



Revised Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State Election Rules 8 CCR 1505-1

May 18th, 2022

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State Election Rules [8 CCR 1505-1]. 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, increase the transparency and security of the election process, and implement amendments required by House Bill 21-1011, enacted June 28, 2021; and, House Bill 21-1071, enacted June 28, 2021.

Specific proposed changes include:

- Amendments under Rule 1 concerning definitions.
 - New Rule 1.1.17 defines and clarifies the interchangeable use of “county” and “county clerk” throughout these rules.
 - New Rule 1.1.21 defines and clarifies the interchangeable use of “Department” with “Colorado Department of State”, “Secretary of State”, and “Colorado Secretary of State’s Office” throughout these rules.
 - New Rule 1.1.29 defines “election project backup” used throughout these rules.
 - New Rule 1.1.47 defines “secure ballot area” used throughout these rules.
 - New Rule 1.1.48 defines “secure equipment area” used throughout these rules.
 - Repeal of Current Rule 1.1.49 which defines “zero tape”. Zero tape is no longer used in elections in Colorado, and there are no references to zero tape throughout these rules.

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.

- Other amendments to definitions involve technical, grammatical, and renumbering edits. Definition rules found in Rule 26.1 are re-codified throughout Rule 1.1.
- Amendments under Rule 2 concerning voter registration and registration records.
 - Amendments to Rule 2.15.5 concern county custodianship of voter information for non-resident voter records. The amendments clarify how a county clerk should respond to a request for voter information in SCORE for a record of a voter that is outside the county.
 - Rules 2.16 and 2.17 are re-codified to New Rule 20.9.1(a) and (b). Re-codification is necessary to consolidate all security rules to New Rule 20. Current Rules 2.18 through 2.20 are renumbered to Rules 2.16 through 2.18.
- Amendments under Rule 4 concerning coordinated elections.
 - Amendments to Rule 4.1.2, including new subsections (a) and (b), ensure the ballot content is translated correctly as required by HB 21-1011.
 - Amendments to Rule 4.8.2 remove language duplicative to section 1-5-407(4.5), C.R.S., and require designated election officials to reject printing a nickname of a candidate on a ballot if that nickname contains a political slogan or other political speech.
 - New Rule 4.8.8 establishes a standard for translators used by a county that is required to provide translations under section 1-5-905, C.R.S. This is required by HB 21-1011 and will be affirmed in the county's filed election plan.
 - New Rule 4.8.9 permits any individual to file an election complaint against a county concerning a violation of standards established in Rule 4.8.8 to the Department of State's office.
- Amendments under Rule 6 concerning election judges and judge removal.
 - Repeal of Current Rule 6.9. Specific contents of this rule are readopted in New Rule 20.2.3 to consolidate all security rules to New Rule 20.
 - New Rule 6.9 requires a county to notify the Department of State of the removal of an election judge from their duties.
- Amendments under Rule 7 concerning mail ballot election administration generally.
 - Current Rule 7.4.8 is re-codified to New Rule 20.7.2(b). Re-codification is necessary to consolidate all security rules to New Rule 20. Current Rules 7.4.9 through 7.4.16 are renumbered to Rules 7.4.8 through 7.4.15.
 - New Rule 7.8.12 ensures proper administration of the multilingual ballot hotline at a voter service and polling center as required by HB 21-1011.

- New Rule 7.8.13 requires staff members or election judges to fill out the voter assistance form, required by section 1-7-111, C.R.S., when assisting a voter with the multilingual hotline.
- Current Rule 7.16 is re-codified to New Rule 20.11.2(b). Re-codification is necessary to consolidate all security rules to New Rule 20.
- New Rule 7.16 is re-codified from Current Rule 20.13. Re-codification is necessary to remove non-security related rules from Current Rule 20.
- Amendments under Rule 8 concerning watchers and their duties.
 - New Rule 8.8.4 clarifies that watching a drop box is an activity that a credentialed watcher may be involved in and sets limits on the number of watchers who may watch a drop box at any one time, similar to other election activities currently in rule.
 - Amendments to Rule 8.10.2 clarify additional election activities that a credentialed watcher may be involved in and clarify that logic and accuracy tests are open to the public, under section 1-7-509(2), C.R.S.
- Amendments to Rule 11 regarding election database project backup and voting systems.
 - Repeal of Rules 11.1.1 and 11.1.2, as they are now covered by the requirements found in New Rules 11.4.1 and 20.10.1. Current Rule 11.1.3 is renumbered to Rule 11.1.1.
 - New Rule 11.2.4 requires a county to notify the Department of State about the expiration of a voting system's license agreement or the cessation of use of a voting system component and requires a county to comply with the retainment policy in New Rule 20.5.7, if the equipment is retained by the county.
 - New Rule 11.4, including New Rules 11.4.1 and 11.4.2, regarding election database project backups.
 - New Rule 11.4.1 requires counties to create election database project backups at specific times throughout the election period. This New Rule also specifies which project backup should be treated as the election setup record.
 - New Rule 11.4.2 requires the county to independently export logs from the election management system for retention, in accordance with New Rule 20.10.2, at the time they create an election project backup, if the county's voting system does not export logs during the creation of an election project backup.
 - New Rule 11.4.3 is re-codified from Current Rule 11.4, including Current Rules 11.4.1 through 11.4.6 being re-codified to subsections (a) through (f) for rule

