

Preliminary Draft of Proposed Rules

Colorado Department of State Election Rules 8 CCR 1505-1

January 31, 2023

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Department 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 7, 2023, 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 **March 2, 2023**.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

1 *Amendments to 8 CCR 1505-1 follow:*

2 *Amendments to Rule 10.5.1:*

3 10.5.1 The designated election official must provide the following information to the canvass
4 board:

5 (a) The name of each candidate, office, and votes received;

6 (b) The number or letter of each ballot issue or question and votes received;

7 (c) The total number of ballots cast;

8 (d) The number of provisional ballots cast, including totals for:

9 (1) Ballots accepted by each code; and

10 (2) Ballots rejected by each code.

11 (e) The number of mail ballots cast, including totals for:

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2022). 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. (2022). “[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.”

- 1 (1) Ballots accepted; and
- 2 (2) Ballots rejected by each code.
- 3 (f) The number of in-person ballots counted;
- 4 (g) The number of damaged and spoiled ballots.
- 5 (h) If applicable, the number of ballots cast in each party's primary election, including
- 6 totals for:
- 7 (1) Ballots accepted in each party's primary election by affiliated and
- 8 unaffiliated voters; and
- 9 (2) Ballots rejected by each code.
- 10 (i) IF APPLICABLE, THE RANKED VOTING RESULTS REPORT REQUIRED BY SECTION 1-7-
- 11 1003 (7)(A), C.R.S.

12 *Amendments to Rule 11.3.2(c), including the repeal and replacement of subsection (c)(1), subsections*

13 *(1)-(3), and necessary renumbering:*

- 14 (c) Preparing for the Logic and Accuracy Test
- 15 ~~(1) The county must prepare a test deck of ballots that includes every ballot~~
- 16 ~~style and, where applicable, precinct. The county test deck must include~~
- 17 ~~a sufficient number of ballots to mark every vote position for every~~
- 18 ~~contest including write-in candidates, allow for situations where a contest~~
- 19 ~~permits an elector to vote for two or more positions, and include~~
- 20 ~~overvotes and undervotes for each contest. The county test deck must~~
- 21 ~~include at least one write-in vote for each qualified write-in candidate so~~
- 22 ~~that all qualified write-in candidate names will appear in the LAT result~~
- 23 ~~uploaded to ENR as required by Rule 11.9.3. The county test deck must~~
- 24 ~~include ballots printed from a ballot on-demand printer if a ballot on-~~
- 25 ~~demand printer will be used in the upcoming election, and must include~~
- 26 ~~commercially printed ballots.~~
- 27 (1) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE PLURALITY
- 28 VOTING CONTEST MUST PREPARE A TEST DECK OF BALLOTS THAT:
- 29 (A) INCLUDES EVERY BALLOT STYLE AND, WHERE APPLICABLE, PRECINCT;
- 30 (B) INCLUDES A SUFFICIENT NUMBER OF BALLOTS TO MARK EVERY VOTE
- 31 POSITION FOR EVERY CONTEST, INCLUDING WRITE-IN CANDIDATES,
- 32 CONTESTS THAT PERMIT AN ELECTOR TO VOTE FOR TWO OR MORE
- 33 POSITIONS, AND OVERVOTES AND UNDERVOTES FOR EACH CONTEST;
- 34 (C) INCLUDES AT LEAST ONE WRITE-IN VOTE FOR EACH QUALIFIED WRITE-
- 35 IN CANDIDATE SO THAT ALL QUALIFIED WRITE-IN CANDIDATE NAMES
- 36 WILL APPEAR IN THE LAT RESULT UPLOADED TO ENR AS REQUIRED
- 37 BY RULE 11.9.3; AND
- 38 (D) LEAVES UNMARKED THE INSTANT RUNOFF VOTING CONTESTS IN THE
- 39 PLURALITY VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING

