



Shaping Colorado's Election Rules

A response to comments on the Secretary of State's draft election rules

July 6, 2015

On May 8, 2015, the Secretary of State's office issued a preliminary draft of proposed amendments to Colorado's election rules (8 CCR 1505-1). At that time we invited comments on our draft and have since received many from election officials, advocates, and members of the public.

While there remain several steps in the formal rulemaking process before we can officially adopt rules—and there is still time for anyone to comment, both in writing or in person at the July 7th rulemaking hearing—this document describes the actions we took in response to the many considered comments and suggestions we received.

As you will see, in many instances we modified our draft language based on suggestions by commenters; and those amendments are reflected in the pre-hearing amended draft rules that we issued on July 1st. It is important to remember that the proposed rules, as amended, remain drafts, which are subject to further change. Our explanations of the actions we took in response to comments are preliminary and should not be considered final decisions. We continue to invite comments and suggestions as we move forward in the formal rulemaking process.

The substantive content of this document is organized into several two-column tables, each separated by commenter. In the left column we have provided a citation to the draft rule at issue and a summary of the commenter's suggestion or concern. In the right column we briefly explain any preliminary action we took based on the comment. If we took no action, we explain why. Because our summaries and explanations are brief, you should have a copy of the most recently released draft rules handy when you review this document.

You will also notice that we did not include responses to every commenter, and we did not provide separate responses to repeated comments about the same proposed rule. Rather, we included only one response unless there were multiple, substantively different comments to the same proposed rule.

If you have questions about this document or would like to provide additional comments on the draft rules, please email SoS.Rulemaking@sos.state.co.us.

Commenter: Amber McReynolds on behalf of the Election Statute Review Committee of the Colorado County Clerks Association

Proposed rule citation with commenter’s suggestion or concern	Department’s preliminary action
2.3.1: Provide The HAVV file on a bi-weekly basis.	No change. While we would like to provide the file on a more regular basis, retrieving the data is a manual process, which is currently hindered by intermittent connectivity with the national database. We will work to improve the process and will provide the list more regularly as soon as we are able.
2.4.2: Modify the rule to allow the DEO to make a record incomplete if the applicant does not provide an address.	No change. The Department’s current guidance to counties is to make a record incomplete if the voter does not provide an address.
2.5.1: Leave the current rule intact to allow the county to make a judgment call regarding sufficient matching information in each record.	No change. We believe use of consistent minimum matching criteria to ensure a proper match is preferable so that a consistent standard is applied. Please let us know if there are problems with this standard.
2.13.1: Amend this rule to mirror the language in Rule 6.4.2.	Accepted suggestion and amended accordingly.
6.4.2: Amend the language to clarify that the county is providing the training as opposed to third party groups. What is the process for approving a training?	No change. The proposed rule language allows for each supervisor judge to take either an SOS-provided training or a county training approved by the SOS. Under the draft language, a third party may not provide training because the SOS will only approve county-provided trainings. We will implement a process for approving county training.
7.2.5: Will the statement be required for UOCAVA envelopes?	No change. Federal law primarily addresses the language on UOCAVA envelopes; this language is not required.
7.2.6: Third party delivery is not prohibited by law. The rule may confuse counties about their obligations when the voter doesn’t fill out that portion. It may also confuse voters and introduce potential issues.	No change. Third party delivery is not prohibited but statute explicitly limits it. This proposed rule (along with proposed Rule 7.2.5) is meant to assist with the enforcement of the ten-ballot statute and to provide a chain of custody if there are allegations of ballot tampering.
7.2.7: The term “prepared” is vague in the context of the rule.	Amended the proposed rule to remove the term “prepared” and any reference to third-party vendors.
7.5.1: Add “when in operation” for clarity.	No change. Under the proposed rule’s language, drop-off locations that are not open 24 hours need only be monitored when open because when they are not open they are not drop-off locations.
7.7: The amendments add the requirement that	- Amended the language to clarify that the

a missing signature cure requires a copy of an ID. Will the rule require the county to send ballot-return envelopes with missing signatures to the D.A.?	county is not required to send a ballot-return envelope with a missing signature to the D.A. - Kept the rest of the revision because this change was necessary to ensure that voters who cure missing signatures are treated in the same manner as those who cure discrepant signatures.
7.11.2(b): Counties should have the option to use SCORE or issue a provisional ballot.	No change. While the rule does not prevent the county from offering voters a provisional ballot, the county should not rely on this option because provisional ballots require additional verification before the county may tabulate them. For that reason, if Citrix-based SCORE is functioning, the county should give voters the option of voting a regular mail ballot.
7.11.3: Strike this rule. Small counties with only one workstation should be able to access both types of SCORE on that one station.	No change. The rule protects the integrity of the SCORE system by preventing data collisions, which can occur when a county enters data into the original Citrix-based SCORE module at the same time or close to the same time that it enters information into the new web-based SCORE module.
23.1.2: Technical correction: insert “of.”	Made the change.

Commenter: Merlin Klotz, Douglas County Clerk and Recorder

Proposed rule citation with commenter’s suggestion or concern	Department’s preliminary action
2.13.1(a): Include election judges in the list of roles allowed to process voter registration and updates in the VSPC.	Agreed. Added election judges to the list.

Commenter: Liz Olson, Elections Manager for El Paso County

Proposed rule citation with commenter’s suggestion or concern	Department’s preliminary action
1.1.46: Amend draft rule to reflect that recall elections are conducted for non-partisan candidates too.	Agreed. Amended rule to reflect both partisan and non-partisan recalls.
7.2.3(c): Repealing this rule has no effect because 1-7.5-107(3)(c), C.R.S., still requires the mailing of a ballot to property owners on property owner list.	No change. The Department eliminated this rule because it unnecessarily repeated what is already in statute.

