STATE OF COLORADO
Department of State
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Notice of Temporary Adoption

Colorado Department of State
Election Rules
8 CCR 1505-1

Adopted: February 10, 2022
Updated: March 1, 2022

I. Adopted Rule Amendments

As authorized by Colorado Elections Law[1] and the State Administrative Procedure Act[2], the Colorado Department of State gives notice that the following amendments to the Election Rules[3] 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):

Amendments to 8 CCR 1501-1 follow:

Amendments to Rule 20.4.1, including the repeal of Rules 20.4.1(a) – (c), concerning compliance with seal requirements:

20.4.1 COUNTY CLERKS MUST CONTINUOUSLY COMPLY WITH THE SEAL REQUIREMENTS OF THE MOST RECENT CONDITIONS OF USE ISSUED BY THE SECRETARY OF STATE FOR THE COUNTY'S VOTING SYSTEM. COUNTY CLERKS MAY NOT ALLOW ANY UNATTENDED VOTING SYSTEM COMPONENT TO REMAIN UNSEALED AT ANY POINT AFTER TRUSTED BUILD HAS BEEN INSTALLED ON THE COMPONENT.

~~(a) The county must place a seal over any data port when the port is not being used, except slots for activation cards.~~

~~(b) If the county cannot verify the firmware or software hash value (MD5 or SHA-1), the county must seal the BMD case. To detect unauthorized access, the county must use seals at either the seams of the case or at key entry points such as screw access points.~~

~~(c) In each voter service and polling center, the county must provide a minimum of one accessible BMD that complies with section 1-5-704, C.R.S.~~

Amendments to Rule 20.5.3, including New Rule 20.5.3(b), concerning access to secure areas and voting systems:

[1] Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2021).
[2] Section 24-4-103, C.R.S. (2021).
[3] 8 CCR 1505-1.

20.5.3 ~~County employee access.~~ The ~~clerk~~COUNTY CLERK may grant ~~employees~~ access to the AREAS AND THE codes, ~~or~~ locks, ~~and~~ OR combinations described in this Rule in accordance with the following limitations:

(a) Access to the code, lock, or combination to ballot storage areas, counting room, location of adjudication, or tabulation workstations is restricted to employees who have successfully passed a criminal background check. Any person who has been convicted of an election offense or an offense with an element of fraud is prohibited from having access to the above areas.

(B) ANY INDIVIDUAL WHO IS PROHIBITED FROM HAVING PHYSICAL CONTACT WITH ANY VOTING EQUIPMENT UNDER SECTION 1-5-607(1), C.R.S. MAY NOT ACCESS A ROOM WITH VOTING EQUIPMENT UNLESS ACCOMPANIED BY ONE OR MORE INDIVIDUALS WITH AUTHORIZED ACCESS.

(~~b~~C) Except for emergency personnel, no other individuals may be present in these locations unless supervised by one or more employees with authorized access.

(~~c~~D) In extreme circumstances, the county CLERK may request and the Secretary of State may grant exemption from the requirements outlined in this Rule.

Amendments to Rule 20.5.4, regarding access to the hard drive of voting system components:

20.5.4 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, INCLUDING THE HARD DRIVE(S) OR COPIES OF ANY PART OF THE HARD DRIVE(S) FOR 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

[Not shown: no amendments to Rule 20.5.4 (b) – (e).]

Amendments to Rule 20.6.1, including New Rules 20.6.1(b)(5) – (8) and current Rule 20.6.1(g) renumbered to Rule 20.6.1(h), concerning access to election management systems:

20.6.1 In addition to the access controls discussed in Rule 20.5, the ~~county~~COUNTY CLERK must change all passwords and limit access to the~~ following areas~~ ELECTION MANAGEMENT SYSTEM BY DOING THE FOLLOWING:

(a) The ~~county~~COUNTY CLERK must change ~~any~~ ALL passwords associated with a voting system according to the SCHEDULE REQUIRED BY THE MOST RECENT conditions of use FOR THAT VOTING SYSTEM.

(b) Administrative and user accounts for THE OPERATING SYSTEM ON THE VOTING SYSTEM, election management system and election PROJECTS ~~databases~~.

(1) The ~~county~~COUNTY CLERK may use the administrative user account FOR THE ELECTION MANAGEMENT SYSTEM only to create individual user accounts for each election PROJECT ~~database~~.

(2) The ~~county~~COUNTY CLERK must create individual user accounts that are associated and identified with each individual authorized user of the OPERATING SYSTEM OF THE VOTING SYSTEM, election management system or election PROJECT ~~database~~.

