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## **COST-BENEFIT ANALYSIS**

DEPARTMENT: Colorado Department of State AGENCY: Elections Division

CCR: 8 CCR 1501-1 DATE: 07/20/2021

### **RULE TITLE OR SUBJECT: ELECTION RULES**

#### ***I. Background:***

On June 30, 2021, the Elections Division within the Colorado Department of State published a notice of proposed rulemaking for election rules.<sup>1</sup> Along with that notice, the Department submitted a statement of basis for all of the proposed changes. As noted in that statement of basis, this proposed rulemaking encompasses multiple changes throughout election rules on a wide variety of subjects. Those subjects include: the implementation of recently enacted legislation; removing references to technology no longer in use in Colorado; permanent adoption of temporary rules<sup>2</sup>; and changes to signature review, petition review, and canvass and watcher procedures, among other changes. A hearing to consider public feedback on these proposed rules is scheduled for August 3, 2021 at 1:00 p.m.<sup>3</sup>

On July 4<sup>th</sup>, 2021, State Senator Rankin submitted a request for a cost benefit analysis to the Department of Regulatory Agencies (DORA). After a request for clarification, Senator Rankin asked that all proposed rules undergo a cost benefit analysis review. In response, the Department of State consulted with DORA to determine which rules required a cost benefit analysis and which rules were exempt. After consultation, DORA determined that multiple rules contained in the proposed rulemaking were exempt from analysis. Those rules which DORA determined were exempt are attached to this analysis as Exhibit A.

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<sup>1</sup> 8 CCR 1501-1. Notice of rulemaking, statement of basis, and preliminary draft may be found [here](#).

<sup>2</sup> 8 CCR 1501-1, adopted June 17, 2021. Notice of temporary adoption, statement of basis, and statement of justification may be found [here](#).

<sup>3</sup> Registration for the public hearing which will be conducted via webinar can be found [here](#).

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### ***II. Introduction:***

These proposed election rules address a variety of topics regarding election administration across Colorado. Following the 2021 legislative session, the Department reviewed the current election rules in their entirety. This detailed assessment led the Department to propose changes for a variety of reasons including:

- As needed to implement SB 21-188 and SB 21-250;
- To remove references to technology no longer in use in Colorado;
- To improve signature verification, petition review, and canvass and watcher procedures;
- To bring current rules into line with Departmental rulemaking standards and guidelines; and
- To permanently adopt rules that had been temporarily adopted on June 17<sup>th</sup>.

The following analysis includes all rules noticed in the proposed rulemaking that have not been exempted from review by DORA. To adequately answer all questions required for the cost benefit analysis, the proposed rules to be analyzed have been categorized by topic. Each topic addressed and the rules that correspond to each topic are considered below.

### ***III. Repeal of references to voting equipment no longer in use in Colorado including Direct Recording Electronic (DRE) voting devices and Voter Verifiable Paper Audit Trail (VVPAT) equipment.***

*Rules Affected:* 1.1.19; 1.1.26 (renumbered as 1.1.25); 1.1.48; 7.9.2 (renumbered as 7.8.2); 10.12.3; 10.13.4; 10.13.6; 11.3.2; 11.9.1; 20.3.3; 20.4; 20.7; 20.10.4; 20.11; 20.13 (old and renumber); 20.14.2; 20.15; 20.19.4; 20.19.5; 20.20; 20.21; 21.4.5; 21.4.11; 25.1.7; 25.2.2(d).

#### **1. The reason for the rule or amendment.**

As part of the Department's review of our election rules, we consistently look to determine those rules that can be removed because they are no longer applicable, are outdated, or do not comply with current statutory requirements. Our review of election rules this spring revealed that the rules currently effective in Colorado reference a variety a voting equipment that is no longer certified for use in Colorado and has not been used for years. Most of these references were to Direct Recording Electronic (DRE) voting devices and the paper trail that came with those devices, the Voter Verifiable Paper Audit Trail (VVPAT). Colorado has not run an election with the use of these voting devices for years making rules

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that refer to these devices no longer applicable, out dated, and not in line with current statutory requirements.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these rule changes. None of this equipment is used in Colorado, so removing references to them in election rules has no effect on how elections are actually run in Colorado.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of this equipment is used in Colorado, so removing references to them in election rules has no effect on how elections are actually run in Colorado.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects associated with these rule changes. Removing references to this equipment in election rules will not change the reality on the ground that none of this equipment is in use or certified for use in Colorado.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative that the Department has identified would be to leave these rules in place. The Department does not prefer this alternative because it goes against Department rulemaking standards that are meant to keep election rules as current as possible for easier consumption by our county partners and members of the public. There would be no cost or benefit to this alternative because it would not change how elections are administered practically on the ground.

