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To: [SoS Rulemaking](#)
Cc: [Gilbert Ortiz](#); [Grantham Justin](#); [Fitzpatrick, Molly](#); [Carly Koppes](#); [Broerman Chuck](#); [Peg Perl](#); [Davidson, RTodd - C&R Voter Services Manager](#); [Judd Choate](#)
Subject: [EXTERNAL] Colorado County Clerks Association Comments on 4.15.22 Proposed Election Rules
Date: Tuesday, May 31, 2022 4:57:19 PM
Attachments: [CCCA Proposed Election Rules Comments 5.31.22.pdf](#)

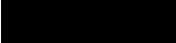
Good afternoon,

Please find attached the Colorado County Clerks Association's (CCCA) comments on the 4.15.22 proposed election rules.

The CCCA would also like to recommend a new rule as well. If there is an issue with an election system that impacts the tabulation of results or the publication/reporting of election results, the Colorado Department of State and/or the affected county be required to produce a written report, no later than 60 days after Election Day, that details the issue, why it occurred, and how it was resolved/mitigated. We feel this type of public disclosure will greatly enhance the transparency and public trust in our elections here in Colorado.

We appreciate the opportunity to provide written comments. If you have any questions, or if you need any further information, please let me know.

Best,
Matt

Matt Crane | Executive Director
Colorado County Clerks Association


Proposed Rule	CCCA Aggregated County Comments: April 15, 2022 Proposed Rules
CCCA Proposal	<ul style="list-style-type: none"> ● If there is an issue with an election system that impacts the tabulation of results or the publication/reporting of election results, the Colorado Department of State and/or the affected county shall produce a written report, no later than 60 days after Election Day, that details the issue, why it occurred, and how it was resolved/mitigated.
1.1.47 & 1.1.48	<ul style="list-style-type: none"> ● The proposed definitions of these areas differ from current description of security areas and SB 22-153. This raises numerous concerns by Counties as these terms are used for security requirements in Proposed Rule 20. For example, neither of these definitions explicitly state whether they apply to VSPC locations (where ballots are temporarily stored and voting equipment is deployed). SB 22-153 explicitly exempts from access and video security requirements when items are deployed to a VSPC. Therefore, these rules could set up contradictory requirements for County compliance. ● Is “copying election files to/from memory cards or flash drives” in 1.1.48 including uploads data from SCORE could make our offices subject to these access/video? ● Secure ballot area (A)(4) - Does this apply only when processing or while voted ballots are stored for 25 months? ● How does this affect watchers going into a secure ballot area versus outside a window?
4.8.8	<ul style="list-style-type: none"> ● The proposed rule gives too little guidance to Counties when choosing translation vendors. It would better serve the statutory intent and provide consistent quality and guidance if CDOS provided an approved list of vendors (perhaps working with the Courts system who has certified lists of translators) and/or a qualification process for vendors to be added to CDOS’ maintained list - similar to other vendors such as print vendors. In addition, CDOS should clarify whether counties are permitted to use local translation sources (e.g. county staff or community partners) to proof and adjust as needed to meeting the requirement in proposed Rule 4.8.8 for translations that are linguistically accurate and culturally appropriate to the local population.
4.8.9	<ul style="list-style-type: none"> ● Needed clarity on translator qualifications in the prior proposed rule is especially important given this new proposed rule creating a separate complaint cause of action specifically for improper translation under Rule 4.8.8. It is unclear why there is a legal imperative to call this out for a specific election complaint cause of action separate from pre-existing authority for individuals to file election complaints for violation of any Election Rules. However, if CDOS believe this is necessary, then it should add specifically a coordinating district who completed translation of local ballot content is also subject to an election complaint. A Clerk is not the proper respondent for actions taken by a coordinating jurisdiction DEO subject to the IGA and these proposed rules allow the translation to be handled at that level. At that point, the County is required to print as the content (English and translation) is certified from the local DEO without adjustment to the translation.
6.9	<ul style="list-style-type: none"> ● This rule is unreasonable and unnecessary. The hiring and duties of election judges are administered between Clerks, county political parties, and the judges themselves. Having to notify CDOS immediately of any removal does not properly reflect the proper role, or lack thereof, of the state in this area. It is also very broad and creates a time-consuming administrative burden on Counties to inform CDOS every time any judge is “removed from duty.” ● What is the definition of "removed from duty"? Does it mean only those judges whose service is terminated by the county? Judges who are shifted to different