(3) The ~~county~~COUNTY CLERK must restrict access to each individual user account with a unique password known only to each individual user. Authorized users must access the OPERATING SYSTEM OF THE VOTING SYSTEM, election management system, and election PROJECT ~~database~~ using his or her individual user account and unique password.

(4) The ~~county~~COUNTY CLERK may grant administrative privileges to no more than ~~ten~~ FOUR individual user accounts per election UNLESS THE COUNTY CLERK HAS REQUESTED AND BEEN AUTHORIZED BY THE SECRETARY OF STATE TO GRANT MORE. THE COUNTY CLERK MUST IDENTIFY THE EMPLOYEES WITH ADMINISTRATIVE PRIVILEGES IN THE SECURITY PLAN FILED WITH THE SECRETARY OF STATE.

(5) THE COUNTY CLERK MAY ONLY GRANT ADMINISTRATIVE PRIVILEGES FOR THE OPERATING SYSTEM OF THE VOTING SYSTEM TO THE COUNTY CLERK, EMPLOYEES OF THE COUNTY, AND ANY PERSON APPOINTED BY THE SECRETARY OF STATE TO ASSIST IN THE ADMINISTRATION OF AN ELECTION, SUBJECT TO THE RESTRICTIONS OF RULE 20.6.1 (B)(8). THE COUNTY CLERK MAY ONLY GRANT ADMINISTRATIVE PRIVILEGES TO THE ELECTION MANAGEMENT SYSTEM OR THE ELECTION PROJECT TO THE COUNTY CLERK, EMPLOYEES OF THE COUNTY CLERK'S OFFICE, AND ANY PERSON APPOINTED BY THE SECRETARY OF STATE TO ASSIST IN THE ADMINISTRATION OF AN ELECTION, SUBJECT TO THE RESTRICTIONS OF RULE 20.6.1 (B)(8).

(6) AUTHORIZED USERS WITH ADMINISTRATIVE PRIVILEGES OF THE OPERATING SYSTEM, ELECTION MANAGEMENT SYSTEM, OR ELECTION PROJECT MAY NOT SHARE THEIR ACCOUNTS OR PASSWORDS WITH ANYONE.

(7) THE COUNTY CLERK MUST DISABLE ALL ACCOUNTS TO ACCESS THE OPERATING SYSTEM FOR INDIVIDUALS WHO ARE NO LONGER EMPLOYED BY THE COUNTY, OR ARE NO LONGER EMPLOYED IN A ROLE THAT REQUIRES ACCESS TO THE VOTING SYSTEM.

(8) ANY INDIVIDUAL WHO IS PROHIBITED FROM HAVING PHYSICAL CONTACT WITH ANY VOTING EQUIPMENT UNDER SECTION 1-5-607 (1), C.R.S. MAY NOT GRANT THEMSELVES OR BE GRANTED WITH AN ACCOUNT OR PASSWORD FOR THE OPERATING SYSTEM OF THE VOTING SYSTEM, THE ELECTION MANAGEMENT SYSTEM, OR AN ELECTION PROJECT.

(c) The voting system provider may not have administrative or user access to the county's election management system.

(d) The ~~county~~COUNTY CLERK may not connect or allow a connection of any voting system component to the Internet.

(e) If any component of the voting system is equipped with Wi-Fi capability or a wireless device, the ~~county~~COUNTY CLERK must ensure that the wireless capability or device is disabled before use in an election.

(f) The ~~county~~COUNTY CLERK may not connect any component of the voting system to another device by modem.

(G) THE COUNTY CLERK MAY NOT ALTER, OR GRANT PERMISSION TO ANYONE ELSE TO ALTER, EXCEPT DURING THE TRUSTED BUILD PROCESS, THE PRE-BOOT SETTINGS FOR ANY VOTING SYSTEM COMPONENT, INCLUDING ALTERING THE BOOT PATH.

(~~g~~H) The ~~county~~COUNTY CLERK must include in its security plan the name, title and date of background checks for each employee with access to any of the areas or equipment set forth in this Rule. The ~~county~~COUNTY CLERK must maintain a storage facility access log that details employee name, date, and time of access to the storage facility in which the software, hardware, or components of any voting system are maintained. If access to the storage facility is controlled by use of key card or similar door access system that is capable of producing a printed paper log including the person's name and date and time of entry, such a log must meet the requirements of this Rule. [Section 24-72-305.6, C.R.S.]