- 1 THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT
2 RUNOFF VOTING CONTESTS.
- 3 (2) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE INSTANT
4 RUNOFF VOTING CONTEST MUST PREPARE A SEPARATE COUNTY TEST DECK OF
5 BALLOTS FOR EACH INSTANT RUNOFF VOTING CONTEST THAT IS BEING
6 CONDUCTED. EACH TEST DECK MUST:
- 7 (A) INCLUDE A SUFFICIENT NUMBER OF BALLOTS TO MARK A VOTE
8 POSITION FOR EVERY CANDIDATE IN THE CONTEST IN THE FIRST
9 ROUND OF TABULATION, INCLUDING WRITE-IN CANDIDATES;
- 10 (B) INCLUDE AT LEAST ONE OVERVOTE, AT LEAST ONE SKIPPED RANKING,
11 AND AT LEAST ONE DUPLICATE RANKING;
- 12 (C) BE MARKED IN SUCH A MANNER SO THAT NO CANDIDATE RECEIVES A
13 MAJORITY OF THE FIRST RANKING VOTES IN THE FIRST ROUND;
- 14 (D) NOT BE MARKED IN A WAY THAT WILL REQUIRE A WINNING CANDIDATE
15 OR LOSING CANDIDATE TO BE DETERMINED BY LOT; AND
- 16 (E) LEAVE UNMARKED THE PLURALITY CONTESTS AND ANY ADDITIONAL
17 INSTANT RUNOFF VOTING CONTESTS IN EACH INSTANT RUNOFF
18 VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING THE
19 COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF
20 VOTING CONTESTS.
- 21 (3) ANY COUNTY TEST DECK MUST INCLUDE BALLOTS PRINTED FROM A BALLOT-ON-
22 DEMAND OR MOBILE BALLOT PRODUCTION PRINTER IF EITHER WILL BE USED IN
23 THE UPCOMING ELECTION AND MUST INCLUDE COMMERCIALY PRINTED
24 BALLOTS.
- 25 ~~(2)~~(4) The county must convene a Testing Board of one registered elector from
26 each of the major political parties. Testing Board members must be
27 registered to vote in the county and be sworn in as election judges.
- 28 ~~(3)~~(5) The county must provide at least 25 ballots that are clearly marked as
29 test ballots to each Testing Board member. A COUNTY CONDUCTING AN
30 INSTANT RUNOFF VOTING ELECTION MUST PROVIDE AT LEAST 10 ADDITIONAL
31 BALLOTS PER INSTANT RUNOFF VOTING CONTEST TO EACH TESTING BOARD
32 MEMBER TO MARK FOR EACH INSTANT RUNOFF VOTING CONTEST.
- 33 ~~(4)~~(6) Testing Board members must mark their test ballots following the
34 instructions printed on the ballots and retain a record of the tally. TESTING
35 BOARD MEMBERS MUST MARK INSTANT RUNOFF VOTING CONTESTS IN SUCH A
36 MANNER SO THAT NO CANDIDATE WILL RECEIVE A MAJORITY OF VOTES IN THE
37 FIRST ROUND OF TABULATION. A COUNTY CLERK MAY REMOVE A MEMBER OF
38 THE TESTING BOARD FROM THEIR DUTIES IF THAT MEMBER REFUSES TO MARK
39 THEIR BALLOT ACCORDING TO THE INSTRUCTIONS PRINTED ON THE BALLOT OR
40 AS REQUIRED BY THIS RULE.
- 41 ~~(5)~~(7) The Testing Board must test the ballots on each type of voting device
42 used in the election and each type of ballot including audio ballots.

43 *Amendments to Rule 11.3.2(d)(4), including necessary renumbering:*

- 1 (4) The Testing Board and designated election official must count the test
2 ballots as follows, as applicable:
- 3 (A) Ballot Scanners:
- 4 (i) The Testing Board must test at least one central count
5 ballot scanner.
- 6 (ii) The Testing Board must randomly select the machines
7 to test.
- 8 (iii) The Testing Board must count the board and county's
9 PLURALITY AND INSTANT RUNOFF VOTING test ballot batches
10 separately and generate reports to verify that the
11 machine count is identical to the predetermined tally.
- 12 (B) Ballot Marking Devices (BMDs):
- 13 (i) The Testing Board must randomly select and test at
14 least one BMD.
- 15 (ii) FOR PLURALITY VOTING CONTESTS, ~~At~~ AT least two
16 members of the Testing Board must use the selected
17 BMD to mark and print at least 25 ballots in the same
18 manner that the testing board member manually marked
19 his or her test ballots. At least two members of the
20 Testing Board must mark at least one of ~~his or her~~ THEIR
21 test ballots using the audio ballot playback and
22 accessible input devices.
- 23 (iii) FOR INSTANT RUNOFF VOTING CONTESTS, THE TESTING
24 BOARD MUST USE THE SELECTED BMD TO MARK AND PRINT
25 AT LEAST 10 BALLOTS IN THE SAME MANNER THAT THE
26 TESTING BOARD MEMBER MANUALLY MARKED THEIR TEST
27 BALLOTS. AT LEAST TWO MEMBERS OF THE TESTING BOARD
28 MUST MARK AT LEAST ONE OF THEIR TEST BALLOTS USING
29 THE AUDIO BALLOT PLAYBACK AND ACCESSIBLE INPUT
30 DEVICES.
- 31 (~~iii~~-iv) A Testing Board member or county election official must
32 separately scan and tabulate the test ballots marked with
33 and printed from the BMD on one central count or polling
34 location scanner, and generate a results report.
- 35 (~~iv~~-v) Each Testing Board member must verify that the results
36 report generated from the scanner exactly corresponds
37 to the testing board member's tally of the votes on the
38 manually marked paper ballots comprising ~~his or her~~
39 THEIR test ballots.

40 *Amendments to Rule 11.10.2, updating the email domain name:*

41 11.10.2 By email to:

42 ~~voting.systems@sos.state.co.us~~ VOTING.SYSTEMS@COLORADOSOS.GOV

1 *Amendments to Rule 26.8, regarding results reporting for a ranked voting election:*

2 26.8 Reporting results of a ranked voting election

3 26.8.1 The designated election official must ensure anonymity of a voter's rankings in the ballot
4 image report required by section 1-7-1003 (7)(a)(II), C.R.S. In precincts with ten or fewer
5 voters, the ballot image reports must be combined with another precinct.

