



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

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

August 3, 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,¹ improve elections administration in Colorado, and increase the transparency and security of the election process.

Specific proposed changes include:

- Amendments to Rule 1.1.4 to provide uniform terminology in rules.
- Amendments to Rule 1.1.6 to provide uniform terminology in rules.
- Amendments to Rule 1.1.7 to provide uniform terminology in rules.
- Amendments to Rule 1.1.25 to provide uniform terminology in rules.
- Amendments to rule 1.1.43 to establish uniformity in administration of current law.
- Amendments to Rule 2.1 to establish uniformity in administration of current law.
- New Rule 2.1.6 to provide for uniform administration of current law.
- Amendments to Rule 2.2 to implement changes due to SB 18-233.
- Amendments to Rule 2.8 to implement changes due to SB 18-233.
- Renumbering of Rules 2.9 through 2.17.
- Update cross references in Rule 2.16.2.

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.

- New Rule 2.20 to establish uniformity in administration of current law.
- Amendments to Rule 4.7.1 concern the form that a candidate must submit to the Secretary of State to receive the Congressional Term Limits Declaration.
- New Rule 4.8.3 to establish uniformity in the administration of current law.
- Amendments to Rule 7.1.1 to implement changes due to SB 18-233.
- Repeal Rule 7.2.7 to implement changes due to SB 18-233.
- Update cross references in Rules 7.2.11 and 7.2.14.
- Repeal Rule 7.3 to implement changes due to SB 18-233. Update cross references in Rules 7.3.6 and 7.4.1
- Amendments to Rule 7.4.5 to establish uniformity in administration of current law.
- Amendments to Rule 7.4.8 and 7.4.13 to implement changes due to SB 18-233.
- Updated cross references in 7.4.14, 7.6.1, 7.8.10, 7.10.3, 8.7.4, and 10.6.2.
- Amendments to Rule 10.13.3 to establish uniformity in terminology in rules.
- Amendments to Rule 11.2.3 to establish uniformity in administration of current law.
- Amendments to Rule 11.3.1(a) to establish uniformity in administration of current law.
- Update cross reference in Rule 11.3.2(c).
- Amendments to Rule 11.3.2(d) and (e) to establish uniformity in administration of current law and update cross references.
- Amendments to Rules 11.4, 11.6, and 11.7 to establish uniform administration of current law.
- Amendments to Rules 11.8.3 and 11.8.4 to establish uniform administration of current law.
- Updates to numbering and cross references in Rules 11.8.5, 11.8.6, and 11.8.7.
- Amendments to Rule 11.8.8 to establish uniform administration of current law.
- Updates to cross references in Rule 11.10.1 and amendments to establish uniform administration of current law.
- Amendments to Rule 11.11 to establish uniform administration of current law.

- Amendments to Rules 14.1.2 and 14.5.5 to establish uniform terminology.
- Updated cross reference in Rule 16.2.6.
- Amendments to Rule 19 to establish uniform administration of current law.
- Updated terminology and cross reference in Rule 20.2.2.
- Amendments to Rules 20.3 and 20.4 to establish uniform administration of current law.
- Amendments to Rule 20.5.2 to establish uniform administration of current law.
- New Rule 20.5.3 to establish uniform administration of law regarding voting system security.
- Amendment to Rule 20.6 to establish uniform terminology.
- New Rule 20.7 to establish uniform administration of law regarding voting system security.
- Amendments and updated cross references in Rules 20.8, 20.9, 20.10, 20.12, 20.13, 20.14, 20.15, and 20.16 to establish uniform administration of current law.
- Amendments to Rules 20.18.5 and 20.19.3 to establish uniform terminology.
- Repeal Rule 20.20 to address outdated technology.
- Amendments to Rules 21.3.6, 21.4.4, 21.4.5, 21.4.7(e), 21.4.9, and 21.10(d)(3) to establish uniform administration of current law.
- Repeal Rules 21.4.11 and 21.4.12 to address outdated technology.
- Amendments to Rule 21.4.11 – 21.4.14 to establish uniform administration of current law.
- Amendments to Rule 21.5 to provide clarity to current rules.
- Amendments to Rule 21.5.3 to establish uniform administration of current law.
- Amendments to Rule 21.6 to provide clarity to current rules.
- Amendments to Rule 21.10.12 to provide clarity to current rules.
- Amendments to Rule 25.2.2 to establish uniform terminology.
- New Rule 26 to provide guidance on ranked voting methods in accordance with section 1-7-1004, C.R.S.

On June 15, 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. Additional comments received during the formal rulemaking are available online at: https://www.sos.state.co.us/pubs/rule_making/hearings/2018/ElectionsRulesHearing20180808.html. All comments are incorporated into the official rulemaking record.

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 1-1-109(3), C.R.S., (2017), which authorizes the Secretary of State to promulgate rules “as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify what constitutes approved and acceptable forms certified for use by eligible voters, campaigns, and voter registration drives and acceptance by election officials and any rules necessary to establish uniformity regarding the use of forms.”
- Section 1-1.5-104(1)(e), C.R.S., (2017), 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., (2017), 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 1-5-608.5(3)(b), C.R.S., (2017), which permits the Secretary of State to “promulgate conditions of use in connection with the use by political subdivisions of electronic and electromechanical voting systems as may be appropriate to mitigate deficiencies identified in the certification process.”
- Section 1-5-613(1), C.R.S., (2017), 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., (2017), which requires the Secretary of State to adopt rules “that establish minimum standards for electronic and electromechanical voting systems.”

- Section 1-5-623(4), C.R.S., (2017), which requires the Secretary of State to promulgate rules “as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components.”
- Section 1-7-509(6), C.R.S., (2017), which requires the Secretary of State to promulgate rules “prescribing the manner of performing the logic and accuracy testing required by this section.”
- Section 1-7-510(6), C.R.S., (2017), which requires the Secretary of State to promulgate rules to implement the section regarding election setup records.
- Section 1-7-512(2), C.R.S., (2017), which requires the Secretary of State to promulgate rules “establishing procedures for voting systems providers to comply with this section.”
- Section 1-7-513(2), C.R.S., (2017), which requires the Secretary of State to promulgate rules “prescribing the manner of maintenance of records required by this section” regarding voting equipment.
- Section 1-7-1004, C.R.S., (2017), requiring the Secretary of State to adopt rules consistent with section 1-7-1003, C.R.S., “on the conduct of elections using ranked voting methods. The rules shall prescribe the methods and procedures for tabulating, auditing, and reporting results in an election using a ranked voting method.”
- Section 1-7.5-106(2), C.R.S., (2017), which allows the Secretary of State to adopt rules governing procedures and forms necessary to implement” article 7.5 of Title 1.