New Rules 20.6.2 and 20.6.3, concerning an acceptable use policy agreement for the voting system and a prohibition on the creation or dissemination of an image of the hard drive of any voting system component. Current Rule 20.6.2 renumbered to Rule 20.6.4

20.6.2 AS OF MARCH 1, 2022, ALL USERS WITH ACCESS TO THE VOTING SYSTEM MUST SIGN THE VOTING SYSTEM ACCEPTABLE USE POLICY AGREEMENT, PROVIDED BY THE SECRETARY OF STATE, EVERY YEAR PRIOR TO USING THE SYSTEM. THE COUNTY CLERK MUST SUBMIT COPIES OF ALL NEWLY SIGNED ACCEPTABLE USE POLICY AGREEMENTS SIGNED BY ELECTION STAFF WITH THE COUNTY CLERK'S SECURITY PLAN.

20.6.3 A COUNTY CLERK MAY NOT CREATE, PERMIT ANY PERSON TO CREATE, OR DISCLOSE TO ANY PERSON AN IMAGE OF THE HARD DRIVES OF ANY VOTING SYSTEM COMPONENT WITHOUT THE EXPRESS WRITTEN APPROVAL BY, AND COORDINATION WITH, THE SECRETARY OF STATE.

Amendments to Rule 20.6.4 to update internal cite and grammatical changes:

~~20.6.2~~20.6.4 Removable storage devices

(a) The ~~county~~COUNTY CLERK must reformat all removable storage devices immediately before inserting them into any component of the voting system, except as provided in Rule ~~20.6.2 (b)-(e)~~ 20.6.4(B) – (E), or in the conditions of use.

(b) The ~~county~~COUNTY CLERK may insert, without first reformatting, a removable storage device containing only election definition data files downloaded from SCORE if:

(1) The ~~county~~COUNTY CLERK reformats the removable storage device immediately before inserting it into the SCORE workstation and downloading the election definition data files; and

(2) Before and while downloading the SCORE election definition data, the ~~county~~COUNTY CLERK installs and operates the advanced network monitoring and threat detection applications provided or approved by the Secretary of State.

(c) The ~~county~~COUNTY CLERK may insert, without first reformatting, a removable storage device into a BMD, if:

(1) The removable storage device contains only election and ballot style data files necessary to program the BMD for testing or use in an election;

(2) The ~~county~~COUNTY CLERK downloaded the election and ballot style data files directly from the EMS workstation;

(3) The ~~county~~COUNTY CLERK did not expose the removable storage device to the internet or insert it into an internet-connected device after downloading the election and ballot style data files from the EMS; and

(4) The ~~county~~COUNTY CLERK reformatted the removable storage device immediately before inserting it into the EMS and downloading the election and ballot style data files.

(d) The ~~county~~COUNTY CLERK may insert a removable storage device without first reformatting it if the removable storage device contains only election database or project files remotely programmed by the voting system provider in accordance with Rule 20.8.

(e) ~~the county~~ THE COUNTY CLERK may insert a removable storage device without first reformatting it if the removable storage device contains only election database backup files created by the ~~county~~COUNTY CLERK and:

(1) The ~~county~~COUNTY CLERK submits an attachment with their Security Plan stating security procedures for the removable storage device that addresses storage of the device when not in use; and

(2) The plan in the attachment is approved by the Secretary of State.

Amendments to Rule 20.7, concerning access to voting systems components:

20.7 The ~~county~~COUNTY CLERK must keep all components of the voting system, ballots, servers, workstations, ballot scanners, BMDs, and video data records in a LOCATION WITH LOGS AND ACCESS CONTROLS REQUIRED BY THIS RULE 20. THE LOCATION MUST ALSO BE A temperature-controlled storage environment that maintains a minimum temperature of 50 degrees Fahrenheit and a maximum temperature of 90 degrees Fahrenheit. The storage environment must be dry with storage at least four inches above the floor. The ~~county~~COUNTY CLERK must provide the Secretary of State with a description of the specific environment used for each type of component.