The second alternative would be to only remove references specific to DREs and VVPATs while leaving all other references to other outdated equipment in place.

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Again, the Department does not prefer this alternative because it goes against Department rulemaking standards. There would be no cost or benefit to this alternative because it would not change how elections are administered practically on the ground.

### **IV. Alignment of Rules with Current Practice in Colorado**

*Rules Affected: 6.1.3, 7.3.2-7.3.6 (repeal, new, and renumber), 7.9.9 (renumbered as 7.8.9), 16.2.2, 16.2.7, 24.3.3*

1. The reason for the rule or amendment.

As part of the Department's ongoing review of election rules, the Department determined that several rules no longer reflect the actual election administration practices currently in place. After a careful study of these rules, the Department determined that it should make amendments to help our county partners and the public better understand and follow these requirements. On the whole, these amendments and additions help to clarify how counties should conduct elections in Colorado.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these rule changes. None of these changes in rule should result in changes to current county practice. As a result, the changes should have no overall economic benefit.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of these changes in rule should result in changes to current county practice. As a result, the changes should have no overall cost to implement.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and they all reflect current practice in Colorado. As a result, the changes should have no overall cost to the economy at large.

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5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative that the Department has identified would be to leave these rules as they are. The Department does not prefer this alternative because it goes against Department rulemaking standards that are meant to keep election rules as current as possible for easier consumption by our county partners and members of the public. There would be no cost or benefit to this alternative because it would not change how elections are actually administered in Colorado.

Another alternative that the Department has identified is to repeal these rules in their entirety and not provide any alternative language that reflects current practice. The Department does not prefer this alternative because it may lead our county partners to question whether their current practice would comply with Colorado law. There would be no cost or benefit to this alternative because it would not change how elections are actually administered in Colorado.

### ***V. Rules Regarding Voter Data Processing, Transmittal, and Retention***

*Rules Affected: New 2.12.3, 2.13.2-2.13.5, New 2.15.7*

1. The reason for the rule or amendment.

Over the last several years, the Department has encountered issues regarding the use and maintenance of voter registration data. In most of these instances the duties of the county clerk or Secretary of State's office were unclear. The rule changes proposed here are meant to clarify which offices are responsible for providing and maintaining voter registration data for caucus use, to comply with the National Voter Registration Act (NVRA), and to investigate potential double voting.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these changes. The changes made here would only slightly alter election administration operations in Colorado and as a result would not have any economic impact. There is no anticipated

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reduction or increase in workload for counties or the Department of State as a result of these changes.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are minimal anticipated costs to these rule changes. The changes made here would only slightly alter election administration operations in Colorado and, as a result, would not have any economic impact. Rule changes to Rule 2.13.4 may increase some workload for counties who would need to quickly cancel records eligible for cancellation during an election period. The Department believes that this slight cost is necessary to keep voter registration rolls as up to date as possible.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to county clerk offices and the Department of State. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative that the Department has identified would be to leave these all of these rules as they are. The Department does not prefer this alternative because the current proposed changes help to clarify issues that have been raised over the last two-year election cycle. Leaving these issues unaddressed would leave unnecessary ambiguity in election administration in Colorado. There would be no cost or benefit to this alternative because it would maintain the status quo of election administration in Colorado

Another alternative that the Department has identified would be to require county clerks to perform all of the tasks associated with these rule changes. This would include: requiring counties to provide a confidential voters list for caucus, requiring counties to perform NVRA list maintenance on their own, and requiring counties to send double voter information directly to the Colorado Attorney

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General's Office. The Department does not prefer this alternative because it would needlessly complicate this work which can be completed centrally and because it would likely result in a workload increase for counties which would increase costs to county clerks, particularly in their staff time. The benefit of this alternative would be to the Department of State's office who would see a slight staff workload reduction.

