

Colorado County Clerks Association's comments on the Secretary of State's proposed election rules of July 15, 2024.

These comments are presented in order of the proposed rules and reflect the combined observations and concerns from multiple counties in the CCCA. Although counties appreciate and agree with many of the proposed rules, this document is devoted to the rules with which counties disagree or seek additional clarification.

Proposed Rule 7.7.14: Counties are concerned about this proposal for the following reasons:

- It is unclear how counties will develop an accurate list of voters to receive the correspondence. The current SCORE report for zero signatures has proven inaccurate when compared with actual voter records in SCORE.
- The correspondence could alarm voters who have recently signed a voter registration form or provided a signature in some other manner.
- It is unclear from the proposed rule whether voters would be required to provide identification when they return the reference signature.

Proposed Rule 7.16.4: CCCA recommends the following amendment:

THE COUNTY CLERK MUST ARRANGE VOTER SERVICE AND POLLING CENTERS IN A MANNER THAT PREVENTS A VIDEO SURVEILLANCE CAMERA FROM BEING ABLE TO RECORD, ~~OR APPEARING TO RECORD,~~ HOW A VOTER MARKS OR CASTS THEIR BALLOT.

- The language "appearing to record" is vague and could be interpreted to require counties to remove or cover otherwise compliant (and necessary) cameras that do not record how a voter marks the ballot.
- Counties with IGAs or other agreements with VSPC sites do not have enough time before the General Election to renegotiate provisions regarding cameras.

Proposed changes to Rule 20.4.2(e)(2): Counties have expressed concern about complying with proposed subsection (e)(2)(B)'s requirement to have two staff members authorized by Rule 20.4.1 present. Counties are often beholden to county IT staff's schedules when conducting necessary planned outages and it could be difficult to meet this requirement when not all staff are in office between elections.

Proposed Rule 20.4.5: Counties agree with the goals of this proposal but are concerned about whether federal agency availability will prevent counties from complying with the rule. The proposal also does not appear to exempt counties that have recently undergone an assessment. Would it be possible to have an assessment done by a different third party with the requisite experience?

Proposed changes to Rule 20.5.3: CCCA recommends clarifying proposed subsection (b)(1)(A) to ensure that the use of new switches configured through network interface before trusted build are allowed.

Proposed Rule 20.7.2(d): CCCA recommends striking this proposed rule.

- Drop boxes are sufficiently secure with locks and video surveillance. Requiring seals would create new issues for counties without providing meaningful additional security.
- Seals on public-facing drop boxes will undoubtedly be broken or removed by individuals with no intent to tamper with ballots. This will lead to unnecessary time and resources spent investigating. Worse, it will create an appearance of impropriety when counties are already confronting disinformation about elections.

- There are other practical concerns, including the impact on seals of inclement weather, cost of seals, and time spent removing and affixing seals during critical points on election day.

Proposed Rule 20.10.3: CCCA recommends that the Secretary of State strike this proposed rule and work with counties to arrive at a solution that balances preservation of election records with counties' needs to access ballots during the conduct of an election.

- The proposed rule does not specify when the limitation on removing ballots begins. It is unclear whether this would allow counties to access physical ballots during adjudication or when conducting reconciliation and balancing procedures.
- Unsealing and resealing each container before opening the next is unworkable when, in some circumstances, counties must access ballots among hundreds of containers.
- The two-week notice requirement would inhibit counties from conducting regular election work and could prevent timely fulfillment of Open Records requests.

Proposed changes to Rule 20.11.1: CCCA recommends striking the proposed new language in subsection (f) regarding daily confirmation of video surveillance operation.

- Some counties that rely on third-party video surveillance will not be able to comply with this rule by the General Election. While counties work closely with third parties to ensure compliance with statute and rules, they are unable to mandate new requirements that are outside the scope of current agreements. Amending these agreements this close to the election is not feasible.
 - A future rule of this nature may help counties in negotiations with third parties, but our current focus is on the upcoming election.

Proposed changes to Rule 20.12.2(a)(1): CCCA recommends the following amendment:

If a county clerk discovers or determines that a violation of any provision of Rule 20 has occurred, they must file an incident report with the Department of State as soon as feasible, BUT NOT LATER THAN TWO BUSINESS DAYS, following **DISCOVERY OF** the incident. The incident report must describe in detail the incident and the rule that may have been violated and any other information the Department may require. ~~IF AN ISSUE ARISES THAT DOES NOT CONSTITUTE A VIOLATION OF RULE 20, BUT THE COUNTY CLERK OR DEPARTMENT BELIEVES AN INCIDENT REPORT SHOULD BE FILED, THE CLERK MUST FILE AN INCIDENT REPORT AS SOON AS FEASIBLE.~~

- The addition of “discovery of” is intended to clarify when “two business days” begins to toll.
- The proposed last sentence does not provide a standard for when to file a report other than when the Clerk “believes” a report is needed. Recommend striking.

Proposed changes to Rule 21.4.5: Proposed subsection (G) is not currently possible with Dominion's Democracy Suite ICX Classic. Although the differences between the BMD-produced ballot and paper hand-marked ballots are minor, the ICX cannot produce an “identical” ballot.

- Currently, the printers are only able to print in black and white.
- The ICX uses a .png file for printing, which will cause certain gray scale elements to be different from other ballots printed from PDF.