coherence. Amendments to subsection (b) include grammatical changes and email address update.

- Amendment to Rule 15.1.4, concerning discrepancies that the Department or designated election official will not use to reject a petition entry. The change clarifies that a line on a petition without a date will not be rejected if the line above and below has a valid date.
- Amendments under Rule 20 regarding security procedures. This includes the repeal of Current Rule 20, the replacement of this rule with New Rule 20 to consolidate and reorganize all security rules for clarity, and the proposed permanent adoption of temporary rules adopted on February 10, 2022 (e-filed under CCR tracking #2022-00078).
 - New Rule 20.1 concerning security plans.
 - New Rule 20.1.1 combines Current Rules 20.1 and 20.16, with amendments for clarity. The requirement that county clerks submit a plan for issuing emergency ballots has also been removed because this process has been standardized statewide via the use of the Democracy Live electronic ballot delivery system.
 - New Rule 20.1.2 places in one rule the information that the county must provide the Department of State in their security plan. This rule includes Current Rule 20.3.5, a portion of Current Rule 20.11.1, a portion of Current Rule 20.14, a portion of Current Rule 20.5.2, and proposed permanent adoption of temporary Rule 20.6.2 (part of which is reorganized as New Rule 20.1.2(e)) and temporary Rule 20.7 (part of which is reorganized as New Rule 20.1.2(f)).
 - New Rule 20.2 concerning background checks.
 - New Rule 20.2.1 lists general requirements for background checks performed by the county.
 - New Rule 20.2.2 contains a portion of Current Rule 6.9. The rule requires background checks to be performed by the county for all election judges who have access to a list of specific voter confidential information. Current Rule 6.9 only requires a background check for supervisor judges.
 - New Rule 20.2.3 requires background checks to be performed by the county for temporary or permanent staff members with access to voter-specific confidential information and other duties. Specific contents within Current Rules 6.9, 20.5.4(a), 20.11.1(c), 11.1.3, and 20.5.3(a) are re-adopted and amended for clarity within subsections (a) through (f). Subsection (e) is new and requires a background check for any employee with access to an election project backup.
 - New Rule 20.2.4 is a re-adoption of Current Rule 20.5.4(b) with some rewording for clarity. The new rule now also requires a voting system

provider to perform background checks of contractors with access to voting systems and provide the Department of State with confirmation, in writing, that a background check was performed.

- New Rule 20.2.5 is a re-adoption of Current Rule 20.5.4(c) with slight revisions to the wording for clarity.
- New Rule 20.3 concerning security training.
 - New Rule 20.3.1 is a re-adoption of Current Rule 20.14.1 with amendments. Unlike Current Rule 20.14.1, New Rule 20.3.1 requires the county to provide security training for all election-related field technicians, election-related contractors, and election officials regardless of their assigned duty.
 - New Rule 20.3.2 is a re-adoption of Current Rule 20.14.2 with minor revisions to the header for clarity.
- New Rule 20.4 concerning physical security.
 - New Rule 20.4.1 is a re-adoption of Current Rule 20.5.1 and a proposed permanent adoption of temporary amendments to Rule 20.5.3(a) (reorganized as New Rule 20.4.1(b) and amended). New Rule 20.4.1(a) explicitly requires secure areas to be kept under lock.
 - New Rule 20.4.2 is a re-adoption of a portion of Current Rule 20.9.2 and a re-adoption of Current Rule 20.9.3 with some revisions to reflect a structural change to the rule. New Rule 20.4.2(b) requires all counties, regardless of size, to maintain security records of areas that current rule only requires of counties with over 50,000 people.
 - New Rule 20.4.3 is a combination and re-adoption of Current Rules 20.9.1 and 20.3.4 and proposed permanent adoption of temporary amendments to Current Rule 20.6.1(h) (reorganized within Rule 20.4.3, amended into subsections for clarity). Minor revisions to wording have been made for clarity.
 - New Rule 20.4.4 sets general restrictions to who may be present in secure ballot areas or secure equipment areas. This is a proposed permanent adoption of temporary amendments to Current Rule 20.5.3(a), (c), and (d) (reorganized within New Rule 20.4.4(a), amended into sub-subsections for clarity) and temporary New Rule 20.5.3(b) (reorganized as New Rule 20.4.4 (c)).
 - New Rule 20.4.5 requires a county to file an incident report as is required by New Rule 20.1.2(a) for any violation of Rule 20.4. This rule also allows the Department of State to act under New Rule 20.12.2(b) to remedy this violation.