	<p>positions? Judges who quit? SCORE is already notified whenever any election judge with user access is terminated, what is the additional goal of this proposed rule. CDOS does not receive a list of every election judge who is hired in order to compare this information in any way.</p> <ul style="list-style-type: none"> • County HR guidelines as to what we are allowed to tell people (part of SOS) when have no authority to tell whether to hire or fire.
7.8.13	<ul style="list-style-type: none"> • This is inconsistent with existing rules that don't require staff or judges to fill out voter assistance forms. Why would election judges just fill this out when directing how to use the hotline? Because the translator on the hotline is the "person other than an election judge" who is helping the voter in casting their ballot under 1-7-111(b), do the VSPC judges need to obtain and fill in information about the translator on the assistance form? Or are the judges completing it on behalf of the translator? We recommend removing this requirement for election judges to complete the form to stay consistent with existing law and process.
8.8.4 & 8.10.2	<ul style="list-style-type: none"> • Most 24-Hour Drop Boxes are not manned by election judges, thus these are not enforceable requirements. • Would this rule require counties to hire judges to staff all drop boxes (bi-partisan teams) 24/7 to accept certificates and ensure watchers are performing duties in accordance with law/rules? • No way to differentiate between a watcher and a general member of the public out at a drop box. People can sit in a car and not interact with voters. • Are we better off deleting this proposed rule and highlight violations that may occur such as voter intimidation?
11.2.4	<ul style="list-style-type: none"> • In this proposed rule, the use of "voting system equipment" is an undefined term and not used in the current Election Rules. This should be changed to currently defined term "voting system component" which is used in prior and current proposed rules. If this is intended to mean something different from "voting system components", then "voting system equipment" should be specifically defined and the difference explained. Also, is this notification requirement retroactive? Many Counties currently have retired voting system components that are no longer used but still retained by the County in compliance with current inventory rules.
11.4.1	<ul style="list-style-type: none"> • "Tabulation" as used in subsections (C) and (D) is not a clear marker for end of day, since adjudication and other reconciliation activities would likely occur after "tabulation" before everything is considered finished in the voting system for the day. We instead suggest possibly using "ballot processing" • Subsection (C) requires every single day that you do ballot processing - "day" is business day not calendar day. • Subsection (D) should be changed until after all processing has concluded on the <u>ninth</u> day after the election if the intent is the final unofficial results after the close of the cure/UOCAVA period (midnight on the eighth day) and all such ballots have been processed. • The 12th day is the provisional deadline, so that is an appropriate date as well.
20.2.1 (A)	<ul style="list-style-type: none"> • This proposed rule is too broad. Most counties provide public tours of their central count facilities as a method of educating voters and building confidence in processes. These tours include accessing areas outline in this rule. This rule may reduce transparency at a time when we need to be more transparent to help rebuild public trust and confidence that has been eroded by bad actors. • Would this include Watchers?
20.3.1 & 20.3.2	<ul style="list-style-type: none"> • This rule has a very broad scope of "election-related field technicians" and "election-related contractors" (which are undefined terms). This would include all field techs, contractors for any possible election product even that have no work with any of the items listed in 20.3.2. For example, envelope sorter tech

	<p>contractors, video surveillance camera techs, county IT coming to respond to a personal printer issue could all be included in the scope of the rule but none of these handle voter privacy, sealing equipment, or voter anonymity. This requirement should be more narrowly focused on field tech or contractors who work in VSPCs or on voting system components. In addition, do counties have to provide training to SOS staff before contacting them to provide help with an issue? Is CDOS going to provide consistent training content (perhaps an accessible online course)? This would allow techs to travel from county to county without attending 64 different County trainings and ensure consistent training that meets the Rule’s intent.</p>
<p>20.4.2 & 20.4.3</p>	<ul style="list-style-type: none"> • The broad definition of this rule may push the fiscal impact of SB 22-153 well beyond the allotted \$1,000,000. • Under current rules, counties under 50,000 voters do not have to keep all these areas under video surveillance (as defined in the new “Secure Ballot Area” and 1.1.48 “Secure Equipment Area” definitions). Indeed, this video requirement is broader than SB22-153 which will require video over “voting system components” storage/use (but not when deployed at VSPCs). Moreover, adding these expanded areas under video coverage when these proposed rules go into effect with require many Counties to expend the funds and make significant changes <u>before</u> the grant program in SB22-153 is available. SB22-153 also will give Counties until June 30, 2023 to make these changes, and this proposed rule would impose these video requirements much earlier than that legislation. • There are additional questions and challenges by this proposed rule including signature verification in the video and log requirement for Counties under 50,000 voters. Most smaller counties do this in their regular office, not a special room just for signature verification. Most do not already have cameras or log systems in their regular office. Would these Counties need everyone that breaches the main office door to sign in on the log if any of this activity is going on at that time? Does this rule require that even Visitors/Watchers/not badged people must be provided a county badge to swipe into all specific areas in this rule? Or may a County continue to maintain a general paper log that any visitor/watcher/tour guest must sign in when entering the ballot processing facility? • Election judges need to log in and out of each room back and forth during the workday. • Clarify whether or not the video surveillance needed at VSPCs (excluded from proposed legislation) since 20.4.2 states “excluding voting booths”
<p>20.4.4</p>	<ul style="list-style-type: none"> • This rule creates an unrealistic burden to require a County "immediately inform" CDOS if emergency personnel respond to an emergency situation within a secure area. County elections officials might not know immediately when the emergency access happens, so the standard should be revised to be that County informs CDOS as soon as Clerk or election staff has knowledge of the emergency personnel access.
<p>20.5.2(A)</p>	<ul style="list-style-type: none"> • Are all staff/election judges with access to voting system components (ICC, ICX, adjudication) required to sign the new Acceptable Use Policy forms?
<p>20.5.2(D)</p>	<ul style="list-style-type: none"> • This additional manual access log feels excessive and duplicative given the prior proposed rule requirements for saving system access logs from the voting system itself. This rule should be changed to remove the requirement to manually add “purpose” to this additional log so that voting system access logs or even Windows system logs could satisfy this requirement without burdening County staff with manually creating an additional log outside of those systems. Also, define system at end of rule. Is this voting system and/or operating system?