Amendments to 20.8.1(c) to update internal cite:

(c) At all times during the election programming process, the voting system provider complied with the security protocols for removable storage devices in Rule ~~20.6.2(a) – (c)~~ 20.6.4(A) – (C); and

Amendments to 20.10.5, including New Rules 20.10.5(h) – (j), concerning documentation and equipment subject to review by Secretary of State:

20.10.5 ~~The Secretary of State may inspect~~ A COUNTY CLERK MUST MAKE AVAILABLE TO THE SECRETARY OF STATE UPON REQUEST, county documents and equipment, including:

(a) County maintenance records;

(b) Chain of custody logs;

(c) Trusted build integrity;

(d) Wireless status;

(e) Virus protection status;

(f) Password status (Bios, operating system, and applications);~~ and~~

(g) Access logs;

(H) BACKGROUND CHECK DOCUMENTS;

(I) SIGNED ACCEPTABLE USE POLICY AGREEMENTS; AND

(J) VIDEO SURVEILLANCE.

New Rule 20.15.3, concerning unauthorized access to a voting system:

20.15.3 IN THE EVENT THAT AN ELECTION OFFICIAL KNOWS, OR REASONABLY SHOULD KNOW, THAT THE COUNTY'S VOTING SYSTEM WAS ACCESSED BY ANY INDIVIDUAL NOT PERMITTED ACCESS BY THESE RULES, OR IS MADE AWARE THAT THE SYSTEM HAS BEEN TAMPERED WITH, THEY MUST IMMEDIATELY NOTIFY THE SECRETARY OF STATE.

New Rule 20.15.4, concerning actions the Secretary of State may take for failure to comply with security requirements:

20.15.4 IN THE EVENT THAT THE SECRETARY OF STATE DETERMINES THAT AN ELECTION OFFICIAL HAS SHOWN A SERIOUS OR PATTERNED FAILURE TO COMPLY WITH ANY SECURITY REQUIREMENTS FOUND IN STATUTE, THESE RULES, THE CONDITIONS OF USE OF THE VOTING SYSTEM, OR THE ACCEPTABLE USE POLICY AGREEMENT FOR THE VOTING SYSTEM, THE SECRETARY OF STATE MAY TAKE ANY OR ALL OF THE FOLLOWING ACTIONS, INCLUDING, BUT NOT LIMITED TO:

(A) REQUIRING THE COUNTY CLERK TO SUBMIT A SECURITY REMEDIATION PLAN NO LATER THAN 90 DAYS BEFORE THE NEXT ELECTION OUTLINING THE PROCEDURES THE COUNTY CLERK WILL FOLLOW TO ENSURE COMPLIANCE WITH THE SECURITY REQUIREMENTS THAT WERE NOT FOLLOWED;

(B) PROHIBITING OR LIMITING 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;

(C) IN ACCORDANCE WITH SECTION 1-1.5-104 (2)(A)(II), C.R.S., APPOINTING OBSERVERS AT THE COUNTY EXPENSE TO BE PRESENT WITH THE COUNTY CLERK TO ENSURE COMPLIANCE WITH THE SECURITY REQUIREMENTS; OR

(D) REFERRING THE MATTER TO THE ATTORNEY GENERAL OR DISTRICT ATTORNEY FOR POTENTIAL INVESTIGATION AND PROSECUTION UNDER SECTION 1-13-114, C.R.S. OR ANY OTHER APPLICABLE PROVISION.

New Rule 20.20, including New Rules 20.20.1 through 20.20.5 regarding trusted build procedures:

20.20 TRUSTED BUILD PROCEDURES

20.20.1 WHEN TRUSTED BUILD IS REQUIRED

(A) IN THE EVENT THAT THE SECRETARY OF STATE DETERMINES A TRUSTED BUILD IS REQUIRED IN A COUNTY, INCLUDING DUE TO A NEW CERTIFICATION, MODIFICATION, OR OTHER SECURITY ISSUE, THE COUNTY CLERK AND VOTING SYSTEM PROVIDER MUST COORDINATE WITH THE SECRETARY OF STATE TO INSTALL TRUSTED BUILD ON A SCHEDULE DETERMINED BY THE SECRETARY OF STATE.

(B) AT THE TIME THAT THE SECRETARY OF STATE DETERMINES A TRUSTED BUILD IS REQUIRED, THE SECRETARY OF STATE WILL PROVIDE THE REASON TO THE COUNTY CLERK FOR THE REQUIRED TRUSTED BUILD.

