



Statement of Justification and Reasons for Adoption of Temporary Rules

Colorado Department of State Election Rules 8 CCR 1505-1

June 10, 2022

Amended Rules: 20.4.1; 20.5.3, including section (c); 20.5.4(a); 20.6.1, including section (a); 20.6.1(b), including subsections (1) through (4); 20.6.3, including sections (a) through (e); 20.7; 20.8.1(c); and 20.10.5.

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

Renumbering:

- Former Rule 20.6.1(g) is renumbered as Rule 20.6.1(h).
- Former Rule 20.6.2 is renumbered as Rule 20.6.3.

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.

The Department adopted temporary rules on February 10th, 2022 (updated March 1st, 2022, and under CCR Tracking #2022-00078). Additionally, the Department issued a notice of proposed rulemaking on April 15th, 2022 (updated May 18th, 2022, and under CCR Tracking #2022-00197). A public rulemaking hearing was conducted in accordance with the State Administrative Procedure Act² on May 24th, 2022, to receive comments, evidence, and testimony on the proposed rules with the written comment period extended to May 31, 2022. Re-adoption of these rules on a brief, temporary basis is necessary to provide clear guidance to interested parties, including county clerks, vote system vendors, and the general public, while the Department reviews the comments and testimony received during the permanent rulemaking hearing and adopts the rules on a permanent basis before any temporary rules expire. This is particularly true given the rapidly approaching June 28, 2022, statewide primary which county clerks are already actively engaged in running.

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 Section 24-4-103(3)(a), C.R.S. (2021)

Re-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,³ federal law requires that local election officials maintain custody of their voting system.⁴ Similarly, Colorado law requires the Department of State to promulgate rules establishing minimum standards for voting system security⁵ and to specify permissible conditions of use for those systems.⁶ To comply with these 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,⁷ ensure that voting system users maintain the security of the system,⁸ and allow the Department of State the information and enforcement mechanisms necessary to ensure that security measures are being followed.⁹ All of these changes are immediately necessary for elections conducted in Colorado to continue to comply with state and federal law.

Failure to re-adopt these rules would be contrary to the public interest given the public's right to secure elections guaranteed by the Colorado Constitution.¹⁰ The close proximity of the June 28, 2022, 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 re-adopt these rules immediately. It would be contrary to the public interest to allow these rules to expire while county clerks are actively running a statewide primary election.

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.¹¹

³ "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>

⁴ 52 U.S.C. § 20701

⁵ Section 1-5-616(1)(g), C.R.S. (2021)

⁶ Section 1-5-623(4), C.R.S. (2021)

⁷ Election Rules 20.5.3; 20.5.4; 20.6.1; 20.7; 20.20.2.

⁸ Election Rules 20.4.1; 20.6.2; 20.20.1; 20.20.3; 20.20.4

⁹ Election Rules 20.10.5; 20.15.3; 20.15.4; 20.20.5

¹⁰ Art. VII, Sec. 11, Colo. Const.

¹¹ Section 24-4-103(6), C.R.S. (2021).