20.5.5	<ul style="list-style-type: none"> Again, similar to New Rules 10.4.2, Counties with less than 50,000 voters do not currently have this requirement for logs covering this broad scope at this time. We suggest tailoring this law to match the timing and requirements of SB22-153 so these counties have the time and grant program to aid in their compliance with these new requirements. Otherwise, as with previous proposed rules, this rule may push the fiscal impact of SB 22-153 well beyond the allotted \$1,000,000.
20.5.6	<ul style="list-style-type: none"> Again, this proposed rule includes mixed use of the terms "voting system equipment" and "voting system components" in subsections 20.5.6(A) & (B) & (D), this time appearing to mean the same thing and being interchangeable. If that is the case, please change and keep consistent with use of the defined "voting system components" term.
20.5.7	<ul style="list-style-type: none"> Rule 20.5.7 yet again introduces a third term "election equipment" which is again undefined - if this means the same thing as the defined term "voting system components" then please change to that term. If in the context of the rule it means "voting equipment" as defined in CRS 1-1-104(50.7) then please change to that term. However, that Title 1 term doesn't appear to make sense because this proposed probably doesn't intend to prohibit transferring empty ballot boxes or voting booths or similar non-voting systems components to cities and special districts. This is an important clarification that is needed so that Counties know what items are - and are not - allowed to be loaned to those DEOs for use in their independent elections.
20.5.8	<ul style="list-style-type: none"> What is the standard of "reasonably should know?"
20.7.2	<ul style="list-style-type: none"> Subsection (A) - Limit only to up to certification/canvass. After that, only election staff can handle or supervise any CORA request, etc. Subsection (B) needs to clarify the treatment of return envelopes sealed with ballots still within the envelope versus ballot envelopes that are opened and empty after ballot processing and scanning. Compare to what 7.4.8 before said - changed language and put it back.
20.8.2	<ul style="list-style-type: none"> Subsection 20.8.2(D) is too broad. It appears to prohibit onsite repair or maintenance of ICC scanners at County locations. This would be a hardship and risk further damage to machines if voting systems techs could not perform this routine work on site at the County. Authorized or elections employee in subsection (E) to escort vendor, not other county employees.
20.9.2	<ul style="list-style-type: none"> Adding new security rules to ballot printers which are by definition excluded from "voting system components" in Rule 1.1.45 raises many compliance difficulties, costs and challenges for Counties. First, does this proposed rule only apply to "ballot on demand" printers from Runbeck or also "mail ballot printers" from other vendors? Second, due to the sheer quantity of these printers that many large counties have, it will be quite difficult to store the large printers themselves in a "locked storage area" when not in use. Many counties do more securely store the laptops and ballot paper separately from the printers when not during election time, which means these are just commercial printers with no trusted build installed. The proposed rule should be revised to match that type of arrangement which meets the security goals of the rule. In addition, the rule should be clarified to define whether "not in use" means between elections or outside voting hours (or this is another place an exception for when equipment is deployed to a VSPC could be added).
20.10.1	<ul style="list-style-type: none"> This rule does not address requirements for the transfer of backups to separate physical locations. (i.e. Offsite backup contingency server.)
20.12.2(A)(1)	<ul style="list-style-type: none"> This rule is not realistic. If an issue occurs, counties are likely to confer with county attorney first. That is a fair and necessary first step. It's also realistic that a county

	<p>will work to mitigate any violations to ensure they do not happen again. Any time spent filing an incident report and awaiting a response could mean allowing further violations.</p>
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