(1)(e), C.R.S., (2019), which gives the Secretary of State the power to “[p]romulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA.”
- Section 1-5-601.5, C.R.S., (2019), which allows the Secretary of State to “require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002.”
- Section 1-5-613(1), C.R.S., (2019), which requires the Secretary of State to “adopt uniform rules...for the purchase and sale of voting equipment in the state.”
- Section 1-5-616, C.R.S., (2019), which requires the Secretary of State to adopt rules “that establish minimum standards for electronic and electromechanical voting systems.”
- Section 1-7-510(6), C.R.S., (2019), which requires the Secretary of State to promulgate rules to implement the section regarding election setup records.
- Section 1-7-515(4), C.R.S., (2019), which requires the Secretary of State to promulgate rules “necessary to implement and administer,” risk-limiting audits.
- Section 1-7.5-106(2), C.R.S., (2019), which allows the Secretary of State to adopt rules governing procedures and forms necessary to implement” mail ballot elections.
- Section 1-8.5-112, C.R.S., (2019), which requires the Secretary of State to adopt rules governing the issuance of provisional ballots statewide.

### **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/2020/ElectionsRulesHearing20200615.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2020/ElectionsRulesHearing20200615.html).

You may also contact our office to request an 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 June 10, 2020.

## **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. You may submit written comments to [SoS.Rulemaking@sos.state.co.us](mailto:SoS.Rulemaking@sos.state.co.us) any time before and during the hearing. Additional opportunity to comment in writing will be announced at the conclusion of the hearing. Information regarding how to testify during the webinar hearing is providing in section VI of this notice.

As soon as possible after receipt, written comments will be posted online at the Secretary of State website:

[www.sos.state.co.us/pubs/rule\\_making/hearings/2020/ElectionsRulesHearing20200615.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2020/ElectionsRulesHearing20200615.html).

We will redact apparent personal contact information, including home address, email address, and telephone number(s), from submissions before posting the information online, unless otherwise directed by the contributor. All written comments will be added to the official rulemaking record.

## **VI. Webinar and audio recording of hearing**

### *Register for the webinar hearing*

To join and listen to the hearing, you must register for the webinar online: <https://attendee.gotowebinar.com/register/2301283741070772493>.

When you register, you must provide your full name and email address. Please provide additional contact information including your address and telephone number. You may also provide your job title and organization. Lastly, indicate whether you plan to testify during the hearing. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

### *Webinar hearing procedures*

At the beginning of the webinar, we will mute all public participants. After the introduction and a brief summary of the rulemaking, we will open the hearing to testimony as follows:

- Referencing registration records, we will identify and individually unmute participants who indicated that they plan to testify during the hearing.

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<sup>4</sup> Section 24-4-103(3)(a), C.R.S. (2019). “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.”

- When we exhaust the list, we will ask whether any additional attendees wish to testify. Attendees may raise/lower their hand by clicking the icon in their control panel.
- To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

Before the hearing concludes, we will announce an additional opportunity to submit written comments and the associated deadline.

#### *Webinar audio requirements*

**Please be advised:** we strongly encourage attendees to join the webinar through their computer even if they use their telephone to dial in for audio. To testify during the hearing, it is best to use your computer microphone and speakers or a headset. As outlined above, we will first receive testimony from attendees whose registration indicates that they plan to provide testimony and then we will offer attendees the option to raise their hand. If you access the webinar only by telephone, you may not appear in our webinar attendee list meaning we may not be able to unmute you. Moreover, the raise your hand feature is only available to attendees who access the webinar by computer.

#### *Audio recording*

After the hearing concludes, a recording will be available on our audio broadcasts page here: [https://www.sos.state.co.us/pubs/info\\_center/audioBroadcasts.html](https://www.sos.state.co.us/pubs/info_center/audioBroadcasts.html).

## **VII. Office contact**

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

Dated this 15<sup>th</sup> Day of May, 2020.

Ian Rayder  
Deputy Secretary of State

For

Jena Griswold  
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 15, 2020**

### **I. Basis and Purpose**

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The Secretary is considering 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.

Specific proposed changes include:

- Permanent adoption of temporary New Rule 1.1.17 that defines “de minimis change” to establish minimum standards for the certification of electronic voting systems in the state.
- Amendments to Rule 6.4.1 to clarify existing rules regarding signature verification.
- Permanent adoption of temporary amendments to Rule 7.2.3 to ensure proper administration of mail ballot elections statewide.
- Permanent adoption of temporary New Rule 7.2.17 to ensure proper administration of mail ballot elections statewide.
- Permanent adoption of temporary New Rule 7.9.11 to implement and ensure proper administration of HB 19-1278 and mail ballot elections statewide.
- Permanent adoption of temporary New Rule 7.17 to ensure proper administration of mail ballot elections statewide, specifically in regards to the operation of voter service and polling centers.
- Permanent adoption of temporary amendments to Rule 11.3.2 further prescribing the manner of performing logic and accuracy testing.

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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.

- Amendments to Rule 17.1.2 to further implement HB 19-1278 and to ensure that the HAVA requirement that provisional ballots be issued to voter’s whose eligibility cannot be immediately determined is followed.
- New Rule 17.1.4 to ensure that the HAVA requirement that provisional ballots be issued to voter’s whose eligibility cannot be immediately determined is followed.
- Permanent adoption of temporary New Rule 21.1.1(c) that clarifies standards for certification of changes to voting systems that are de minimis in nature.
- Permanent adoption of temporary amendments to Rule 25.2.2 further prescribing the manner of performing risk-limiting audits statewide.

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.

Statements above concerning proposed permanent adoption of temporary rules relate to the Secretary of State’s May 8, 2020 temporary adoption of election rules (e-filed under CCR tracking #2020-00330).

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2019), 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 1-1.5-104(1)(e), C.R.S., (2019), which gives the Secretary of State the power to “[p]romulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA.”
- Section 1-5-601.5, C.R.S., (2019), which allows the Secretary of State to “require by rule that voting systems and voting equipment satisfy voting systems standards promulgated after January 1, 2008, by the federal election assistance commission as long as such standards meet or exceed those promulgated in 2002.”
- Section 1-5-613(1), C.R.S., (2019), which requires the Secretary of State to “adopt uniform rules...for the purchase and sale of voting equipment in the state.”
- Section 1-5-616, C.R.S., (2019), which requires the Secretary of State to adopt rules “that establish minimum standards for electronic and electromechanical voting systems.”
- Section 1-7-510(6), C.R.S., (2019), which requires the Secretary of State to promulgate rules to implement the section regarding election setup records.

- Section 1-7-515 (4), C.R.S., (2019), which requires the Secretary of State to promulgate rules “necessary to implement and administer,” risk-limiting audits.
- Section 1-7.5-106(2), C.R.S., (2019), which allows the Secretary of State to adopt rules governing procedures and forms necessary to implement” mail ballot elections.
- Section 1-8.5-112, C.R.S., (2019), which requires the Secretary of State to adopt rules governing the issuance of provisional ballots statewide.