



## Notice of Temporary Adoption

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

Adopted: June 17, 2021

#### I. Adopted Rule Amendments

As authorized by Colorado Elections Law<sup>1</sup> and the State Administrative Procedure Act<sup>2</sup>, the Colorado Secretary of State gives notice that the following amendments to the Election Rules<sup>3</sup> 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:*

*Amendments to Rule 20.5.4 including New Rules 20.5.4(a) and 20.5.4(e):*

#### 20.5.4 ~~Non-county employee access~~ VOTING SYSTEM ACCESS SECURITY

- (A) EXCEPT FOR VOTERS USING A VOTING SYSTEM COMPONENT TO VOTE DURING AN ELECTION, COUNTY CLERKS MAY NOT ALLOW ANY PERSON TO ACCESS ANY COMPONENT OF A COUNTY'S VOTING SYSTEM UNLESS THAT PERSON HAS PASSED THE BACKGROUND CHECK REQUIRED BY THIS OR ANY OTHER RULE OR LAW, IS PERFORMING A TASK PERMITTED BY THE COUNTY CLERK OR THE OFFICE OF THE SECRETARY OF STATE UNDER STATUTE OR RULE, AND IS:
- (1) AN EMPLOYEE OF THE COUNTY CLERK;
  - (2) APPOINTED AS AN ELECTION JUDGE BY THE COUNTY CLERK IN ACCORDANCE WITH ARTICLE 6 OF TITLE 1, C.R.S.;
  - (3) AN EMPLOYEE OF THE VOTING SYSTEM PROVIDER FOR THE COUNTY'S VOTING SYSTEM; OR
  - (4) AN EMPLOYEE OR DESIGNEE OF THE SECRETARY OF STATE.
- ~~(a)~~(B) All ~~vendors~~ VOTING SYSTEM PROVIDER EMPLOYEES who conduct work on any component of a county's voting system must ~~conduct~~ COMPLETE a criminal background check on each employee prior to the employee's work with the voting

<sup>1</sup> Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2020).

<sup>2</sup> Section 24-4-103, C.R.S. (2020).

<sup>3</sup> 8 CCR 1505-1.

system. The ~~vendor~~ PROVIDER must affirm that the check was conducted in writing to the Secretary of State prior to the employee conducting any work. Any person convicted of an election offense or an offense with an element of fraud is prohibited from working on any component of a county's voting system.

- (b)-(c) All Secretary of State staff who conduct work on any component of a county's voting system must undergo a criminal background check prior to the staff's work with the voting system.
- (D) Any person convicted of an election offense or an offense with an element of fraud is prohibited from working on any component of a county's voting system.
- (E) ANY VIOLATION OF RULE 20 MAY RESULT IN THE PROHIBITION OR LIMITATION ON THE USE OF, AS WELL AS DECERTIFICATION OF, A COUNTY'S VOTING SYSTEM OR COMPONENTS IN ACCORDANCE WITH SECTION 1-5-621, C.R.S., AND RULE 21.7.3.

*Amendments to Rule 21.7.3. Specifically, a portion of former Rule 21.7.3 is re-codified as New Rule 21.7.3(a). Additionally, the Secretary adopts New Rules 21.7.3(b-e) and 21.7.4.*

~~21.7.3 If any voting system provider, provides for use, installs, or causes to be installed an uncertified and decertified voting system or component, the Secretary of State may suspend use of the component or the voting system. THE SECRETARY OF STATE MAY INVESTIGATE A COMPLAINT FILED BY ANY PERSON, AND, UPON ANY FINDINGS AS OUTLINED IN (A) THROUGH (E) BELOW, MAY PROHIBIT, LIMIT OR DECERTIFY USE OF A VOTING SYSTEM, IN WHOLE OR IN PART. AN INVESTIGATION BY THE OFFICE OF THE SECRETARY OF STATE MAY INCLUDE, BUT IS NOT LIMITED TO, THE REVIEW OR INSPECTION OF THE VOTING SYSTEM COMPONENT AT ISSUE.~~