6 26.8.2 ~~The comprehensive report required by section 1-7-1003 (7)(a)(III), C.R.S., must include~~
7 ~~results in the summary report by precinct.~~ FOR ANY RANKED VOTING ELECTION COORDINATED
8 WITH A COUNTY CLERK, THE COORDINATED ELECTION OFFICIAL MUST PUBLISH PRELIMINARY AND
9 FINAL RESULT REPORTS OF A RANKED VOTING ELECTION ON A WEBSITE. THE REPORTS MUST
10 COMPLY WITH SECTION 1-7-1003 (7)(A)(I) – (III), C.R.S. THE COORDINATED ELECTION OFFICIAL
11 MUST PROVIDE TO THE SECRETARY OF STATE THE WEBSITE WHERE RESULTS WILL BE POSTED NO
12 LATER THAN A WEEK BEFORE ELECTION DAY.

13 ~~26.8.3 The designated election official must submit the final reports required by section 1-7-1003~~
14 ~~(7)(a), C.R.S., to the Secretary of State no later than the twenty second day after the~~
15 ~~election.~~

16 *Amendments to Rule 26.9, regarding audits for a ranked voting election, including the repeal of Rules*
17 *26.9.1 to 26.9.6:*

18 26.9 Auditing a ranked voting election or race. The designated election official must audit each ranked
19 voting race ~~in accordance with this Rule~~ before the canvass board certifies official election results.

20 26.9.1 ~~In a coordinated election, if all winning candidates are determined in the first round of~~
21 ~~tabulation, the county clerk must conduct a risk-limiting audit under Rule 25.2. In all other~~
22 ~~cases, the audit board must verify the accuracy of the voting system's tabulation of the~~
23 ~~ranked voting contest by hand counting the votes in at least one precinct, or in one percent~~
24 ~~of all precincts in which the ranked voting contest appeared on the ballot, whichever is~~
25 ~~greater.~~

26 26.9.2 ~~No later than 15 days before election day, the designated election official must appoint an~~
27 ~~audit board.~~

28 (a) ~~In a coordinated election, the audit board must consist of electors nominated by~~
29 ~~the major political party county chairpersons, except as otherwise provided by an~~
30 ~~intergovernmental agreement.~~

31 (b) ~~In any other election, the members of the audit board must be nominated and~~
32 ~~appointed as provided by applicable law or ordinance.~~

33 (c) ~~At least two members of the canvass board must observe the audit, and members~~
34 ~~of the canvass board may serve as members of the audit board.~~

35 (d) ~~The designated election official, members of their staff, and other duly appointed~~
36 ~~election judges may assist the audit board in conducting the audit.~~

37 26.9.3 ~~The designated election official must convene a public meeting on the tenth day after~~
38 ~~election day to randomly select by lot the precinct or precincts to be audited. The~~
39 ~~designated election official must post notice of the public meeting at least seven calendar~~
40 ~~days in advance. The notice must include a description of the random selection lot method.~~
41 ~~The designated election official must give notice of and submit to the Secretary of State a~~

1 ~~list of the precincts randomly selected for audit by 5:00 p.m. on the tenth day after election~~
2 ~~day.~~

3 ~~26.9.4 Conducting the audit.~~

4 (a) ~~The audit board must locate and retrieve all ballot cards containing the ranked~~
5 ~~voting contest for the randomly selected precincts from their storage containers,~~
6 ~~and verify and maintain documented chain of custody of all voted ballots.~~

7 (b) ~~The audit board must first confirm that the number of ballot cards located and~~
8 ~~retrieved for the audit equals the number of ballot cards with the ranked voting~~
9 ~~contest tabulated in each randomly selected precinct.~~

10 (c) ~~For each ranked voting contest, the audit board must hand count the ballots cast,~~
11 ~~following the counting method set forth in Rule 26.5 for instant runoff voting~~
12 ~~contests, and in Rule 26.6 for single transferable voting contests.~~

13 ~~26.9.5 The designated election official must report the results of the audit to the Secretary of State~~
14 ~~by mail, fax, or email by 5:00 p.m. on the last day to canvass. The audit report must contain:~~

15 (a) ~~The number of ballots audited for each ranked voting contest;~~

16 (b) ~~The voting system's tabulation of the ranked voting contests for the randomly~~
17 ~~selected precincts;~~

18 (c) ~~The audit board's hand count of the ranked voting contests for the randomly~~
19 ~~selected precincts;~~

20 (d) ~~The audit board's statement that its hand count confirmed the voting system's~~
21 ~~tabulation or an explanation for any discrepancies identified; and~~

22 (e) ~~The signatures of the audit board, the canvass board members who observed the~~
23 ~~audit, and the designated election official.~~

24 ~~26.9.6 The designated election official must segregate and seal and preserve as election records~~
25 ~~all materials used during the ranked voting audit, including all tabulation reports, the~~
26 ~~audited ballots, and the audit report.~~