



## Notice of Proposed Rulemaking

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

Date of notice: January 29, 2021

Date and time of public hearing: March 2, 2021 at 1:00 p.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 March 2, 2021 at 1:00 p.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

In accordance with Senate Bill 16-115 amendments to section 30-10-424, C.R.S., the Secretary is commencing permanent rulemaking to repeal the Rules Concerning the Electronic Recording Technology Grant Program<sup>2</sup>.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

### III. Statutory authority

The Secretary proposes the rule revision in accordance with the following statutory provisions:

- Senate Bill 16-115 amendments to section 30-10-424, C.R.S., repealed the Secretary of State's authority to promulgate rules necessary for the administration of section 30-10-421, C.R.S.

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<sup>1</sup> Section 24-4-103(3)(a), C.R.S. (2020).

<sup>2</sup> 8 CCR 1505-10.

#### **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:

[https://www.sos.state.co.us/pubs/rule\\_making/hearings/2021/ERT-RulesHearing20210302.html](https://www.sos.state.co.us/pubs/rule_making/hearings/2021/ERT-RulesHearing20210302.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>3</sup> if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by February 25, 2021.

#### **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:

[https://www.sos.state.co.us/pubs/rule\\_making/hearings/2021/ERT-RulesHearing20210302.html](https://www.sos.state.co.us/pubs/rule_making/hearings/2021/ERT-RulesHearing20210302.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/5414379397369039117>.

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.

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<sup>3</sup> Section 24-4-103(3)(a), C.R.S. (2020). "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."

*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.
- 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 29th Day of January, 2021.

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 Rules Concerning the Electronic Recording Technology Grant Program 8 CCR 1505-10**

**January 29, 2021**

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

This statement explains proposed repeal of Rules Concerning the Electronic Recording Technology Grant Program.<sup>1</sup>

In accordance with Senate Bill 16-115 amendments to section 30-10-424, C.R.S., the Secretary is commencing permanent rulemaking to repeal the Rules Concerning the Electronic Recording Technology Grant Program.

#### **II. Rulemaking Authority**

The statutory authority is as follows:

- Senate Bill 16-115 amendments to section 30-10-424, C.R.S., repealed the Secretary of State's authority to promulgate rules necessary for the administration of section 30-10-421, C.R.S.

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<sup>1</sup> 8 CCR 1505-10.

# 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.<sup>1</sup>

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**.<sup>2</sup>

Please note the following formatting key:

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

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*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.~~

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<sup>1</sup> 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.

<sup>2</sup> 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.~~