Commenter: Carla Gomez, Saguache County Clerk and Recorder

Proposed rule citation with commenter's suggestion or concern	Department's preliminary action
7.2.5 and 7.2.6: As a county that must provide election materials in Spanish, concerned about space issues on the ballot-return envelope.	No change. See general comments to these proposed rules above. The Department reduced the length of a prior rule on this subject and will work with language minority counties to ensure that the language fits.
7.7: Add "attempt" to the language about calling electors.	Agreed. Amendment made.
16.1.6: Concerned about the cost of sending more correspondence to what may be an already invalid address.	No change. The substance of this rule was not amended; the requirement already exists.

Commenter: Sara L. Rosene, Grand County Clerk and Recorder

Proposed rule citation with commenter's suggestion or concern	Department's preliminary action
6.5: Concerned about removing background check requirement.	No change. The legislature repealed this rule, but the Department still requires background checks under the SCORE acceptable use agreement.

Commenter: Martha M. Tierney, Tierney Paul Lawrence LLP, on behalf of the Colorado Democratic Party

Proposed rule citation with commenter's suggestion or concern	Department's preliminary action
7.2.6: The rule was not properly amended in the initial rulemaking draft. It should have been fully repealed because the Legislature expired the rule in Senate Bill 15-100.	Agreed. Amended the draft by repealing the expired rule and proposing a reenacted new version, which differs from the rule expired by SB 15-100.
7.2.6: The Secretary of State lacks authority to enact a rule on this subject.	No change. The Secretary of State has general rulemaking authority under section 1-1-107(2)(a), C.R.S., and specific authority to prescribe the form of materials to be used in mail ballot elections under section 1-7.5-106(1)(a), C.R.S. Furthermore, when the Secretary promulgated previous Rule 7.2.6, he met no opposition from the Attorney General's office or the Office of Legislative Legal Services when those agencies conducted their respective reviews of the rule.

Commenter: Harvie Branscomb

Proposed rule citation with commenter's suggestion or concern	Department's preliminary action
2.10.3: The rule is too confusing, as is the statutory reference. It would appear that voting in the election solves any issue related to an undeliverable notification?	No change. The proposed rule change does not alter the current processes, but rather conforms language in the rule to language in statute.
7.2.7: The proposed rule would justify current practices of third-party vendors who produce and handle ballots and ballot packets, which should not be encouraged.	Although counties may contract with third-party vendors to print and mail ballots, we amended the proposed rule to eliminate mention of third party vendors.
16.1.5: The rule should remain and be amended for clarity.	No change. The proposed draft eliminates the rule because it is duplicative of existing requirements in statute. We try to avoid repeating statutory requirements in the rules.
16.2.1(c): The definition of "not feasible" is too weak to reflect legislative intent of section 1-8.3-113(1), C.R.S.	No change. The legislative intent comment appears to reference a prior version of the statute. The revised statute requires the Secretary of State to define "not feasible." The proposed rule defines the term in a manner that leaves the determination with the military or overseas voter who is best equipped to assess his or her specific situation.
16.2.3: Replace the term "electronic transmission" with "fax or email."	No change. The term "electronic transmission" comes directly from statute.

Commenter: Marilyn Marks on behalf of the Colorado Republican Party

Proposed rule citation with commenter's suggestion or concern	Department's preliminary action
2.3: The phrase "that does not verify" is unclear.	Amended the draft language to read "if the clerk cannot verify the elector's information."
2.5.1: The word "establish" should be replaced with "failure to meet."	No change. "Establish" better describes the clerk's process.
2.13.1: As written, the rule appears to prevent election judges from registering voters.	Amended the rule to add "election judge."
7.2.5: The prohibition in the statute is against receiving more than 10 ballots, rather than dropping off more than 10 ballots—which is how the draft rule reads.	Agreed. Amended by replacing "drop off more than 10" with "receive more than 10."
7.2.7: It is unclear from the proposed language at what point a third-party vendor has	Amended the proposed rule to remove the reference to third-party vendors.

“prepared ballots for mailing.”	
7.5.5: Replace “receive” with “record.”	No change. “Receive” is a term of art relating to the SCORE system in the context of this rule.
7.9.3(c): Add space accommodations for watchers.	Deferred. We’ll await the completion of the Secretary’s Election Watcher Advisory Panel before amending or adding rules about watchers.
16.2.3: The self-affirmation should include a declaration that, at the time of voting, the voter is either overseas or out of the state in the case of military voters.	No change. The current rule requires that the affirmation contain the standard oath required under federal law, which requires each covered voter to affirm his or her eligibility.
20.5.2(f): Voting systems should not have Wi-Fi capability.	Removed the proposed rule that would have allowed for approved WiFi capability.
23: The proposed rule formulating the Bipartisan Election Advisory Commission should give appointment power to the political parties.	No change. The proposed rule creates a commission with balanced membership from many interests and have the authority to speak for them. The Secretary will make appointments that further the goals of the commission.

Commenter: Jack J. Woehr, Campaigns Director, Libertarian Party of Colorado

Proposed rule citation with commenter’s suggestion or concern	Department’s preliminary action
23: The rule should provide for appointment of members who represent Colorado’s minor political parties.	No change. The current draft rule requires at least 13 members from a broad spectrum of interests. The Department must limit the number of appointees to ensure orderly and productive meetings.

Various commenters

Proposed rule citation with commenter’s suggestion or concern	Department’s preliminary action
16: Prohibit internet voting.	Agreed. Added Rule 16.2.8 to specifically clarify that internet voting is not permitted.