- New Rule 20.5 concerning security of the voting system.
 - New Rule 20.5.1 is a re-adoption of Current Rules 20.4 and 20.3.2 and proposed permanent adoption of temporary amendments to Current Rule 20.4.1 (reorganized as New Rule 20.5.1(a)). Current Rule 20.4 has otherwise been altered to clarify that seals must be checked by election officials and that seals must be verified even if they appear to be inaccessible.
 - New Rule 20.5.2 includes:
 - A proposed permanent adoption of temporary New Rule 20.6.2 (reorganized as New Rule 20.5.2(a), amended to sub-subsections for clarity) and amendments to Current Rules 20.5.4(a) (reorganized as New Rule 20.5.2(b), amended to sub-sections for clarity) and 20.6.1 (reorganized as New Rule 20.5.2(c) with the header repealed for clarity). These rules generally describe the limits counties must place on individuals accessing their voting system.
 - A combination of Current Rules 20.19.2(a) and (b) into New Rule 20.5.2(d) to clarify that an access log associated with the voting system must be maintained manually and must record the purpose for entering the election management system.
 - New Rule 20.5.3 includes:
 - A proposed permanent adoption of temporary amendments to Current Rule 20.6.1(e) (reorganized as New Rule 20.5.3(a)(1)), New Rule 20.6.1(g) (reorganized as New Rule 20.5.3(a)(2)), amendments to Current Rule 20.6.1(d) (reorganized as New Rule 20.5.3(b)(2)), amendments to Current Rule 20.6.1(f) (reorganized as New Rule 20.5.3(b)(3)), and amendments to Current Rule 20.6.4 (reorganized as New Rule 20.5.3(c)). This includes reorganization into subparts for clarity.
 - A re-adoption of Current Rules 20.2 and 20.4.2 as New Rules 20.5.3(d) and (e) without changes.
 - Current Rule 20.6.4, with temporary amendments included, has been slightly modified in New Rule 20.5.3(c) to clarify that the rules apply to connecting rather than inserting a removable storage device.
 - New Rule 20.5.3(f) prohibits connecting anything to a voting system component that would enable a wireless connection to that component.

- New Rule 20.5.4 is a re-adoption of Current Rule 20.11.1. This includes:
 - Separating the rule into subparts and other minor changes to wording made for clarity.
 - Current Rule 20.11.1(b), now New Rule 20.5.4(d), has been altered to require election judges of different affiliations who are receiving or transporting equipment to verify the seals and chain-of-custody of the equipment.
 - Current Rule 20.11.1(c), now New Rule 20.5.4(e), has been altered to require equipment transported by contract workers to be verified by election officials upon delivery.
 - New Rule 20.5.4(e)(3) requires election equipment to be delivered on the same day that it is picked up.
- New Rule 20.5.5 is a proposed permanent adoption of temporary amendments to Current Rule 20.7 (reorganized as New Rule 20.5.5, separated into subsections (a) and (b) for clarity). Current Rule 20.7 has been separated into subparts in New Rule 20.5.5 for clarity. New Rule 20.5.5 also now requires that any component of the voting system must be in a location with logs and access controls.
- New Rule 20.5.6 places security guidelines on voting system equipment that is no longer in use. This includes reformatting the equipment and preserving election records.
- New Rule 20.5.7 is a replacement for Current Rule 20.17 and concerns the use of voting system equipment by other jurisdictions. This rule prohibits the transfer of voting equipment to a municipality, special district, or another local jurisdiction. If equipment is transferred between counties, this rule standardizes the transfer and notification process that counties must follow.
- New Rule 20.5.8 requires a county to file an incident report as is required by New Rule 20.1.2(a) for any violation of New Rule 20.5. This rule also allows the Department of State to act under New Rule 20.12.2(b) to remedy a violation. This includes the proposed permanent adoption of temporary Current Rule 20.15.3 (reorganized as New Rule 20.5.8(b)).
- New Rule 20.6 concerning trusted build procedures. Proposed permanent adoption of temporary Current Rule 20.20 (reorganized as New Rule 20.6) with cross-reference changes.
- New Rule 20.7 concerning the security of ballots.

