



Notice of Permanent Adoption

Colorado Department of State Elections Rules 8 CCR 1505-1

March 31, 2023

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Department of State gives notice that the following amendments to the Elections Rules³ are adopted on a permanent basis.

The rules were considered at the March 7, 2023, rulemaking hearing in accordance with the State Administrative Procedure Act⁴.

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 and publication notes
Shading	Amendments included after the March 7 th rulemaking hearing

Amendments to 8 CCR 1505-1 follow:

Amendments to Rule 10.5.1:

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

- (a) The name of each candidate, office, and votes received;
- (b) The number or letter of each ballot issue or question and votes received;
- (c) The total number of ballots cast;
- (d) The number of provisional ballots cast, including totals for:
 - (1) Ballots accepted by each code; and

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2022).

² Section 24-4-103, C.R.S. (2022).

³ 8 CCR 1505-1.

⁴ Section 24-4-103(3)(a), C.R.S. (2022).

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

Amendments to Rule 11.3.2(c), including the repeal and replacement of subsection (c)(1), subsections (1)-(3), and necessary renumbering:

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

- ~~(D)~~ LEAVES UNMARKED THE INSTANT RUNOFF VOTING CONTESTS IN THE PLURALITY VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS.
- (2) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE INSTANT RUNOFF VOTING CONTEST MUST, FOR EACH VOTING CONTEST: PREPARE A SEPARATE COUNTY TEST DECK OF BALLOTS FOR EACH INSTANT RUNOFF VOTING CONTEST THAT IS BEING CONDUCTED. EACH TEST DECK MUST:
- (A) INCLUDE A SUFFICIENT NUMBER OF BALLOTS TO MARK A VOTE POSITION FOR EVERY CANDIDATE IN THE CONTEST IN THE FIRST ROUND OF TABULATION, INCLUDING WRITE-IN CANDIDATES;
- (B) INCLUDE AT LEAST ONE OVERVOTE, AT LEAST ONE SKIPPED RANKING, AND AT LEAST ONE DUPLICATE RANKING; AND
- (C) BE MARKED IN SUCH A MANNER SO THAT NO CANDIDATE RECEIVES A MAJORITY OF THE FIRST RANKING VOTES IN THE FIRST ROUND;
- ~~(D)~~ NOT BE MARKED IN A WAY THAT WILL REQUIRE A WINNING CANDIDATE OR LOSING CANDIDATE TO BE DETERMINED BY LOT; AND
- ~~(E)~~ LEAVE UNMARKED THE PLURALITY CONTESTS AND ANY ADDITIONAL INSTANT RUNOFF VOTING CONTESTS IN EACH INSTANT RUNOFF VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS.
- (3) ANY COUNTY TEST DECK MUST INCLUDE BALLOTS PRINTED FROM A BALLOT-ON-DEMAND OR MOBILE BALLOT PRODUCTION PRINTER IF EITHER WILL BE USED IN THE UPCOMING ELECTION AND MUST INCLUDE COMMERCIALY PRINTED BALLOTS.
- ~~(2)~~(4) The county must convene a Testing Board of one registered elector from each of the major political parties. Testing Board members must be registered to vote in the county and be sworn in as election judges.
- ~~(3)~~(5) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member. A COUNTY CONDUCTING AN INSTANT RUNOFF ELECTION MUST ENSURE THAT INSTANT RUNOFF VOTING CONTESTS ARE INCLUDED ON AT LEAST 25 TEST BALLOTS PER BOARD MEMBER. A COUNTY CONDUCTING AN INSTANT RUNOFF VOTING ELECTION MUST PROVIDE AT LEAST 10 ADDITIONAL BALLOTS PER INSTANT RUNOFF VOTING CONTEST TO EACH TESTING BOARD MEMBER TO MARK FOR EACH INSTANT RUNOFF VOTING CONTEST.
- ~~(4)~~(6) Testing Board members must mark their test ballots following the instructions printed on the ballots and retain a record of the tally. IN A COUNTY CONDUCTING AN INSTANT RUNOFF ELECTION, IF AFTER A REVIEW OF THE MACHINE AND HAND TALLY OF THE TESTING BOARD MEMBER'S TEST BALLOTS IT IS FOUND THAT THE BALLOTS DID NOT REQUIRE A SECOND ROUND OF TABULATION, THE TESTING BOARD MEMBER MUST MARK 25 ADDITIONAL TEST BALLOTS WHICH WILL RESULT IN NO CANDIDATE RECEIVING A MAJORITY OF VOTES IN THE FIRST ROUND OF TABULATION. TESTING BOARD MEMBERS MUST MARK INSTANT RUNOFF VOTING CONTESTS IN SUCH A MANNER SO THAT

~~NO CANDIDATE WILL RECEIVE A MAJORITY OF VOTES IN THE FIRST ROUND OF TABULATION. A COUNTY CLERK MAY REMOVE A MEMBER OF THE TESTING BOARD FROM THEIR DUTIES IF THAT MEMBER REFUSES TO MARK THEIR BALLOT ACCORDING TO THE INSTRUCTIONS PRINTED ON THE BALLOT OR AS REQUIRED BY THIS RULE.~~

- (5)(7) The Testing Board must test the ballots on each type of voting device used in the election and each type of ballot including audio ballots.