### **VI. Alignment of Rules to Changes Made in SB 21-250 and SB 21-188**

*Rules Affected: 7.7 (renumbered as 7.6), 7.12.1 (renumbered as 7.11.1), 9.2.1 (renumbered as 9.2.2), New 9.2.3, New 9.2.4, 11.8.2-11.8.3 (repeal, new, and renumber), 15.1.3*

#### 1. The reason for the rule or amendment.

During the 2021 legislative session the Legislature passed several bills that directly affect election administration in Colorado. Two of these bills, SB 21-250 and SB 21-188, went into effect immediately and had provisions that need to be implemented prior to the 2021 November coordinated election. When reviewing current election rules, the Department kept in mind those changes that were needed to implement these bills. As a result, several changes were made that help to implement this legislation and clarify different election administration procedures that may have changed as a result of these bills.

#### 2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are some slight economic benefits to these changes which potentially reduce the workload and processing costs of counties. The bills passed this session already slightly increased the election administration work of county clerk offices. The rule changes to Rules 7.6 and 7.11.1 actually help to clarify and narrow what extra work the county clerks must engage in and as a result reduce the costs to county clerks. Other rule changes made in this category are unlikely to have any specific economic benefit or workload reduction.

#### 3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

The Department expects that county clerks may incur some additional minimal processing costs as a result of changes made to Rules 9.2.2 and 9.2.3. However, the Department believes that these costs are necessary to standardize the

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challenge process in Colorado and to give challenged voters the opportunity to respond to a challenge. Mail ballot challenges are rare in Colorado so any resulting processing changes should be very slight. Other rule changes in this category should not have a cost that is not already required due to statutory changes.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to county clerk offices. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative the Department has identified is to leave these rules unchanged and instead rely on informal guidance for counties to implement the changes needed for these bills. The Department does not prefer this alternative because it could result in non-standard procedures across the state which could have the affect of disenfranchising voters. There would be no economic cost or benefit to leaving these rules unchanged and relying on guidance.

Another alternative the Department has identified is to alter all rules in this category except Rule 11.8.2. Leaving that rule in place would have no practical effect on the administration of elections in Colorado because there is no longer any voting equipment in Colorado that was certified for use prior to January 1, 2016. This change was made because the similar statutory provision was repealed in SB 21-250. The Department does not prefer this alternative because it goes against Department rulemaking standards that are meant to keep election rules as current as possible for easier consumption by our county partners and members of the public. There would be no cost or benefit to this alternative because it would not change how elections are actually administered in Colorado.

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### **VII. Rules Regarding the Mailing, Intake, and Processing of Mail Ballots**

*Rules Affected: 6.8, 7.2.4, 7.2.6, 7.2.7, New 7.2.17, 7.5.10 (renumbered as 7.4.10), New 7.7.8, 7.8.8 (renumbered as 7.7.9), New 7.7.10, 7.8.11 (renumbered as 7.7.13), 9.1.1, New 9.2.1, 18.4, New 20.9.4*

1. The reason for the rule or amendment.

These rule changes have been proposed to ensure uniform administration of mail ballot procedures. Specifically, these changes clarify requirements for printing, mailing, intake, and processing of mail ballots. The Department has proposed these changes as a result of real-world challenges and experiences of administering elections over the past two-year cycle.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

Most of the rule changes proposed in this category would not result in any economic benefit. Changes to Rule 18.4 may result in a slight cost savings for county clerks because they would not need as many election judges involved in ballot duplication.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to most of the changes proposed in this category.

The Department expects that there are likely to be some printing and mailing costs associated with the changes made to Rule 7.2.4 which would require some additional instructions be included with a replacement primary ballot. The Department believes this slight cost increase is acceptable to help voters who may be confused during a primary election. Based on information currently available, we do not anticipate that these costs would be substantial.

The Department also anticipates that changes made to signature verification audits in Rules 7.7.8 – 7.7.10 and 7.7.13 may result in workload increases and costs to county clerks. The Department believes this cost increase is necessary to ensure that a key process in Colorado's election administration, signature verification, is being conducted uniformly across Colorado.