- New Rule 20.7.1 is a re-adoption of Current Rule 20.11.3 regarding the handling, storage, and transportation of unvoted ballots without changes.
 - New Rule 20.7.2 is a re-adoption of Current Rules 20.3.3 and 20.11.2 regarding the handling, storage, and transportation of voted ballots. New Rule 20.7.2(b) is also re-codified from Current Rule 7.4.8. Re-codification is necessary to consolidate all security rules to New Rule 20.
 - New Rule 20.7.3 requires a county to file an incident report as is required by Rule 20.1.2(a) for any violation of Rule 20.7. This rule also allows the Department of State to act under New Rule 20.12.2(b) to remedy a violation.
 - New Rule 20.8 concerning security for voting system providers and vendors.
 - New Rule 20.8.1 is a re-adoption of Current Rule 20.8 regarding remote election programming services. Minor changes to the structure and wording of the Current Rule have been made for clarity.
 - New Rule 20.8.2 includes:
 - Subsections (a) and (b) create new reporting and verification requirements when voting system components are sent off-site for repair.
 - Subsection (c) is a re-adoption of Current Rule 20.10.2, which includes clarification that a maintenance log must be created when equipment is repaired on site.
 - Subsection (d) restricts a county from allowing on-site repair of a voting system component that has trusted build currently installed.
 - Subsections (e) and (f) are a re-adoption of Current Rules 20.10.3 and 20.10.4 and include changes made to align with other changes made to this section.
 - New Rule 20.8.3 requires a county to file an incident report as is required by New Rule 20.1.2(a) for any violation of New Rule 20.8. This rule also allows the Department of State to act under New Rule 20.12.2(b) to remedy a violation.
 - New Rule 20.9 concerning security of other election systems.
 - New Rule 20.9.1 concerning statewide of other election systems (SCORE). Current Rules 2.16 and 2.17 are re-codified to New Rule 20.9.1(a) and (b). Re-codification is necessary to consolidate all security rules to New Rule 20. Proposed amendments to this rule include changing the reference from “state user administrator” to “SCORE customer support” throughout and establishing the requirement that county clerks inform the Department of

State of a data breach or actual or potential cybersecurity attack on the county network.

- New Rule 20.9.2 is a re-adoption, without changes, of Current Rules 20.18.2 and 20.18.3 regarding the storage, security, and software access of ballot-on-demand printers.
- New Rule 20.9.3 requires a county to file an incident report as is required by Rule 20.1.2(a) for any violation of Rule 20.9. This rule also allows the Department of State to act under Rule 20.12.2(b) to remedy a violation.
- New Rule 20.10 concerning retention and election project backups.
 - New Rule 20.10.1 establishes new requirements for the security of election project backups that have been made as required by Rule.
 - New Rule 20.10.2 pertains to the retention of voting system security records and includes:
 - Subsection (a) is a re-adoption of a portion Current Rule 20.3.1 with language that clarifies that the 25 months retention period begins for voting system components only after the component is no longer in the county's possession.
 - Subsection (b) specifies in one location the records that the county must maintain as election records. This includes access logs, video footage, election project backups, and any other document created by the county to ensure the physical security of the system.
 - Subsection (c) is a re-adoption of the other portion of Current Rule 20.3.1 with minor changes for clarity.
 - New Rule 20.10.3 includes the proposed permanent adoption of temporary Current Rule 20.6.3 (reorganized as New Rule 20.10.3).
 - New Rule 20.10.4 requires a county to file an incident report as is required by New Rule 20.1.2(a) for any violation of New Rule 20.10. This rule also allows the Department of State to act under New Rule 20.12.2(b) to remedy a violation.
- New Rule 20.11 concerning security of operations.
 - New Rule 20.11.1 is a re-adoption, with only one cross-reference change, of Current Rules 20.12 and 20.19.4 regarding contingency plans.
 - New Rule 20.11.2 is re-codified from Current Rule 7.16, without amendments. Re-codification is necessary to consolidate all security rules to New Rule 20.

