



Notice of Temporary Adoption

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

September 4, 2020

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a temporary basis and effective immediately. (SMALL CAPS indicate proposed additions to the current rules. ~~Stricken type~~ indicates proposed deletions from current rules. *Annotations* may be included):

Current 8 CCR 1505-1 is amended as follows:

New Rule 25.2.7:

Rule 25. Post-election audit

- 25.2.7 NOTWITHSTANDING ANY OTHER RULES TO THE CONTRARY, FOR THE 2020 GENERAL ELECTION ONLY, THE FOLLOWING DEADLINES APPLY:
- (A) WORK DUE FOR RULE 25.2.2(E) MUST BE COMPLETED NO LATER THAN TEN DAYS AFTER ELECTION DAY.
 - (B) WORK DUE FOR RULE 25.2.2(F) AND (G) MUST BE COMPLETED NO LATER THAN 5:00 P.M. MT TEN DAYS AFTER ELECTION DAY.
 - (C) THE PUBLIC MEETING REQUIRED BY RULE 25.2.2(I) WILL BE CONVENED ON THE THIRTEENTH DAY AFTER ELECTION DAY.
 - (D) THE SELECTION OF BALLOT CARDS REQUIRED BY RULE 25.2.2(L) WILL BE COMPLETED BY 5:00 P.M. MT ON THE THIRTEENTH DAY AFTER ELECTION DAY.

Amendments and temporary re-adoption of Rule 27:

Rule 27. Conducting Elections During Public Health Emergency

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2019).

² Section 24-4-103, C.R.S. (2019).

³ 8 CCR 1505-1.

27.1 In addition to other requirements stated in these rules, the following requirements must be followed when conducting an election during a public health emergency.

27.1.1 Definitions

- (a) "Personal protective equipment" means equipment designed to protect the wearer from injury, or to prevent the spread of infection or illness, including facemasks, protective clothing, or gloves.
- (b) "Public health emergency" means a state of disaster emergency declared by the Governor under section 24-33.5-704, C.R.S., involving a public health emergency including the current COVID-19 pandemic.
- (c) "Public health guidelines" mean guidelines from ~~federal~~, state GOVERNMENT, or local governments, or the Secretary of State's office which ~~direct~~ ADVISE members of the public about how to protect their health and safety during the COVID-19 pandemic.

27.1.2 Unless infeasible, counties, election judges, election workers, watchers, and media observers must follow public health guidelines. ~~that they could reasonably be aware of, including guidance from the Colorado Department of Public Health, the Colorado Governor's Office, and other local health authorities.~~ In the event that there is a conflict in public health guidelines, counties must follow those guidelines ~~that require~~ ISSUED BY THE STATE, UNLESS THE LOCAL HEALTH DEPARTMENT REQUIRES more protective measures be taken.

27.2 Voter service and polling centers open

27.2.1 THE COUNTY SHOULD CONDUCT VOTER SERVICE AND POLLING CENTER OPERATIONS IN A BUILDING SEPARATE FROM THE MAIN COUNTY CLERK'S OFFICE. Unless infeasible, if a voter service and polling center is located in the SAME BUILDING AS THE main county clerk's office, the county must conduct voter service and polling center operations in a separate room or area from other election activities., ~~or relocate the voter service and polling center to a different location.~~

27.2.2 If a county clerk opens only the minimum number of voter service and polling centers required under section ~~1-7.5-107 (4.5)~~, 1-5-102.9, C.R.S., then the county clerk must also identify ~~at least one~~ back-up voter service and polling center ~~location~~ LOCATIONS SUFFICIENT TO MAINTAIN THE MINIMUM NUMBER OF VSPCs REQUIRED BY STATUTE IN THE EVENT OF A CLOSURE, BUT NO LESS THAN ONE, along with a list of essential voting equipment, to which the county can move the operations of a designated voter service and polling center to if a center has to close under Rule 27.2.3. The county should have a plan to make the transition to the back-up location as expeditiously as possible. On election day the county must make the transition to the new location as expeditiously as possible and not longer than two hours. The County must share this plan with the Secretary of State's office in the manner directed by the Secretary of State. Election judges must still follow the requirements of section 1-5-108, C.R.S. in the event that a change in location is necessary.

27.2.3 A county clerk must provide notice to the Secretary of State's office as expeditiously as possible when they close a voter service and polling center if there is a reasonable basis to expect COVID-19 contamination. The county should follow the Secretary of State guidance regarding contamination.