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4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to county clerk offices. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative that the Department has identified would be to leave these all of these rules as they are. The Department does not prefer this alternative because the current proposed changes help to clarify issues that have been raised over the last two-year election cycle. Leaving these issues unaddressed would unnecessarily leave ambiguity for county clerks and voters in Colorado. There would be no cost or benefit to this alternative because it would maintain the status quo of election administration in Colorado.

The second alternative the Department considered was specific to the signature verification audit rules found in Rules 7.7. The Department considered requiring counties to audit signature verification more frequently than every 150 ballots to every 100 or 50 ballots. The benefit to this alternative would be that counties would have even more accurate auditing information regarding signature verification. Ultimately, this alternative was rejected because the Department determined that the significant increase in workload would place too heavy of a cost and burden on county clerks.

### ***VIII. Rules Regarding the Duties and Responsibilities of Watchers and Canvass Board Members***

*Rules Affected: 8.15 (renumbered as 8.14), 8.16 (renumbered as 8.15), 10.3.2, 10.3.3 repealed, New 10.3.4 (renumbered as 10.3.3), 10.1.5, 10.5.1, New 10.6.3, 10.8.2*

1. The reason for the rule or amendment.

As part of the Department's review of election rules, the Department determined that a variety of rules related to watchers and canvass board members need amendments. These amendments are meant to clarify the duties and

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responsibilities that both watchers and canvass board members have in the election process and to bring election rules more into alignment with current election law. The rule amendments also help to fill in gaps in Colorado law for both watchers and canvass board members.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these changes. The changes made to these rules would only slightly alter election administration operations in Colorado and as a result would not have any economic impact. There is no anticipated reduction or increase in workload for counties or the Secretary of State as a result of these changes.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of these changes in rule should result in any significant change to current county practice in accommodating watchers or allowing the canvass board to complete its duties. As a result, the changes should have no overall cost to implement.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to county clerk offices. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative the Department has identified is to leave the current rules regarding watchers and canvass board members as they are. The Department does not prefer this alternative because the proposed changes are meant to clarify and manage problems that have been raised with the existing rule

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framework. Leaving the rules without any changes would not resolve these problems which are likely to reoccur in the next two-year election cycle. There would be no significant cost or benefit to this alternative because it would continue current election administration practice in Colorado.

Another alternative the Department has identified is to remove these rules in their entirety and rely solely on statutory provisions for the operations of watchers and canvass board members. The Department does not prefer this alternative because while the statute does include some basic provisions for both of these categories of election participants, the detail included in statute is not enough for counties to provide reasonable guidance to their staff during an election. There would be no significant cost or benefit to this alternative because counties would replace current election rules with their own processes and procedures. These changes would only minimally affect county workloads, but might result in confusion for state and county parties who are involved in appointing watchers and canvass board members.

### ***IX. Rules Regarding the Certification and Use of Voting Systems in Colorado***

*Rules Affected: 20.5.4, 21.3.5, 21.5.1, 21.7.3, 21.7.4, 21.7.5, New 21.7.6, 21.10.1 and 21.10.2*

#### **1. The reason for the rule or amendment.**

The Department continually analyzes our election rules to ensure that the certification and use of voting systems in Colorado is up to date, secure, and follows the best practices. After review of current election rules and considering conditions on the ground, the Department determined that several rules related to voting systems needed revisions or additions to clarify the security and chain of custody requirements for those systems. This includes permanent adoption of rules that were temporarily adopted on June 17, 2021. Those rules were temporarily adopted to ensure that the chain of custody on voting systems is not compromised with the use of unaccredited third-party access to voting systems. Chain of custody is a critical security measure that county clerks must maintain to ensure voting systems and their components function without error. The Department determined that permanent adoption of these rules is necessary to keep chain of custody on voting systems intact for upcoming elections.

#### **2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.**

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There is only one slight economic benefit that may be associated with these rule changes. The ability for voting system vendors to conduct a remote demonstration of their voting equipment would reduce those vendor's costs regarding travel to Colorado, setting up equipment, and giving a presentation at the Secretary of State's office. This cost savings is slight and would only occur when a new system is certified.