- New Rule 20.12 concerning Department of State inspections and remedies.
 - New Rule 20.12.1 regarding inspections, including the proposed permanent adoption of temporary amendments to Current Rule 20.10.5 (reorganized as New Rule 20.12.1(a)) and re-adoption of Current Rule 20.15.2.
 - New Rule 20.12.2 regarding remedies. This includes:
 - Proposed permanent adoption of temporary Current Rule 20.15.4 (reorganized within New Rule 20.12.2(b)(3)), amended with updated cross-references.
 - New Rule 20.12.2(b)(1), which clarifies that the Secretary of State may take further action to remedy a violation and ensure future compliance of Rule 20.
 - New Rule 20.12.2(b)(2), which is a re-adoption of Current Rule 20.5.4(e) without changes.
- Amendments under Rule 21 regarding voting systems standards for certification.
 - New Rule 21.11 to ensure proper administration of HB 21-1071 regarding instant-runoff voting for municipal elections. This new rule implements the certification standards that voting system providers must comply with to utilize instant runoff voting functionality in a municipal contest. This includes standards for the following:
 - Result reporting requirements;
 - Data export format requirements;
 - Ballot layout requirements;
 - Tabulation requirements;
 - Ballot marking device requirements; and
 - Ballot adjudication requirements.
- Amendments under Rule 26 regarding ranked choice voting.
 - Definition rules in Rule 26.1 are re-codified throughout Rule 1.1. Re-codification is necessary to ensure that definitions used in multiple election rules are in Rule 1.
 - Current Rules 26.2 through 26.10 are renumbered to Rules 26.1 through 26.9.

- Amendments to Current Rule 26.6.3 (renumbered as New Rule 26.5.3) and Current Rule 26.6.4 (renumbered as New Rule 26.5.4) to ensure the proper administration of instant-runoff voting for municipal elections, as required by HB 21-1071.

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.

II. Rulemaking Authority

The statutory authority is as follows:

- House Bill 21-1011, enacted June 28, 2021; and, House Bill 21-1071, enacted June 28, 2021.
- 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 finds necessary for the proper administration and enforcement of the election laws.”
- Section 1-1-109(3), C.R.S., (2021), which requires the Secretary of State “to promulgate rules...as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify what constitutes approved and acceptable forms certified for use by eligible voters, campaigns, and voter registration drives and acceptance by election officials and any rules necessary to establish uniformity regarding the use of forms.”
- Section 1-1-110(1), C.R.S., (2021), which requires county clerks to, “follow the rules and order 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 1-2-301 (1), C.R.S., (2021), which requires the Secretary of State to implement, “a single, uniform, official, centralized, interactive, computerized statewide voter registration system defined, maintained, and administered at the state level . . .”.
- Section 1-2-302 (8), C.R.S., (2021), which requires the Secretary of State to “provide adequate technological security measures to prevent unauthorized access to the computerized statewide voter registration list.”
- Section 1-4-908 (1), C.R.S., (2021), which requires the Secretary of State to “establish guidelines for verifying petition entries.”
- 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 1-5-616(3), C.R.S., (2021), which states that: “The secretary of state shall adopt rules in accordance with article 4 of title 24, C.R.S., to achieve the standards established by section 1-1-103 for the procedures of voting, including write-in voting, and of counting, tabulating, and recording votes by electronic or electromechanical voting systems used in this state.”
- Section 1-5-616(4), C.R.S., (2021), which requires the Secretary of State to “adapt the standards for certification of electronic or electromechanical voting systems established by rule . . . to ensure that new technologies that meet the requirements for such systems are certified in a timely manner...”
- Section 1-5-623(4), C.R.S., (2021), which authorizes the Secretary of State to “promulgate rules in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to specify permissible conditions of use governing electronic voting devices or systems or related components of such devices or systems in accordance with the requirements of this part 6.”
- Section 1-7-509 (2)(b), C.R.S. (2021), which allows the Secretary of State to publish rules regarding public access to the logic and accuracy test.
- Section 1-7-509(6), C.R.S., (2021), that requires the Secretary of State to “promulgate rules in accordance with article 4 of title 24, C.R.S., prescribing the manner of performing the logic and accuracy testing required by this section.”
- Section 1-7-513(2), C.R.S., (2021), which requires the Secretary of State to “promulgate rules...prescribing the manner of maintenance of [voting system component] records required by this section.”
- Section 1-7.5-106(2), C.R.S., (2021), which authorizes the Secretary of State to “adopt rules governing procedures and forms necessary to implement [Article 7.5 of Title 1, C.R.S.]”