20.20.2 ATTENDANCE AT TRUSTED BUILD

(A) THE ONLY INDIVIDUALS WHO MAY BE PRESENT AT A TRUSTED BUILD IN A COUNTY INCLUDE:

(1) SECRETARY OF STATE STAFF, DESIGNEES OF THE SECRETARY OF STATE, OR OTHER INDIVIDUALS APPROVED BY THE SECRETARY OF STATE;

(2) VOTING SYSTEM VENDOR STAFF FOR THE VOTING SYSTEM FOR WHICH TRUSTED BUILD IS BEING INSTALLED; AND

(3) THE COUNTY CLERK, EMPLOYEES OF THE COUNTY CLERK, OR THE DESIGNATED ELECTION OFFICIAL OF THE COUNTY, AS LONG AS THOSE INDIVIDUALS ARE AUTHORIZED TO ACCESS THE VOTING SYSTEM UNDER RULE 20.5.4 (A), HAVE SIGNED THE VOTING SYSTEM ACCEPTABLE USE POLICY AGREEMENT, AND SUBJECT TO THE RESTRICTIONS OF RULE 20.5.3 (B).

(B) THE COUNTY CLERK AND VOTING SYSTEM VENDOR MUST PROVIDE THE NAME, POSITION, AND PROOF OF EMPLOYMENT OF INDIVIDUALS WHO WILL ATTEND THE TRUSTED BUILD IN A COUNTY AT THE TIME OF SCHEDULING THE TRUSTED BUILD WITH THE SECRETARY OF STATE.

(C) BACKGROUND CHECK

(1) ANY INDIVIDUAL PRESENT AT THE TRUSTED BUILD MUST HAVE HAD A BACKGROUND CHECK CONDUCTED IN ACCORDANCE WITH RULE 20.5.4 (A)–(C).

(2) THE COUNTY CLERK AND VOTING SYSTEM VENDOR MUST PROVIDE PROOF THAT A BACKGROUND CHECK WAS CONDUCTED AND PASSED ON INDIVIDUALS WHO WILL BE PRESENT TO THE SECRETARY OF STATE AT THE TIME OF SCHEDULING THE TRUSTED BUILD WITH THE SECRETARY OF STATE'S OFFICE.

(D) THE COUNTY CLERK AND VOTING SYSTEM VENDOR MAY ONLY ALLOW THE NUMBER OF PEOPLE DESIGNATED BY THE SECRETARY OF STATE FOR THAT COUNTY TO ATTEND THE TRUSTED BUILD.

(E) IF, DUE TO AN UNFORESEEN CIRCUMSTANCE, THE COUNTY CLERK OR VOTING SYSTEM VENDOR MUST SEND AN INDIVIDUAL NOT PREVIOUSLY IDENTIFIED TO THE TRUSTED BUILD, THE COUNTY CLERK OR VENDOR MUST IMMEDIATELY CONTACT THE SECRETARY OF

STATE AND PROVIDE THE INFORMATION OTHERWISE REQUIRED BY THIS RULE TO THE SECRETARY OF STATE FOR THE SUBSTITUTE INDIVIDUAL.

20.20.3 SECURITY AT TRUSTED BUILD

(A) THE COUNTY CLERK MUST ENSURE THAT THE LOCATION WHERE THE TRUSTED BUILD WILL BE CONDUCTED DOES NOT ALLOW FOR INDIVIDUALS WHO ARE NOT PERMITTED TO ATTEND TO BE PRESENT OR TO OTHERWISE DISRUPT THE TRUSTED BUILD PROCESS.

(B) VIDEO SURVEILLANCE RECORDING

(1) THE COUNTY CLERK MUST ENSURE THAT THE TRUSTED BUILD IS CONDUCTED UNDER VIDEO SURVEILLANCE AS DEFINED BY RULE 1.1.44 UNTIL ALL DEVICES ARE SEALED AT THE CONCLUSION OF TRUSTED BUILD OR ACCEPTANCE TESTING.

(2) THE COUNTY CLERK MUST IDENTIFY THE VIDEO SURVEILLANCE EQUIPMENT THAT WILL BE USED TO COMPLY WITH THIS RULE TO THOSE ATTENDING THE TRUSTED BUILD.

(3) VIDEO SURVEILLANCE OF THE TRUSTED BUILD MUST BE MAINTAINED AS AN ELECTION RECORD UNDER SECTION 1-7-802, C.R.S.

(4) NO ONE MAY SURREPTITIOUSLY RECORD THE TRUSTED BUILD BY VIDEO OR AUDIO.

20.20.4 COMPLETION OF TRUSTED BUILD

(A) COUNTY CLERKS MUST SEAL ALL VOTING SYSTEM COMPONENTS IN ACCORDANCE WITH THE MOST RECENT CONDITIONS OF USE ISSUED BY THE SECRETARY OF STATE FOR THE COUNTY'S VOTING SYSTEM IMMEDIATELY UPON CONCLUSION OF THE TRUSTED BUILD UNLESS THE COUNTY CLERK PROCEEDS TO AND COMPLETES ACCEPTANCE TESTING ON THE SAME DAY THAT TRUSTED BUILD IS COMPLETED.