There are no other anticipated economic benefits to these changes. The changes made to these rules should only slightly alter election administration operations in Colorado and as a result would not have any economic impact. There is no anticipated reduction or increase in workload for counties or the Department of State as a result of these changes.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

The only potential cost to these amendments would come in the event that a county voting system or component was turned over to a third party, resulting in a loss to chain of custody. In that event, the county could be required to purchase or lease new voting system equipment where chain of custody could be re-established securely. The Department believes that this scenario is highly unlikely and that counties would instead maintain their chain of custody by refusing offers to give their equipment to unaccredited third parties. Although unlikely, the Department believes that this rule and its associated cost is essential to maintain security and voter confidence in Colorado, particularly given the prevalence of unaccredited and insecure election audits that have begun to spring up in other states around the country.

All other changes to this area of rulemaking should result in not cost to implement to the counties or the Department of State.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to county clerk offices. As a result, the changes should have no overall effect on the economy at large.

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5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

Multiple members of the public have encouraged the Department of State's office to reverse course entirely on these rules. These members would prefer that the Secretary allow or require an unaccredited third party to access voting systems and their components. The Department does not prefer this alternative. There would be no benefit to this change because any actions completed by an unaccredited third party, removed from oversight and statutory authority, will not result in findings that could be relied on by election administrators or the public at large. Allowing a third party to take control of a voting system would come at a significant cost because it would irreversibly compromise the security of that system, and is likely to result in a significant loss of confidence in the accuracy of Colorado's election as a whole.

Another alternative the Department has identified, as a product of public comment, would be to generally loosen voting systems access restrictions. The Department does not prefer this alternative. This alternative does not give appropriate consideration to either the statutory requirements for voting systems security or the very real threat of voting system tampering. The Department feels strongly that robust protection of Colorado's voting systems is required to protect the security of and confidence in Colorado's elections.

### ***X. Rules Related to the Intake and Processing of Petitions***

*Rules Affected: 15.1.1, 15.1.2, 15.1.4, 15.2.1*

1. The reason for the rule or amendment.

While reviewing all election rules over the last year, the Department determined that many rules related to petition intake and processing needed revisions to reflect current internal policy and to provide further clarity for petition proponents. SB 21-250 also made some alterations to petition gathering which necessitated that the Department further clarify how it and other designated election officials (DEOs) should receive and review candidate, recall, and initiative petitions.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these changes. The changes made to these rules would only slightly alter petition intake and review operations

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in Colorado and as a result would not have any economic impact. There is no anticipated reduction or increase in workload for counties or the Secretary of State as a result of these changes.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of these changes in rule should result in any significant change to current Secretary of State or county practice in reviewing petitions.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to the Secretary of State and county clerk offices. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

One alternative the Department has identified would be to leave the current rules as they are without any changes. The Department does not prefer this alternative, because the current rules have some ambiguity regarding how the Secretary of State and DEOs review petitions. This ambiguity leaves petition entities and the public at large without clear insight regarding how petitions are actually reviewed. There would be no cost or benefit to this alternative because leaving the rules as they are would continue current petition review practice in Colorado.

A second alternative the Department has identified is to remove the additions to the petition entity affirmation found in Rule 15.2.1. The Department does not prefer this alternative because currently the Department is without any means of determining whether a petition entity complies with the provisions of Colorado statute that prohibit an entity and its owners from operating in Colorado if they have been found guilty in Colorado or another state of violating a variety of

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election crimes. There would be no cost or benefit to this alternative because it would not alter how our office currently handles petition entities who work to obtain a license in Colorado.

### ***XI. Rules Related to the Bipartisan Election Advisory Commission (BEAC)***

*Rules Affected: 23.1.3*

1. The reason for the rule or amendment

As the Bipartisan Election Advisory Commission (BEAC) has continued to meet, the Department has recognized the need for increased flexibility in the time and location of those meetings. The changes made to this rule help to bring BEAC into line with current technology and experience by expressly allowing the Commission to meet virtually. The changes also facilitate scheduling of meetings at times convenient to all participants by eliminating the minimum number of times the Commission must meet each calendar year. BEAC may still meet 3 or more times per year, but this would no longer be required.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

The rule would save the State of Colorado and BEAC members money related to travel. Currently the rule requires that members meet in person at the Secretary of State's Office or other locations throughout the state. This rule change would allow those meetings to occur virtually, saving all participants time and money in travel while increasing public transparency and ability to participate in the meetings.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of these changes in rule should result in any cost change to any member of BEAC.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would

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only apply to members of BEAC. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Colorado Republican Party has submitted comments to this rule indicating that it would prefer that the rule continue to require BEAC to meet 3 times per year. The Department does not prefer this alternative because the current rule is unnecessarily prescriptive and not contemplated in statute. There are no economic costs or benefits to this alternative because it would maintain the current BEAC meeting requirements.