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

- (4) The Testing Board and designated election official must count the test ballots as follows, as applicable:
- (A) Ballot Scanners:
- (i) The Testing Board must test at least one central count ballot scanner.
 - (ii) The Testing Board must randomly select the machines to test.
 - (iii) The Testing Board must count the board and county's ~~PLURALITY AND INSTANT RUNOFF VOTING~~ test ballot batches separately and generate reports to verify that the machine count is identical to the predetermined tally.
- (B) Ballot Marking Devices (BMDs):
- (i) The Testing Board must randomly select and test at least one BMD.
 - (ii) For plurality voting contests, ~~At AT~~ at least two members of the Testing Board must use the selected BMD to mark ~~ALL OF THE BALLOTS~~ and print at least 25 ballots in the same manner that the testing board member manually marked ~~his or her~~ THEIR test ballots. At least two members of the Testing Board must mark at least one of ~~his or her~~ THEIR test ballots using the audio ballot playback and accessible input devices.
 - ~~(iii) For instant runoff voting contests, the Testing Board must use the selected BMD to mark and print at least 10 ballots in the same manner that the testing board member manually marked their test ballots. At least two members of the Testing Board must mark at least one of their test ballots using the audio ballot playback and accessible input devices.~~
 - (iii) A Testing Board member or county election official must separately scan and tabulate the test ballots marked with and printed from the BMD on one central count or polling location scanner, and generate a results report.
 - (iv) Each Testing Board member must verify that the results report generated from the scanner exactly corresponds

to the testing board member's tally of the votes on the manually marked paper ballots comprising his or her THEIR test ballots.

Amendments to Rule 11.10.2, updating the email domain name:

11.10.2 By email to:

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

Amendments to Rule 21.11.4(b):

21.11.4 Tabulation requirements

- (a) The voting system must record all voter rankings.
- (b) During the first round of tabulation, the voting system must tabulate the first-choice ranks on each ballot.
 - (1) A candidate who receives over 50 percent of the first-choice ranks FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~ is the winning candidate, and the voting system must stop tabulating any further rounds.
 - (2) If no candidate receives over 50 percent of the first-choice ranks FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~, the voting system must continue to the next round of tabulation

Amendments to Rules 26.5.2-26.5.5 regarding tabulation of instant runoff elections:

26.5.2 DURING THE FIRST ROUND OF TABULATION, THE DESIGNATED ELECTION OFFICIAL MUST TABULATE THE FIRST-CHOICE RANKS ON EACH BALLOT.

- (a) A candidate who receives over 50 percent of the first-choice ranks FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~ is the winning candidate and no further rounds of tabulation will take place.
- (b) If no candidate receives over 50 percent of the first-choice ranks FOR A CONTEST ACROSS ALL BALLOTS TABULATED ~~on each ballot~~, the designated election official must continue to the next round of tabulation.

26.5.3 At the beginning of ~~During~~ the next round of tabulation, the candidate with the fewest first-choice ranks in the ~~first-PRIOR~~ round is eliminated and the eliminated candidate's votes are transferred to each ballot's next-ranked continuing candidate AND TABULATED.

[No changes to subsections (a) and (b).]

26.5.4 AT THE END OF ROUND ONE AND IN ANY SUBSEQUENT ROUNDS, ~~if~~ the combined votes of two or more candidates with the lowest vote totals in the current round are less than the number of votes for the continuing candidate with the next-highest number of votes, then the candidates in the lowest-vote group are eliminated.

26.5.5 At the end of Round one and in any subsequent rounds, ~~in any round~~, if two or more candidates tie for the lowest number of votes, the eliminated candidate must be chosen by lot, unless the candidates may be eliminated simultaneously under Rule 26.5.4.

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

26.8 Reporting results of a ranked voting election

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

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

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

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

26.9 Auditing a ranked voting election or race. The designated election official must audit each ranked voting race ~~in accordance with this Rule~~ before the canvass board certifies official election results ~~IN A MANNER WHICH WILL NOT INTERFERE WITH THE AUDIT REQUIRED BY SECTION 1-7-515, C.R.S.~~

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

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

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

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

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

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

~~26.9.3 The designated election official must convene a public meeting on the tenth day after election day to randomly select by lot the precinct or precincts to be audited. The designated election official must post notice of the public meeting at least seven calendar days in advance. The notice must include a description of the random selection lot method. The designated election official must give notice of and submit to the Secretary of State a list of the precincts randomly selected for audit by 5:00 p.m. on the tenth day after election day.~~