(B) IN THE EVENT THAT A COUNTY CLERK IMMEDIATELY PROCEEDS TO ACCEPTANCE TESTING ON THE SAME DAY THE TRUSTED BUILD IS COMPLETED, A COUNTY CLERK MUST SEAL ALL VOTING SYSTEM COMPONENTS IN ACCORDANCE WITH THE MOST RECENT CONDITIONS OF USE ISSUED BY THE SECRETARY OF STATE FOR THE COUNTY'S VOTING SYSTEM UPON CONCLUSION OF THE ACCEPTANCE TESTING.

(C) THE COUNTY CLERK MUST SUBMIT A COPY OF THE SIGNED TRUSTED BUILD AFFIDAVIT TO THE SECRETARY OF STATE FOLLOWING THE COMPLETION OF ACCEPTANCE TESTING.

20.20.5 IN THE EVENT THAT A TRUSTED BUILD CANNOT BE SCHEDULED OR COMPLETED DUE TO A COUNTY CLERK'S VIOLATION OF THESE RULES OR IN THE EVENT THAT A COUNTY CLERK IS FOUND TO HAVE VIOLATED THESE RULES FOLLOWING A TRUSTED BUILD, THE SECRETARY OF STATE MAY TAKE ANY OF THE ACTIONS LISTED IN RULE 20.15.4.

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.[4]

IV. Effective Date of Adopted Rules
These rule amendments are effective immediately.

Temporarily adopted on February 10th, 2022
Updated on March 1, 2022,

Christopher P. Beall
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

[4] Section 24-4-103(6), C.R.S. (2021).

STATE OF COLORADO
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Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State
Election Rules
8 CCR 1505-1

Adopted: February 10, 2022
Updated: March 1, 2022

I. Basis and Purpose

This statement explains amendments to the Colorado Department 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.

Specific changes include:

- Amendments under Rule 20 regarding voting systems. These rule changes are necessary to ensure the security and custody of voting systems used in Colorado.
    - Amendments to Rule 20.4.1 are being made to clarify that all voting system components must be sealed in accordance with the conditions of use for that voting system throughout the year. The conditions of use for voting systems in Colorado contain all of the seal requirements necessary for counties to follow, and the rules being repealed here are duplicative of those requirements.
    - Amendments to Rule 20.5.3 are being made to ensure that individuals who are prohibited by law from physically touching voting equipment are not allowed into a room housing voting equipment while unaccompanied.
    - Amendments to Rule 20.5.4 are being made to clarify that the hard drive and any copy of the hard drive of a voting system component may not be accessed unless otherwise authorized by the rule.
    - Amendments to Rule 20.6.1(a) are being made to clarify that the password changing schedule found in the most recent conditions of use published for the

[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.

system should be followed until new conditions of use for that system are published.

- Amendments to Rule 20.6.1(b) regarding the management of user and administrative accounts for the operating system, election management system, and election projects. This includes:

    - Amendments to Rule 20.6.1(b)(1), (2), and (3) clarify that administrative and user account restrictions currently in rule are required for accounts to the operating system, election management system, and election project.

    - Amendments to Rule 20.6.1(b)(4) restrict administrative privileges to four user accounts unless the county clerk requests and is granted additional accounts,and requires counties to notify the Department of State of the individuals who have been given administrative privileges.

    - New Rule 20.6.1(b)(5) restricts the individuals that a county clerk may grant administrative privileges to.

    - New Rule 20.6.1(b)(6) restricts the sharing of administrative accounts and passwords.

    - New Rule 20.6.1(b)(7) requires counties to disable accounts for individuals who no longer require access to the voting system due to a change in employment.

    - New Rule 20.6.1(b)(8) prohibits individuals who are barred by law from touching a voting system from having a user account or password to that system.

- New Rule 20.6.1(g) restricts county clerks from allowing anyone to alter the pre-boot settings for any voting system component outside of the trusted build process.

- New Rule 20.6.2 requires users of the voting system to sign an acceptable use policy agreement before using the voting system, beginning March 1, 2022. That policy agreement is attached to these rules as Exhibit A. A similar agreement is already required for all users who access the statewide voter registration database.

- New Rule 20.6.3 restricts a county clerk from creating, allowing a person to create, or disclosing an image of the hard drive of any voting system component without contacting and obtaining the approval of the Department of State's office.