27.3 ~~Receipt and processing of ballots~~

~~27.3.1 A county clerk must ensure that all election judges and staff wear masks, and any other personal protective equipment required by the county or location, while receiving and processing ballots.~~

~~27.3.2 The Secretary of State may alter Rule 7.5.4 and require counties to wait a minimum number of hours before date stamping and processing returned ballot envelopes in SCORE.~~

27.4-27.3 Protecting the health of election judges, AND staff, ~~and voters~~

~~27.4.1-27.3.1 Unless infeasible, counties must have infrared thermometers and take the temperature of all county staff and election judges as they report at all locations.~~

~~27.4.2-27.3.2 Unless infeasible, counties should encourage election judges and staff to take their own temperature before reporting to work. Judges AND STAFF exhibiting a fever or other COVID-19 symptoms must report that information to their supervisor or other appropriate county official before reporting to work OR DURING WORK HOURS.~~

~~27.4.3-27.3.3 Clerks must allow election judges to stay home if they have any COVID-19 related symptoms, concerns, illness or are quarantined without losing pay.~~

~~27.4.4-27.3.4 Election judges and staff members must wear masks, OR OTHER FACE COVERING, and any other personal protective equipment required by the county or location, at all times while performing duties. SERVING AS AN ELECTION JUDGE, PERFORMING DUTIES FOR THE COUNTY, OR WHILE OTHERWISE IN THE PRESENCE OF OTHER PEOPLE WHILE SERVING AS AN ELECTION JUDGE OR STAFF MEMBER.~~

~~27.4.5 An election judge and staff member must immediately report any COVID-19 like symptoms they experience during working hours to their supervisor or other appropriate county official.~~

~~27.4.6-27.3.5 Unless infeasible, counties must prepare a plan and identify on-call election judges who are able to report TO A NEW LOCATION OR DUTY within two hours and shall be compensated for their on-call service.~~

27.5-27.4 Protecting the health of watchers, media, observers, and the public

~~27.5.1-27.4.1 Watchers and media-observers must wear masks, and any other personal protective equipment required by the county or location, while at a voter service and polling center or location where other election activities are occurring and should maintain strict social distancing guidelines with a minimum of six feet between each person., unless maintaining six feet distance would not allow the watcher to observe any activity listed in Rule 8.10.2.~~

~~27.5.2-27.4.2 Unless infeasible, if watchers and media observers plan to be, or are, at a location for one hour or more, counties must use infrared thermometers to take their temperature. COUNTIES MUST HAVE INFRARED THERMOMETERS AND TAKE THE TEMPERATURE OF ALL WATCHERS AND OBSERVERS WHEN THEY REPORT TO ANY LOCATION.~~

27.4.3 WATCHERS AND OBSERVERS MUST FOLLOW THE DIRECTIONS OF COUNTY STAFF AND THESE RULES REGARDING THE HEALTH AND SAFETY OF VOTERS, ELECTION STAFF, AND JUDGES. ANY WATCHER WHO VIOLATES THESE RULES OR THE DIRECTIONS OF COUNTY STAFF REGARDING THE HEALTH AND SAFETY OF VOTERS, ELECTION STAFF, AND JUDGES MAY BE REMOVED BY THE COUNTY CLERK. IN THE EVENT THAT A WATCHER IS REMOVED BY THE COUNTY CLERK, THE COUNTY CLERK MUST PROVIDE THE APPOINTING AUTHORITY WITH THE OPPORTUNITY TO APPOINT A REPLACEMENT WATCHER IN ACCORDANCE WITH RULE 8.6.

~~27.5.3~~ 27.4.4 ~~Anyone~~ WATCHER OR OBSERVERS experiencing COVID-19 symptoms while at a voter service and polling center or location where other election activities are occurring must immediately report that to an appropriate county official and leave the location.

27.4.5 NOTWITHSTANDING ANY RULE TO THE CONTRARY, IF OBSERVATION OF AN ACTIVITY LISTED IN RULE 8.10.2 CANNOT BE FEASIBLY ACCOMPLISHED BY MAINTAINING SIX FEET OF SOCIAL DISTANCING, THEN WATCHERS MUST STILL BE ALLOWED TO OBSERVE THAT ACTIVITY. WATCHERS MUST STILL OBSERVE ALL OTHER DIRECTIVES IN THIS RULE, AND RULE 8 WHEN OBSERVING ACTIVITIES.

~~27.6~~ 27.5 Conditions at voter service and polling centers

~~27.6.1~~ 27.5.1 Counties must use best efforts to maintain hygienic conditions within voter service and polling centers, including:

- (a) ~~Cleaning all voting equipment with non-bleach cleaners after each use or otherwise ensuring that the voting equipment is clean after each use~~ BY FOLLOWING THE CLEANING GUIDELINES FROM THE EQUIPMENT MANUFACTURER; and
- (b) ~~Cleaning all voting booths and non-ballot marking devices~~ OTHER SURFACES USED BY VOTERS after each use with ~~bleach-based or non-bleach-based~~ OTHER cleaners APPROVED BY THE EPA FOR USE AGAINST SARS-CoV-2 (COVID-19).

