



Revised Statement of Basis, Purpose, and Specific Statutory Authority

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

July 6, 2017

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,¹ improve elections administration in Colorado, and increase the transparency and security of the election process.

Specific proposed changes include:

- New Rule 1.1.10 to define the term “cast vote record”.
- New Rule 1.1.33 to define the term “personally identifiable information”.
- Amendments to Rule 2.3.1 to clarify the language of existing rule.
- New Rule 2.5.4 to ensure proper administration of Propositions 107 and 108 and SB 17-305, and to guarantee that an elector affiliated with one party does not cast a ballot in another party’s primary election.
- Amendments to Rule 2.12.1 to clarify the language of existing rule.
- Repeal of Rule 2.13.2 to establish uniformity in the administration of current law.
- New Rules 2.14.4 and 2.14.5 to ensure the proper administration of the statewide voter registration database.
- Amendments to Rule 2.15.1 to establish uniformity in the administration of current law.
- New Rule 2.17 to ensure proper administration of Propositions 107 and 108 and SB 17-305.

¹ 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 4.5.2(d) to establish uniformity in the administration of current law.
- Amendments to Rule 4.8.3(a) to ensure proper administration of Propositions 107 and 108.
- Amendments to Rule 7.2.5 to eliminate obsolete provisions.
- Amendments to Rule 7.2.7 to eliminate an unnecessary citation.
- Amendments to Rule 7.2.9 to eliminate obsolete provisions.
- New Rule 7.2.10 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- New Rule 7.2.11 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- New Rule 7.2.12 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- New Rule 7.5.5 to establish uniformity in the administration of current law, and to allow access to drop-off locations that are not near an office, VSPC, or other drop-box.
- Amendments to Rule 7.5.9 to establish uniformity in the administration of current law.
- Amendments to Rule 7.5.10 to establish uniformity in the administration of current law and organize existing rules for clarity. The amendments to this rule ensure ballot secrecy as required by the Colorado Constitution.
- Amendments to Rule 7.5.11 to establish uniformity in the administration of current law and organize existing rules for clarity.
- New Rule 7.5.12 to establish uniformity in the administration of current law and organize existing rules for clarity.
- New Rule 7.5.13 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- New Rule 7.5.14 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- Amendments to Rule 7.6.1 to establish uniformity in the administration of current law and organize existing rules for clarity.
- Amendments to Rule 7.7 and 7.7.3 to establish uniformity in the administration of current law and organize existing rules for clarity.

- Amendments to Rule 7.8.2 to establish uniformity in the administration of current law and organize existing rules for clarity.
- Amendments to Rule 7.9.1(c) to correct an incorrect citation.
- Amendments to Rule 7.9.3 to establish uniformity in the administration of current law and organize existing rules for clarity.
- New Rule 7.9.8 to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- New Rule 7.9.9 to establish uniformity in the administration of current law.
- New Rule 7.9.10 to establish uniformity in the administration of current law.
- New Rule 7.16 to establish uniformity in the administration of current law and provide more voting options to voters.
- New Rule 7.17 to establish uniformity in the administration of current law.
- Amendments to Rule 8.1.5 to establish uniformity in the administration of current law.
- Amendments to Rule 8.7.4 to correct an incorrect cross-reference.
- New Rule 8.15.8 to establish uniformity in the administration of current law.
- Amendments to rule 10.3.2(b) to correct an incorrect cross-reference.
- New Rule 10.4 to ensure proper administration of risk-limiting audits.
- Amendments to Rule 10.5.1 to establish uniformity in the administration of current law, organize existing rules for clarity, and to ensure proper administration of Propositions 107 and 108 and SB 17-305.
- Amendments to Rule 10.13.1 and 10.13.2 to correct incorrect cross-references.
- Amendments to Rule 11.3.2(c)(1) to establish uniformity in the administration of current law.
- Amendments to Rule 11.10.1(b)(2) to correct an incorrect cross-reference.
- Amendments to Rule 11.10.3 establish uniformity in the administration of current law.
- Repeal of Rule 13.1.7 to establish uniformity in the administration of current law.
- Amendments to Rule 13.2.9(a) to establish uniformity in the administration of current law.