- Amendments to Rule 20.7 clarify that voting system components and other records must be kept in a location with log and access control.

- Amendments to Rule 20.10 explicitly allow the Department of State's office to obtain upon request security documentation, including background check documents, acceptable use policy agreements, and video surveillance.

- New Rule 20.15.3 requires election officials to notify the Department of State's office if that person knows or should know that a voting system is accessed by an individual without permission or the election official becomes aware that the system has been tampered with in any way.

- New Rule 20.15.4 lists the actions the Department of State's office may take in the event that an election official has committed a serious or patterned failure to comply with security requirements.

- New Rule 20.20.1 specifies the times that a trusted build may be required and requires counties to work with the Department of State's office to schedule a time for that trusted build.

- New Rule 20.20.2 specifies who may attend a trusted build. This includes requirements that all individuals who attend a trusted build have undergone a background check.

- New Rule 20.20.3 specifies security requirements that counties must have in place during the trusted build. This includes requirements for video surveillance at the trusted build.

- New Rule 20.20.4 requires counties to adhere to specific seal requirements following the trusted build. It also requires counties to submit a copy of the trusted build affidavit to the Department of State's office at the conclusion of acceptance testing.

- New Rule 20.20.5 notes that the Department of State's office may take enforcement action against a county clerk that does not comply with the trusted build requirements.

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

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

- Section 1-1-107(2)(a), C.R.S., (2021), which authorizes the Secretary of State "[t]o promulgate, publish and distribute…such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."

- Section 1-1-110(1), C.R.S., (2021), which requires county clerks to, "follow the rules and orders promulgated by the secretary of state pursuant to this code."

- Section 1-1.5-104(1)(e), C.R.S., (2021), 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 and of [Article 1.5]."

- Section 1-5-608.5(3)(b), C.R.S., (2021), which allows 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), C.R.S., (2021), which requires the Secretary of State to adopt rules "that establish minimum standards for electronic and electromechanical voting systems." This includes the authority to adopt rules regarding "security requirements" for those voting systems.

- Section 1-5-623(4), C.R.S., (2021), 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…"

- Section 1-7-513(2), C.R.S., (2021), which requires the Secretary of State to promulgate rules "prescribing the manner of maintenance of records required by this section" regarding voting equipment.

- Section 1-7.5-104, C.R.S. (2021), 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."

- Section 1-7.5-106, C.R.S., (2021), 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.]."

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Updated: March 1, 2022

Amended Rules: 20.4.1; 20.5.3, including section (d); 20.5.4(a); 20.6.1, including section (a); 20.6.1(b), including subsections (1) through (4); 20.6.4, including sections (a) through (e); 20.7; 20.8.1(c); and 20.10.5.

New Rules: 20.5.3(b); 20.6.1(b)(5) through (8); 20.6.1(g); 20.6.2; 20.6.3; 20.10.5(h) through (j); 20.15.3; 20.15.4; 20.20, including 20.20.1 through 20.20.5.

Renumbering:

- Former Rules 20.5.3(b) and (c) are renumbered as Rules 20.5.3(c) and (d).
- Former Rule 20.6.1(g) is renumbered as Rule 20.6.1(h).
- Former Rule 20.6.2 is renumbered as Rule 20.6.4.

In accordance with Colorado law,[1] the Department of State finds that certain amendments to the existing election rules are imperatively necessary and, as a result, must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado and federal election laws.

Adoption of these new and amended rules on a temporary basis is necessary to ensure that voting systems utilized throughout Colorado remain secure as required by Colorado and federal law. As the United States Department of Justice recently explained,[2] federal law requires that local election officials maintain custody of their voting system.[3] Similarly, Colorado law requires the Department of State to promulgate rules establishing minimum standards for voting system security[4] and to specify permissible conditions of use for those systems.[5] To comply with these

[1] Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-7.5-104, 24-4-103 (6)(a) C.R.S. (2021).
[2] "Federal Law Constraints on Post-Election 'Audits'", United States Department of Justice, pub. 07/28/2021. Found at https://www.justice.gov/opa/press-release/file/1417796/download
[3] 52 U.S.C. § 20701
[4] Section 1-5-616(1)(g), C.R.S. (2021)
[5] Section 1-5-623(4), C.R.S. (2021)

state and federal laws, the Department must have rules in place which maintain the security of voting systems used in the state.