The Department has also identified that it could continue to require BEAC to meet in person. The Department does not prefer this alternative because requiring in person meetings reduces public input and can make participating from members of BEAC who are not in the area of the meeting difficult. There would be some travel and time costs for members of BEAC associated with this alternative. There is no identifiable benefit to continuing to require that BEAC meet in person when the technology to meet remotely is readily available.

## ***XII. Rules Related to the Operation of Risk Limiting Audits***

*Rules Affected: 25.2.2 (e)-(l), 25.2.3*

1. The reason for the rule or amendment.

After every statewide election, the Department and county clerks assist election judges who conduct risk-limiting audits. Experience after each election has shown the Department that some minor rule amendments are necessary to continue to operate the risk-limiting audit in a timely and uniform manner. The rule changes here primarily alter the post-election timing of these audits on a timeline that mirrors the successful timeline used in November of 2020. Other changes clarify some of the responsibilities of audit boards in conducting the audit.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness.

There are no anticipated economic benefits to these changes. The changes made to these rules would only slightly alter the timing of risk-limiting audits and

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the conduct of those audits. There is no anticipated reduction or increase in workload for counties or the Secretary of State as a result of these changes.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment.

There are no anticipated costs to these rule changes. None of these changes in rule should result in any significant change to current Secretary of State or county practice in conducting the risk-limiting audit.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness.

There are no anticipated adverse effects to these rule changes. None of these changes in rule affect private business or the economy as a whole and would only apply to the Secretary of State and county clerk offices. As a result, the changes should have no overall effect the economy at large.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

The Department has not identified any alternative rules submitted by the public that relate to these changes.

The first alternative the Department has identified is to maintain the rules as they are. The Department does not prefer this alternative because the current post election timeline leaves very little time for the Department to complete its work in preparation for the audit. The rules as proposed here would allow the Department and county partners to take the weekend to prepare for the audit which begins the following Monday. There would be no cost or benefit to this alternative because post-election audits would continue to operate as they have in years past.

The second alternative the Department has identified is to move the post-election timeline back further to give counties and the Department more time between the end of the "cure period" (eight days after election day) to the beginning of the audit. The Department does not prefer this alternative because canvass must be completed no later than 22 days after the election and the audit must be complete before canvass. The Department believes that while the current timeline may be pushed back by one weekend, pushing it further may result in some counties not meeting the canvass deadline specified in law. There would

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be no cost or benefit to this change because all of the work would still have to be done on a delayed timeline.

**The Department has in good faith developed this Cost-Benefit Analysis that complies with all requirements of § 24-4-103(2.5), C.R.S.**

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### **Appendix A: Exemption Determinations from DORA**

After consultation with DORA, the following rules are exempt from cost-benefit analysis:

Rule 1.1.34  
Rule 2.12.1  
Rule 2.18  
Rule 2.19  
Rule 7.1.1  
Rule 7.2.9  
Rule 7.2.14  
Rule 7.3.3  
Rule 7.4  
Rule 7.4.1  
Rule 7.4.15  
Rule 7.4.16  
Rule 7.7.1  
Rule 7.7.11  
Rule 7.8.1  
Rule 7.8.4  
Rule 8.6.1(b)  
Rule 8.7.4  
Rule 8.10.2  
Rule 8.13  
Rule 10.2.5  
Rule 10.3.4  
Rule 11.10.1  
Rule 15.2.3  
Rule 15.3.2  
Rule 15.3.3  
Rule 15.4  
Rule 15.6  
Rule 16.2.3  
Rule 16.2.6  
Rule 20.5  
Rule 21.4.1  
Rule 21.10.12  
Rule 25.3

Additionally, rules that are simply being renumbered and are not otherwise being amended are also exempt.