

Preliminary Draft of Proposed Rules

Office of the Colorado Secretary of State Rules Concerning the Electronic Recording Technology Grant Program 8 CCR 1505-10

January 29, 2021

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.¹

This is a preliminary draft of the proposed rules that may be revised before the March 2, 2021 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 **February 25, 2021**.²

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

8 CCR 1505-10 is repealed as follows:

Rule 1 – Document Filing Reporting

~~1.1 Quarterly Reporting. No later than the 20th of April, July, October, and January, each county clerk and recorder shall transmit to the Secretary of State, on a form prescribed by the Secretary of State, an accounting of all amounts retained by the county clerk and recorder during the preceding quarter pursuant to the \$1.00 filing surcharge imposed pursuant to section 30-10-421, C.R.S., together with a description of what this surcharge was spent on during the preceding quarter.~~

Rule 2 – Grant Application Process

~~2.1 Definitions~~

- ~~a. “Electronic Recording (eRecording)” — Electronic submission of documents from a submitter, either government or private sector, to the County Clerk and Recorder to be recorded.~~

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2020). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2020). “[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.”

b. ~~“Readiness Assessment”~~— A product submitted by the County Clerk and Recorder to determine the basis of need for grant funds to be used in the project.

2.2 ~~The Grant Program will be a complete implementation as set forth within the eRecording Four-Step Implementation Process (“EFSIP”), which is defined under the following administrative components:~~

a. ~~Program Launch~~—Program education, formal notification to counties, and decision by counties to proceed

b. ~~County Application~~—Counties fulfill the requirements of the Application which include: Readiness Assessment, Project Plan and Budget, and Application

c. ~~Evaluation and Award~~—Materials submitted from the county are evaluated and scored for a determination of award amount and recommendations to proceed

d. ~~Measurement and Management~~—The program will provide an opportunity to manage accountability for each county requesting funds and allows a way for counties to gather data to measure the overall success of the project.

2.3 ~~Rules Concerning the Grant Application Process. All submissions must use the approved Grant Application forms. Grant Application forms and submittal information will be available from the Secretary of State’s office. The Grant Application Process shall include the following steps:~~

a. ~~Readiness Assessment to include the following:~~

1. ~~Technical Assessment~~—Specifically describe the type of technology to be used for electronic filing in your county and how it will interface with current technology used in the county.

2. ~~Submitters Level of Interest~~—This section indicates the level of interest of title companies, banks and any other private sector organizations, Treasurer/Public Trustee, and eRecording software providers.

3. ~~County understanding and support of the project~~—This portion of the application addresses the necessary involvement of IT, Finance, County Commissioners, and any other internal stakeholders.

4. ~~Suitability for eRecording~~—The county will evaluate the cost effectiveness of eRecording for their office

5. ~~eRecording Cost Estimation~~—A concise description of the electronic filing project for which funding is being requested. This should include the amount being requested from the Advisory Panel, which includes a line item budget for the project including specific capital costs and expenses.

6. ~~Pro-Forma Funds Estimate~~—Current retained funds (House Bill 02-1119), estimate of new county funds (Senate Bill 04-219), estimated county supplemental funds (County General Fund).

7. ~~Process Changes~~—Personnel required, technical support, on-going maintenance and support for the eRecording infrastructure that is being implemented.

8. ~~Program objectives~~—Five-year goals, implementation strategy, and transaction estimates.

~~2.4 Submitting Applications to the Secretary of State.~~

- ~~a. The Technology Panel will determine the deadlines for applications.~~
- ~~b. The County Clerk and Recorder's office should submit 7 complete copies of the applications and attachments if submitted in printed paper form. Applications may also be submitted via e-mail, so long as all materials are submitted electronically as a complete package. The Panel will not accept faxed applications due to the potential of readability problems.~~
- ~~c. The Technology Panel will not accept lengthy proposals from vendors in lieu of the Funding application.~~

~~2.5 Timetable for Funding Responses. A preliminary response will be made to any county submitting an application to inform them that the Technology Panel has received their request. Applicants should allow up to two months before expecting a final decision from the Technology Panel. If an application is returned for more information or further clarification, the returned application will be expedited based upon current volume of applications, and the clock will be restarted allowing the Advisory Panel a two-month window for final decision. Direct contact regarding the status of the application process should not be made with the Technology Panel Member unless otherwise directed.~~

~~2.6 Resubmission of Funding Applications. The Advisory Panel will accept resubmitted Funding applications.~~

~~2.7 Evaluation Criteria. The panel will more favorably consider proposals that use existing technology with a proven track record ahead of unproven technologies. In addition, the Advisory Panel will determine their decision based on the following qualifications:~~

- ~~a. Education of county commissioners is a priority in the process of Grant Administration Program awards.~~
- ~~b. The application of technology and data standards ensure a more scaleable infrastructure and a stronger return on investment overall.~~
- ~~c. Counties are advised to buy versus build when evaluating technology solutions.~~
- ~~d. Funding awards are based upon a solid plan that represents a business-driven technology strategy addressing county business problems first.~~
- ~~e. County participation in funding eRecording demonstrates a commitment to the success of the implementation.~~
- ~~f. Collaboration between counties and their submitter community indicate a greater chance for the success of eRecording. A submitter who can begin to produce high volume of electronic documents is the Treasurer/Public Trustee. This relationship should be explored in order to build a strong application and to enhance and expedite the process of building critical mass.~~
- ~~g. All counties implementing eRecording will make process changes and must prepare their organization for these changes.~~
- ~~h. When applying for grant funds, counties must assess their overall readiness for eRecording, the true demand at the time for eRecording, and the county's ability to fund ongoing maintenance and licensing fees into the future.~~

~~i. No application will be approved that requests enhancement to systems or processes that are outside the input side of recording as defined in the EFSIP, except to the extent that funding is required for "necessary improvements to the core filing system", as defined in 30-10-421(3)(b)(II), C.R.S.~~

~~j. Counties will show a breakdown of funding based upon the following:~~

~~1. Use of retained funds under House Bill 02-1119~~

~~2. Use of new generated funds under Senate Bill 04-219~~

~~3. Use of county general funds.~~

~~2.8 Conflicts of Interest Reviewing Applications by Technology Panel Members. Panel members reviewing applications from counties they represent must withdraw themselves from reviewing process in an effort to avoid conflicts of interest and possible higher rating for counties that are represented by the Technology Panel.~~

~~2.9 Notification of Funding Approval. If the county's proposal is approved for funding, a letter will notify the county formally within two weeks after the Technology Panel meeting at which the proposal was considered.~~