After a review of the rules that govern the security of voting systems in Colorado, the Department has determined that certain rules must be updated or issued to maintain security and custody of those systems. The rules being adopted include security measures that ensure security and custody of a voting system by restricting physical and technical access to the system,[6] ensure that voting system users maintain the security of the system,[7] and allow the Department of State the information and enforcement mechanisms necessary to ensure that security measures are being followed.[8] All of these changes are immediately necessary for elections conducted in Colorado to continue to comply with state and federal law.

Failure to adopt these rules immediately would be contrary to the public interest given the public's right to secure elections guaranteed by the Colorado Constitution.[9] The quickly approaching 2022 statewide primary election, which will require the use of secure voting systems and the preservation of records for those systems in compliance with state and federal law, also requires the Department to adopt these rules immediately. With the work of this election already beginning, it would be contrary to the public interest to wait to adopt these rules after a notice and comment period and risk the security of the systems the public will rely on when casting their ballot in June.

For these reasons, and in accordance with the State Administrative Procedure Act, the Department of State finds that temporary adoption of the amendments to existing election rules is imperatively necessary to comply with state and federal law and failure to adopt these rules immediately would be contrary to the public interest.[10]

[6] Election Rules 20.5.3; 20.5.4; 20.6.1; 20.6.3; 20.7; 20.20.2;
[7] Election Rules 20.4.1; 20.6.2; 20.20.1; 20.20.3; 20.20.4
[8] Election Rules 20.10.5; 20.15.3; 20.15.4; 20.20.5
[9] Art. VII, Sec. 11, Colo. Const.
[10] Section 24-4-103(6), C.R.S. (2021).

Exhibit A:

Voting System
End User Acceptable Use Policy

PURPOSE:

This policy establishes a standard to protect the integrity of, and the election information contained in, the county's voting system.

SCOPE:

This policy applies to any person who accesses or uses the county voting system to conduct an election under title 1, C.R.S. All county voting system users must sign and agree with this policy.

INDIVIDUAL RESPONSIBILITIES:

An individual accessing the voting system must comply with the following standards and provisions:

- Users are strictly prohibited from sharing passwords or multi-factor-authentication devices.
- Users must use complex passwords and they must comply with the following requirements:
    - Be at least 15 characters in length.
    - Contain three out of the four following items:
        - Lower-case letter
        - Upper-case letter
        - Number
        - Symbol
    - Not contain the user's name or username.
    - Avoid using simple dictionary words without proper length and complexity. Passwords should be generated from pass phrases or uncommon word associations.
        - Example: Horse793!Staple (Passwords longer than 15 characters are preferred and can be simple as shown)
    - Simple letter substitution **is not** considered acceptable. (Example – Zeros, ones, and fours should not be used to replace "O"s, "I"s, or "A"s in a password. For instance "D1ct10n4ry" **is not** a secure password.)
- Users may not record their usernames and passwords in a location easily accessible to other users.
- Authorized voting system users must ensure proper workstation use. As responsible parties they must:
    - Agree to abide by, the Department of State's rules, conditions of use, and orders, regarding voting systems use and security protocols.
    - Ensure their screen is locked to prevent access to the voting system whenever they leave sight of a terminal.
    - Not install or run any software including shareware, freeware, or browser controls unless authorized by the Department of State to do so.
    - Contact their direct supervisor immediately if the voting system's performance becomes erratic, or if it appears the system has been tampered with, or the local virus protection software finds an infection.
    - Not connect any component of the voting system to an external network or the internet.
- Authorized voting systems users must not:
    - Change the BIOS settings or passwords.
    - Take any action to create, or explicitly or implicitly permit or consent to the creation of, an image of any voting system component hard drive(s) without the advance written authorization of the Department of State.
- Failing to comply with this policy may result in the user's loss of access to the voting system, and could result in disciplinary action, civil or criminal liability, or both, or decertification of the county's voting system, under applicable provisions of federal and state law.

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USER ACKNOWLEDGEMENT:

I certify that I have reviewed, understand, and agree to the Voting System End User Acceptable Use Policy. By signing this form, I affirm that I will abide by the Voting System End User Acceptable Use Policy, procedures, and guidelines. I further affirm that I agree to comply with federal and state statutes, the Department of State's Election Rules, Conditions of Use, and Election Orders, that apply to use of the voting system owned, leased, or used by the county I work for. If I have any questions regarding this policy or the applicable laws, administrative rules, conditions of use, or election orders, I will obtain clarification from my supervisor before taking any action.

Name Printed: _____ County: _____

Signature: _____ Date: _____