



Colorado
Secretary of State

Rulemaking Hearing

Elections Rules

August 3, 2021



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Welcome

This is a public rulemaking hearing, held in accordance with the State Administrative Procedure Act, specifically section 24-4-103, Colorado Revised Statutes.

Observing best practices to help prevent the spread of COVID-19, we are hosting this rulemaking hearing via webinar. All public attendees and Secretary of State's staff members are joining remotely. Public participants will remain muted until the testimony phase of the hearing.



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Welcome

I am Christopher Beall, Deputy Secretary of State, and I am convening this hearing on behalf of the Secretary of State in accordance with the rulemaking notice that we issued on June 30, 2021. The notice also appeared in July 10, 2021 publication of the Colorado Register.

Several additional members of the Secretary of State staff are present today as panel members or otherwise facilitating this hearing.



Introductions

- Melissa Kessler, Legal and Policy Director, Administration Division
- Judd Choate, Director of Elections, Elections Division
- Hilary Rudy, Deputy Director of Elections, Elections Division
- Theresa Conley, Strategic Legal and Policy Manager, Elections Division
- Caleb Thornton, Legal Unit Manager, Elections Division
- Dwight Shellman, County Regulation & Support Manager, Elections Division
- Andrea Gyger, Department Rulemaking Program Manager, Administration Division
- Erika Friedlander, Senior Legal Advisor, Administration Division



Purpose of Hearing

The purpose of this hearing is to receive comments from the public on proposed amendments to the Secretary of State's Election Rules.

Proposed permanent rule revisions necessary to:

- Implement Senate Bills 21-188 and 21-250;
- Update petition review rules, signature verification review rules, and watcher and canvass rules; and
- Remove references to Direct Recording Electronic (DRE) voting devices and Voter Verified Paper Audit Trail (VVPAT) equipment because those systems are no longer in use in the State of Colorado.



Purpose of Hearing

Additionally, the Secretary proposes permanent adoption of temporary voting system rules that were adopted on an emergency basis on 6/17/2021.

Lastly, the draft also includes amendments to:

- Eliminate obsolete provisions;
- Organize and simplify existing rules for clarity; and
- Ensure consistency with Department rulemaking standards.



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Draft Information

The Secretary of State released a preliminary draft of proposed rules with the notice of rulemaking.

Documents relating to this rulemaking are available online:

- www.sos.state.co.us/pubs/rule_making/hearings/2021/ElectionsRulesHearing20210803.html

Webinar attachments:

- Notice of rulemaking
- Draft statement of basis
- Preliminary draft of proposed rules



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General Information

This is a formal rulemaking hearing that is broadcast live over the Internet. This meeting is audio-recorded, and all comments become a part of the official legal record.

For the record, our office has received written comments on the proposed rules. All comments received during the comment period become a part of the official record of this hearing and will be posted online, as soon as possible.



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Staff presentation

Before we commence the testimony phase of this hearing, the elections division has prepared a short presentation for the record to provide more detail concerning the proposed rule amendments.

Caleb Thornton, the legal unit manager in the Elections Division, will provide that presentation now, a copy of which will be made available online as soon possible after today's hearing.



Staff presentation

What changes have been proposed?

- Address topics affecting a variety of election administration procedures
- Includes:
 - Implementing legislation (SB 21-250 and SB 21-188)
 - Permanent adoption of temporary rules
 - Remove references to voting equipment no longer in use
 - Improve signature verification, petition review, and canvass and watcher procedures
 - Align rules with current practice in Colorado



Staff presentation

Permanent Adoption of Temporary Rules

Background

- The Help America Vote Act, a federal law passed in 2002, requires that every state certify and maintain electronic voting equipment.
- Colorado law also requires that those systems meet certain criteria for usability, accessibility, and security.
- Colorado statute requires the Secretary of State to create a certification process for that equipment. Bi-partisan Secretaries of State have overseen the adoption and implementation of this process.



Staff presentation

Permanent Adoption of Temporary Rules

Background

- On June 17, office temporarily adopted changes to Rule 20.5.4, 21.7.3, and 21.7.4.
- On June 30, these temporary changes were proposed as permanent changes.
- Adopting these rules on a permanent basis is one of the topics of this hearing.



Staff presentation

Maintaining Security from Certification through Use

Step 1: Certification

- A five-phase process that involves SOS staff, voting system vendor, and a voting system test lab accredited by the Election Assistance Commission.
- Includes application, review of technical data package by SOS staff, drafting of test plan, testing at a federally accredited lab, and test report/compliance review by SOS staff.
- Within 30 days of certification, all documentation not determined to be proprietary or security related is posted online.



