



Statement of Justification and Reasons for Adoption of Temporary Rules

Colorado Department of State Election Rules 8 CCR 1505-1

Adopted February 10, 2022
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 security⁴ 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).