~~27.6.2~~ 27.5.2 To the extent possible, counties must work to maintain strict social distancing guidelines with a minimum of six feet between each person present at the voter service and polling center.

~~27.7~~ 27.6 Unanticipated events

~~27.7.1~~ 27.6.1 If a county clerk needs to modify their election or locations in a way not contemplated by this rule due to the presence of a public health emergency, the clerk must contact the Secretary of State for assistance and approval.

~~27.8~~ ~~Deadlines for emergency changes to political party bylaws and rules~~

~~27.8.1~~ ~~No later than 60 days after the date of Executive Order D 2020 005, all major political parties must adopt any new or amended bylaws or rules necessary to provide remote access to and participation in party assemblies and conventions, to fill vacancies, and to comply with any emergency order issued pursuant to Executive Order D 2020 003.~~

~~27.8.2~~ ~~Each state central committee must file its party's amended or new bylaws or rules adopted to provide remote access to and participation in party assemblies and conventions, to fill vacancies, and to comply with any emergency order issued pursuant to Executive Order D 2020 003 with the Secretary of State no later than 65 days after the date the Executive Order D 2020 005. If filed before that date, bylaws and rules may be amended until that date. No bylaw or rule may be amended filed or amended after 65 days after the date of Executive Order D 2020 005.~~

~~27.9~~ ~~Circulation of Unaffiliated Petitions~~

~~27.9.1~~ ~~In accordance with Executive Order D 2020 053, unaffiliated and independent candidates may circulate petitions beginning June 1, 2020, and must file those petitions with the designated election official no later than July 27, 2020.~~

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. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State’s findings to justify the immediate adoption of this new rule on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These rule amendments are effective immediately.

Dated this 4th day of September, 2020,

Ian Rayder
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2019).



Statement of Basis, Purpose, and Specific Statutory Authority

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

September 4, 2020

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Secretary of State Election Rules. The amendments are intended 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. This statement includes additional amendments and temporary re-adoption of the rule amendments initially adopted on a temporary basis on May 8th and 28th, 2020.

Specific changes include:

- Amendments to Rule 25: Amendments to this rule are necessary to ensure all post-election activities can be completed timely and in accordance with state law. Due to the Veteran's Day holiday, which falls on the 8th day after election day this November, many post-election deadlines are pushed back a day. These new deadlines conflict with the current deadlines found in election rule 25, governing the post-election risk-limiting audit. To resolve this conflict, it is necessary to alter the risk-limiting audit deadlines for the upcoming election only.
- Amendments and re-adoption of Rule 27: On March 10, 2020, the Colorado Governor declared a disaster emergency due to the COVID-19 contagion. Accordingly, Rule 27 provides necessary guidance for conducting elections during a public health emergency. Amendments to the rule are necessary to provide clarity and further details as more public health information and best practices have become available. Rules 27.8 and 27.9 are repealed as the events that these rules govern have now passed.

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.

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.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2019), 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 1-1.5-104(1)(e), C.R.S., (2019), which gives the Secretary of State the power to “[p]romulgate rules...as the secretary finds necessary for the proper administration, implementation, and enforcement of HAVA.”
- Section 1-7-515 (4), C.R.S., (2019), which requires the Secretary of State to promulgate rules “necessary to implement and administer,” risk-limiting audits.
- Section 1-7.5-106, C.R.S., (2019), which requires the Secretary of State to promulgate rules, “establishing procedures for conducting mail ballot elections.”



Statement of Justification and Reasons for Adoption of Temporary Rules

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

September 4, 2020

Amended Rules: 27
New Rules: 25.2.7

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws.

Adoption of these rules on a temporary basis is necessary given the approaching November 3, 2020, General Election. On March 10, 2020, the Colorado Governor declared a disaster emergency due to the COVID-19 contagion. Accordingly, Rule 27 provides necessary guidance for conducting elections during a public health emergency. Amendments to rule 27 are necessary to provide clarity and further details as more public health information and best practices have become available. Rules 27.8 and 27.9 are repealed as the events that these rules govern have now passed.

New Rule 25.2.7 is necessary to ensure all post-election activities can be completed timely and in accordance with state law. Due to the Veteran's Day holiday, which falls on the 8th day after election day this November, many post-election deadlines are pushed back a day. These new deadlines conflict with the current deadlines found in election rule 25, governing the post-election risk-limiting audit. To resolve this conflict, it is necessary to alter the risk-limiting audit deadlines for the upcoming election only.

The rules are immediately effective as is necessary to provide clear guidance to interested parties, including, but not limited to: county clerks, major political parties, candidates for public office, and the general public.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that temporary adoption of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.²

¹ Sections 1-1-107 (1) (c), 1-1-107(2) (a), 1-7.5-104, C.R.S. (2019).

² Section 24-4-103(3) (6), C.R.S. (2019).