- (A) ANY PERSON INSTALLED ANY UNCERTIFIED OR DECERTIFIED VOTING SYSTEM COMPONENT;
- (B) A COUNTY BREAKS THE CHAIN-OF-CUSTODY FOR ANY COMPONENT OF A VOTING SYSTEM BY ALLOWING ANY INDIVIDUAL NOT AUTHORIZED BY RULE 20.5.4 ACCESS TO THAT COMPONENT;
- (C) A COUNTY SUBMITS AN INCIDENT REPORT REGARDING A COMPONENT OF A VOTING SYSTEM AND THE SECRETARY OF STATE FINDS THAT THE CHAIN-OF-CUSTODY CANNOT BE REESTABLISHED SECURELY;
- (D) A COMPONENT OF A VOTING SYSTEM EXPERIENCES REPEATED HARDWARE FAILURES OR MALFUNCTIONS OF A SIMILAR NATURE; OR
- (E) THE SECRETARY DETERMINES THAT THE INTEGRITY OR SECURITY OF A VOTING SYSTEM COMPONENT CANNOT BE VERIFIED AND THAT CHAIN-OF-CUSTODY CANNOT BE REESTABLISHED SECURELY.

21.7.4 THE SECRETARY OF STATE WILL NOTIFY A COUNTY OF THE PROHIBITION OR LIMITATION ON USE OR DECERTIFICATION OF A COMPONENT OF A VOTING SYSTEM UNDER RULE 21.7.3 AND THE COUNTY MUST IMMEDIATELY CEASE USING THAT COMPONENT.

*[Not shown: current Rule 21.7.4 is renumbered as Rule 21.7.5]*

## **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 these new and amended rules on a temporary basis follows this notice and is incorporated by reference.<sup>4</sup>

**IV. Effective Date of Adopted Rules**

These rule amendments are effective immediately.

Dated this 17th day of June, 2021,

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Christopher P. Beall  
Deputy Secretary of State

For

Jena Griswold  
Colorado Secretary of State

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<sup>4</sup> Section 24-4-103(6), C.R.S. (2020).



## Statement of Basis, Purpose, and Specific Statutory Authority

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

June 17, 2021

### 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,<sup>1</sup> improve elections administration in Colorado, and increase the transparency and security of the election process.

Specific changes include:

- Amendments to Rule 20.5.4 clarify voting system access. New Rule 20.5.4(a) clarifies who a county clerk may allow access to any component of a county's voting system. Additionally, amendments to Rule 20.5.4(b) (formerly Rule 20.5.4(a)) outlines criminal background check requirements for all voting system provider employees. Former Rule 20.5.4(b) is split into separate Rules 20.5.4(c) and (d). Under New Rule 20.5.4(e), any violation of Rule 20 may result in the prohibition or limitation on the use of, as well as decertification of, a county's voting system or components in accordance with section 1-5-621, C.R.S., and Rule 21.7.3.
- Amendments to Rule 21.7.3 include the recodification of a portion of former Rule 21.7.3 under New Rule 21.7.3(a). Additional amendments, including New Rules 21.7.3(a) through (e), are necessary to clarify when the Secretary may prohibit, limit or decertify use of voting system, in whole or in part.
- New Rule 21.7.4 clarifies notification concerning suspension or decertification of a component of a voting system. The rule further requires that a county must immediately cease using that component upon receiving notification from the Secretary of State.

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style.

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<sup>1</sup> 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., (2020), 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., (2020), 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 1-5-608.5(3)(b), C.R.S., (2020), which authorizes the Secretary of State to “promulgate conditions of use in connection with the use by political subdivisions of electronic and electromechanical voting systems as may be appropriate to mitigate deficiencies identified in the certification process.”
- Section 1-5-616(1)-(4), C.R.S., (2020), which requires the Secretary of State to promulgate rules establishing minimum standards for voting systems, specifically including subsection (1)(g) regarding “security requirements.”
- Section 1-5-623(4), C.R.S., (2020), which requires the Secretary of State to promulgate rules necessary “to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems...”