~~26.9.4 Conducting the audit.~~

- ~~(a) The audit board must locate and retrieve all ballot cards containing the ranked voting contest for the randomly selected precincts from their storage containers, and verify and maintain documented chain-of-custody of all voted ballots.~~
- ~~(b) The audit board must first confirm that the number of ballot cards located and retrieved for the audit equals the number of ballot cards with the ranked voting contest tabulated in each randomly selected precinct.~~
- ~~(c) For each ranked voting contest, the audit board must hand count the ballots cast, following the counting method set forth in Rule 26.5 for instant runoff voting contests, and in Rule 26.6 for single transferable voting contests.~~

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

- ~~(a) The number of ballots audited for each ranked voting contest;~~
- ~~(b) The voting system's tabulation of the ranked voting contests for the randomly selected precincts;~~
- ~~(c) The audit board's hand count of the ranked voting contests for the randomly selected precincts;~~
- ~~(d) The audit board's statement that its hand count confirmed the voting system's tabulation or an explanation for any discrepancies identified; and~~
- ~~(e) The signatures of the audit board, the canvass board members who observed the audit, and the designated election official.~~

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

II. Basis, Purpose, and Specific Statutory Authority

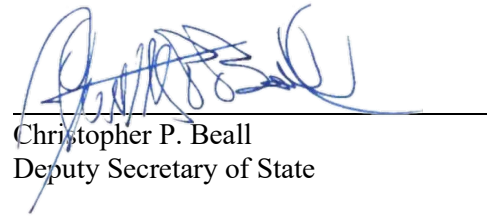
A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Effective Date of Adopted Rules

The rules will become permanently effective twenty days after publication in the Colorado Register.⁵

⁵ Section 24-4-103(5), C.R.S. (2022).

Dated this 31st day of March 2023,



Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State



Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State Elections Rules 8 CCR 1505-1

March 31, 2023

I. Basis and Purpose

This statement explains amendments to the Colorado Department of State Election Rules [8 CCR 1505-1]. The amendments ensure uniform and proper administration, implementation, and enforcement of federal and Colorado election laws,¹ improve elections administration in Colorado, increase the transparency and security of the election process, and implement amendments required by House Bill 21-1071, enacted June 28, 2021.

Specific changes include:

- Amendments to Rule 10.5.1 add ranked voting reports to information that a canvass board must review, if a ranked voting election occurs as part of a coordinated election.
- Amendments to Rule 11.3.2 include instructions to county clerks and Testing Boards on performing logic and accuracy tests for instant runoff voting contest elections. This includes:
 - Specifications regarding how each test deck must be marked;
 - A requirement that if testing board member marked ballots do not result in more than 1 round of tabulation for an instant runoff contest, the board member must mark an additional 25 ballots which will result in at least two rounds of tabulation for that contest;
 - Clarification that a county may remove a testing board member, if the member refuses to mark a ballot in accordance with the instructions printed on a ballot or required by rule; and
 - Restructuring of current rule requirements.

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 21.11.4 to clarify that additional rounds of tabulation are only required in an instant runoff election if no candidate receives over 50 percent of first-choice ranks across all ballots tabulated.
- Amendments under Rule 26 regarding a ranked choice voting election.
 - Amendments to Rule 26.5.2 through 26.5.5 to clarify that additional rounds of tabulation are only required in an instant runoff election if no candidate receives over 50 percent of first-choice ranks across all ballots tabulated. Further amendments were also made to clarify how instant runoff elections are tabulated in each round.
 - Repeal of Rules 26.8.2 and 26.8.3. New Rule 26.8.2 mandates counties to publish their ranked voting election result reports on a website, notifying the Secretary of State’s office of the website no later than a week before election day. This new rule replaces the requirement of submitting instant runoff voting results to the Secretary of State’s office physically or through ENR.
 - Repeal of Rules 26.9.1 through 26.9.6. New Rule 26.9.1 gives counties conducting instant runoff voting elections the opportunity to develop their own audit of an instant runoff election, as specified by section 1-7-515(4)(b)(II), C.R.S., provided that the audit will not otherwise interfere with the Risk-Limiting Audit required by section 1-7-515, C.R.S.

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.

II. Rulemaking Authority

The statutory authority is as follows:

- House Bill 21-1071, enacted June 28, 2021.
- Section 1-1-107(2)(a), C.R.S., (2022), 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.”
- Section 1-1-110(1), C.R.S., (2022), which requires county clerks to, “follow the rules and order promulgated by the secretary of state pursuant to this code.”
- Section 1-7-118(5), C.R.S., (2022), which requires the Secretary of State to, “adopt rules concerning the tabulation, reporting, and canvassing of results for a coordinated election using instant runoff voting conducted by a single county.”

- Section 1-7-509(6), C.R.S., (2022), that requires the Secretary of State to promulgate rules that “must include standards and procedures for conducting logic and accuracy testing on voting equipment to be used in an election using instant runoff voting.”
- Section 1-7.5-106(2), C.R.S., (2022), which authorizes the Secretary of State to “adopt rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]”