



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

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

**July 26, 2019**

### **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.

Specific proposed changes include:

- Amendments to Rule 1.1.26 to provide uniform terminology in rule and to ensure proper administration and implementation of SB 19-202.
- Amendments to Rule 1.1.41 to remove outdated references in rule.
- Repeal of Rule 1.1.42 to remove a defined term that is not used elsewhere in the rule.
- Renumbering of Rules 1.1.43 to Rules 1.1.51.
- Permanent adoption of amendments to Rule 2.10, temporarily adopted on June 28, 2019, to implement and ensure proper administration of HB 19-1266.
- Amendments to Rule 2.17.2 to update a cross-reference.
- Amendments to Rule 2.19 to remove an outdated reference in rule.
- Amendments to Rule 4.1.3 to provide uniform terminology in rule.
- New Rule 4.5.2(f) to establish uniformity in the administration of current law.

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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 4.8.4, including New Rule 4.8.4(c), to implement and ensure proper administration of Proposition 107 (2016).
- Amendments to Rule 4.8.5 to remove an outdated reference in rule and to establish uniformity in the administration of current law.
- Amendments to Rule 5.3 to provide uniform terminology in rule.
- Amendments to Rule 6.1.2 to implement and ensure proper administration of HB 19-1278.
- Amendments to Rule 6.4 to establish uniformity in the administration of current law.
- Amendments to Rule 7.1 to provide uniform terminology in rule and to implement and ensure proper administration of HB 19-1278.
- Amendments to Rule 7.2.7 to provide uniform terminology in rule.
- Amendments to Rule 7.2.9 to implement and ensure proper administration of Proposition 107 (2016).
- Amendments to Rule 7.2.14 to update a cross-reference.
- Amendments to Rule 7.4 to remove an outdated reference in rule.
- Amendments to Rule 7.5.1 to provide uniform terminology in rule, to implement and ensure proper administration of HB 19-1278, and to establish uniformity in the administration of current law.
- New Rule 7.5.3 to implement and ensure proper administration of SB 19-202.
- Amendments to Rule 7.5.4 and 7.5.5 (renumbered as Rules 7.5.5 and 7.5.6) to provide uniform terminology in rule and to implement and ensure proper administration of HB 19-1278.
- Amendments to Rule 7.5.12 (renumbered as Rule 7.5.13) to establish uniformity in the administration of current law.
- New Rule 7.5.14 to establish uniformity in the administration of current law.
- Amendments to Rule 7.5.14 (renumbered as Rule 7.5.16) to update a cross-reference.
- Amendments to Rule 7.6.1 to implement and ensure proper administration of HB 19-1278 and SB 19-202.
- Amendments to Rule 7.7.1 to implement and ensure proper administration of SB 19-202.

- Amendments to Rule 7.7.3 to implement and ensure proper administration of HB 19-1278.
- Amendments to Rule 7.9.1 to implement and ensure proper administration of HB 19-1278.
- Repeal of current Rule 7.9.7 to implement and ensure proper administration of HB 19-1278. Renumbering subsequent rules.
- Amendments to Rule 7.9.9 and 7.9.10 (renumbered as Rules 7.9.8 and 7.9.9) to implement and ensure proper administration of HB 19-1278
- New Rule 7.9.10 to implement and ensure proper administration of HB 19-1278 and to establish uniformity in the administration of current law.
- Amendments to Rule 7.10 to establish uniformity in the administration of current law.
- Repeal of current Rule 7.12.3 to implement and ensure proper administration of HB 19-1278.
- Amendment to Rule 8.7.4 to update a cross-reference.
- Amendments to Rule 9.1.4 to implement and ensure proper administration of HB 19-1278
- Amendments to Rule 9.2 to fix grammar.
- Amendment to Rule 10.1.4 to provide uniform terminology in rule.
- Amendments to Rule 10.5.1 to implement and ensure proper administration of SB 19-202.
- Amendments to Rule 10.6.2 to update a cross reference.
- Amendments to Rule 11.2 to provide guidance on the maintenance of voting system records.
- Amendments to Rule 11.3.2. further prescribing the manner of performing logic and accuracy testing
- Amendments to Rule 11.4, including repeal of Current Rule 11.4.1 and addition of New Rule 11.4.2, to establish uniformity in the current administration of election law.
- Amendments to Rule 11.9 to establish uniformity in the current administration of election law.
- Amendments to Rules 15.1.4, 15.2, and 15.7 to implement and ensure proper administration of HB 19-1278.

- Amendments to Rules 17.1.2 and 17.2.9 to implement and ensure proper administration of HB 19-1278.
- Permanent adoption of amendments to Rule 17.2.10, temporarily adopted on June 28, 2019, to implement and ensure proper administration of HB 19-1266.
- Amendments to Rule 20 to establish security requirements for electromechanical voting systems. Renumbering rules as necessary.
- Amendments to Rules 21.1, 21.2, 21.3, and 21.4 to establish uniform administration of current law.
- New Rule 22.4 to prescribe the form attesting to an elector’s eligibility at a precinct caucus, as required by HB 19-1278.
- Amendments to Rule 26.4.2 to provide uniform terminology in rule.

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 June 17, 2019, 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). Additional comments received during the formal rulemaking are available online at: [www.sos.state.co.us/pubs/rule\\_making/hearings/2019/ElectionsRulesHearing20190731.html](http://www.sos.state.co.us/pubs/rule_making/hearings/2019/ElectionsRulesHearing20190731.html). All comments are incorporated into the official rulemaking record.

## **II. Rulemaking Authority**

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2018), 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., (2018), 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., (2018), 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 1-3-101 (b), C.R.S., (2019), which requires the Secretary of State to, “promulgate rules prescribing the form and content of [affidavit attesting to elector’s eligibility at precinct caucus].” (HB 19-1278)
- Section 1-5-601.5, C.R.S., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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., (2018), 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 1-7.5-105, C.R.S., (2019), allowing the Secretary of State to adopt rules concerning the “submission and approval of election plans.” (HB 19-1278)

- Section 1-7.5-106(2), C.R.S., (2018), which allows the Secretary of State to adopt rules governing procedures and forms necessary to implement” article 7.5 of Title 1.