

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

10/18/2024 2:53 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Defines requirements for Certificates of Ascertainment of Electoral College.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/13/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Bob Roberts
503-986-1518
elections.sos@sos.oregon.gov

Public Service Building
255 Capitol Street NE, Suite 126
Salem, OR 97310

Filed By:
Bob Roberts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/12/2024

TIME: 2:00 PM - 3:00 PM

OFFICER: Bob Roberts

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 494995791

NEED FOR THE RULE(S)

Federal law prescribes general processes that states must follow to designate members of the Electoral College, who select a president and vice president every four years. In 2022, the federal government passed the Electoral Count Reform and Presidential Transition Improvement Act, or ECRA, to clarify the processes for counting electoral votes and to strengthen security features. This bipartisan legislation updated the Electoral Count Act of 1887, which had not been substantially changed since its enactment. This rule implements legislative mandates found in HB 4019 (2024) to incorporate ECRA changes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 4019 (2024), Electoral Count Reform and Presidential Transition Improvement Act of 2022 available online at oregonlegislature.gov or from the Elections Division.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule promotes racial equity. The terms of the rule promote racial equity by protecting against implicit bias and ensuring that the same guidelines and procedures apply consistently to all qualified Presidential Electors and all political

parties.

FISCAL AND ECONOMIC IMPACT:

Proposed rules may cause minimal fiscal or economic impact to the Secretary of State, Elections Division.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There may be a minimal fiscal impact for the state Elections Division to implement and answer questions regarding compliance with these rules, or for other unanticipated reasons.

(2)(a) Because these rules regulate the activity of State, it is not expected to impact small businesses.

(2)(b), (c) The cost that any elections office required to comply with this rule may be responsible for is dependent upon specific circumstances and cannot readily be determined.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved as this rule does not directly affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The fiscal impact of proposed rules are expected to be minimal at most.

ADOPT: 165-025-0110

RULE SUMMARY: Enacts HB 4019 (2024). Defines requirements for Certificates of Ascertainment of Electoral College. Provides for a "security feature" to identify duly elected electors and to safeguard the authenticity of archived certificates. Aligns Oregon with the Electoral Count Reform and Presidential Transition Improvement Act of 2022.

CHANGES TO RULE:

165-025-0110

Certificates of Ascertainment

(1) In addition to the certificates of election issued under OAR 165-025-0100 (6), the Secretary of State shall issue certificates of ascertainment of presidential electors as required by law.¶

(2) Each year in which a President and Vice-President of the United States are to be nominated and elected, the Secretary of State shall select one or more security features to be used for purposes of verifying the authenticity of certificates of ascertainment. ¶

(a) In selecting security feature(s), the Secretary of State shall consider best practices used by other states, the needs of the parties who receive certificates of ascertainment as required by federal law, technological developments, and the reliability and reproducibility of the available security feature(s).¶

(b) No later than ninety days before the date of the general election, the Secretary of State shall document what security feature(s) shall be used for certificates of ascertainment that year, shall place the documentation in a sealed envelope, and shall maintain it in a secure manner.¶

(c) The Secretary of State shall maintain the security feature(s) in confidence in accordance with best practices for sensitive information and shall disclose it only as necessary to those officials responsible for producing, receiving, and authenticating the certificates of ascertainment.

Statutory/Other Authority: ORS 246.150, Electoral Count Reform and Presidential Transition Improvement Act, HB 4019 (2024), ORS 248.370

Statutes/Other Implemented: HB 4019 (2024), ORS 248.370