- Amendments to Rule 14.1.1(a) establish uniformity in the administration of current law.
- New Rule 14.3.4 to establish uniformity in the administration of current law.
- Amendments to Rule 16.1.6 to establish uniformity in the administration of current law and organize existing rules for clarity.
- Amendments to Rule 18.5.3 to establish uniformity in the administration of current law.
- Amendments to Rule 20.13.1(c)(8) to establish uniformity in the administration of current law and correct an incorrect cross-reference.
- Amendments to Rule 20.16.3 to correct an incorrect cross-reference.
- Amendments to Rule 20.17.3 to establish uniformity in the administration of current law.
- Amendments to Rule 21.4.5 to establish uniformity in the administration of current law and organize existing rules for clarity.
- Amendments to Rule 21.4.14 to organize existing rules for clarity and establish uniformity in the administration of current law.
- New Rule 24 to establish uniformity in the administration of current law.
- New Rule 25.1 to ensure proper administration of risk-limiting audits.
- New Rule 25.2 to ensure proper administration of risk-limiting audits.
- Recodification of Rule 11.3.3 as Rule 25.3 to ensure uniformity in the administration of post-election random audits.

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 May 15, 2017, 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. Additional comments received during the formal rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/hearings/2017/ElectionsRulesHearing20170711.html. All comments are incorporated into the official rulemaking record.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2016), 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.”
2. Section 1-1-109, C.R.S., (2016), which authorizes the Secretary of State to “promulgate rules in accordance with article 4 of title 24, C.R.S., 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.”
3. Section 1-1.5-104(1)(b), C.R.S., (2016), which authorizes the Secretary of State to “[p]romulgate, oversee, and implement changes in the statewide voter registration system as specified in part 3 of article 2 of this title.”
4. Section 1-1.5-104(1)(e), C.R.S., (2016), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. §§ 15301-15545] of [Article 1.5 of Title 1].”
5. Section 1-2-701(1) and (2), C.R.S., (2016), which authorizes the Secretary of State to promulgate rules in accordance with article 4 of title 24, C.R.S. for commencing and conducting voter registration drives, and for fulfilling training requirements.
6. Section 1-2-217.7(7), C.R.S., (2016), which states that “[t]he secretary of state shall promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to implement this section” concerning registration on or immediately before election day.
7. Section 1-4-101(2)(b), C.R.S., (2017), which authorizes the Secretary of State to “by rule adopt additional ballot requirements necessary to avoid voter confusion in voting in primary elections.
8. Section 1-4-1203(6), C.R.S. (2017), which authorizes the Secretary of State to “by rule adopt additional ballot requirements necessary to avoid voter confusion in voting in presidential primary elections.”
9. Section 1-7-515(4), C.R.S. (2016), which requires the Secretary of State to promulgate rules necessary to implement and administer risk-limiting audits.
10. Section 1-7.5-104, C.R.S. (2016), which requires the county clerk and recorder to conduct a mail ballot election “under the supervision of, and subject to rules promulgated in accordance with article 4 of title 24, C.R.S., by, the secretary of state.”

11. Section 1-7.5-105, C.R.S. (2016), which requires the county clerk and recorder to supervise the distribution, handling, and counting of ballots and the survey of returns in accordance with “rules promulgated by the secretary of state as provided in section 1-7.5-106(2).”
12. Section 1-7.5-106, C.R.S., (2016), which requires the Secretary of State to establish procedures for and supervise the conduct of mail ballot elections, including adopting “rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]”
13. Section 1-7.5-107(6), C.R.S., (2016), which requires all deposited ballots be counted as provided “by rules promulgated by the secretary of state.”