Staff presentation

Maintaining Security from Certification through Use

Step 2: Accept Software, Create Golden Image

- Certified software sent straight from test lab to SOS career staff.
 - Software on one-write media
 - Hash values for all certified applications sent separately and used by SOS staff to verify contents at multiple points, including the time of receipt, prior to creating the Golden Images, and are later used to audit chain of custody in each county chosen for inspection.
- SOS staff work to create “Golden Images” of certified software.
 - “Golden Image” is a copy of a computer’s memory that can be placed directly onto the hard drive of another computer so that the new computer’s content directly mirrors the original computer’s content. Using an image minimizes the potential for error when upgrading county voting systems.
- SOS keeps Golden Images on an encrypted solid state drive, in a safe located in a limited access room and under video surveillance at SOS office along with an exact backup.



Staff presentation

Maintaining Security from Certification through Use

Step 3: Install Software (Trusted Build)

- Golden images are copied to encrypted drives which are then assigned to SOS staff. These drives are always kept in a locked case with an established chain of custody by using tamper evident seals, which are verified before and after any installation in a county by SOS staff and county staff.
- Installation at county done by SOS and voting system provider staff who have all undergone and passed a national background check.
 - SOS staff responsible for installation of images, ensuring security measures are intact, and hardening components.
 - Voting system staff, with training of Colorado election law and under the supervision of SOS and county staff, are onsite to ensure that the newly installed system performs properly.
- County acceptance testing
 - Go through steps normally taken in an election, but at a smaller scale.
 - Ensures that system is tabulating ballots correctly.



Staff presentation

Permanent Adoption of Temporary Rules

Why are we proposing these changes?

- Department and clerks have seen significant interest in turning over systems and components to unaccredited third parties.
- Gaps were identified in statute and rule regarding security and chain of custody requirements for voting systems and their components.



Staff presentation

Permanent Adoption of Temporary Rules

Why are we proposing these changes?

- It is crucial to the security of these systems that chain of custody not be broken.
 - SOS staff and counties take the steps outlined previously to ensure that ONLY software that has been certified is in use on all system components.
 - Turning over to unaccredited third parties outside of normal process breaks this chain of custody. Without ensuring chain of custody SOS office cannot continue to certify equipment.
- Department of Justice has indicated that failing to maintain the integrity of systems through chain of custody may violate Federal law.



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Public testimony & comment

All members of the public have an opportunity to submit any data, views, or arguments on amendments to the election rules, in writing and, if desired, orally.

To ensure that the hearing is prompt and efficient, and in light of the number of people who have registered in advance to give oral testimony, I ask that you limit your public comment testimony to three minutes in duration.



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Public testimony & comment

Please bear in mind that if you have already submitted written comments, those points are already part of the record. In addition, you may submit further written comments to our office after this hearing.

You need not repeat points you have already made in writing. In addition, if earlier speakers end up making the same point you wish to make, it is appropriate for you to indicate that you agree with the prior testimony given on a point rather than repeating the earlier testimony in full.



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Public testimony & comment

When you registered for this webinar, you answered a few questions. We will reference the registration records and individually unmute participants who indicated that they plan to testify during the hearing.

We will call on the pre-registered speakers in the order in which they registered for this hearing. After we have exhausted the list of pre-registered speakers, we will call upon attendees to use the “raise hand” tool to indicate that they wish to speak.



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Public testimony & comment

Please prepare, we will announce your name and state when you are unmuted. When you finish, we will mute you again and move down the list.

When you speak, please introduce yourself for the recording when you begin. If you represent an organization, please identify the organization.



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Public testimony & comment

When speaking about a particular provision in the proposed rules, it will assist the process if you say the rule number that you are addressing. The rule number is listed in the set of proposed rules that were published with the notice of this hearing.

If you do not know the rule number or do not have the set of proposed rules we are considering today, please simply state the general topic of the proposed rule that you wish to address.



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Public testimony & comment

Additionally, because this is a formal rulemaking hearing under the Colorado Administrative Procedures Act, please address your comments to me, the hearing officer, and refrain from directing questions to other panel members.

I should note finally that in the event the testimony during this hearing extends beyond 5 pm today, we will recess the hearing and resume for a continuation of the hearing on Thursday, that is August 5, 2021, at 1:30 pm.



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Public testimony & comment

In progress:

Testimony from individuals who indicated that they planned to testify when they registered for this webinar hearing



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Public testimony & comment

In progress:

Please “raise your hand” by clicking the icon in your control panel if you wish to testify



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Closing Statements & Adjournment

That concludes the public testimony portion of this hearing. Our office will take under advisement possible amendments to the Secretary of State's election rules.

The record will remain open through 5:00 p.m., Tuesday, August 10, 2021, to allow the submission of additional written comments.

Please email written comments to: sos.rulemaking@sos.state.co.us