

**ESRC Comments to the Secretary of State Regarding Working Draft of Proposed Rules
Dated May 15, 2017**

Rule 1.1.34 - Change definition to include voters who may reside or are located in the district. (Trusts, corporations, etc.) Also, given that property owner eligibility is defined in many other titles, does this term need re-defined here?

Rule 2.3.1 - Change "remove" to "removing".

Rule 2.5.4 - Also allow counties to defer processing a new ballot preference if the voter establishes a preference after the ballot has been mailed.

Clarify what should happen if the affiliation request also has a change of address.

Add "packet" after "primary election ballot" in the first line.

Clarify in the exception language that if a voter appears in person and wishes to remain unaffiliated, they must state their preference before a ballot is issued.

Rule 2.14.4 - Is Rule the best solution for solving this issue? Counties would be happy to meet with SOS staff to work through a solution.

Clarify if "voting hours" applies to county-specific hours or includes voting hours for other counties.

This would preclude counties from running needed daily balancing reports, signature uploads, etc. Will the SOS run more reports and post to the FTP sites to compensate?

Define "schedule". Is it acceptable to schedule a report during business hours that won't run until after hours?

Small counties should be allowed to run reports "at will" given the minimal impact on SCORE.

The Rule as proposed will cripple Agilis counties. We need to run these reports frequently to correctly receive ballots and sort out any ballots from a person who has already voted in the election. Counties who manually scan batches find duplicates at scanning. If the State would run hourly reports, including voter detail, and place them on the FTP for Agilis counties, this Rule might work. Daily reports would not be enough. There are huge problems with this Rule as currently proposed that could lead to electors voting multiple times.

Rule 2.15.1 - Counties support this change regardless of who is defined as "election administrator", but please clarify. Is it someone with administrative SCORE user privileges or is it a Director-level person?

Rule 7.2.10 – Counties overwhelmingly support Option 3 or alternatively, a new option 4. Overall, counties ask for Rules regarding what to do if the voter returns one voted ballot and one blank ballot. Under SB305 it is unclear if the ballots would be accepted or rejected. Counties support accepting a voted ballot if the other is returned blank.

If an unaffiliated voter does not establish a preference before ballots are mailed and later establishes a preference that is different than the returned ballot, does anything need to be recorded in SCORE?

Also, regarding household exchanges, how or should counties address wrong party ballots in envelopes?

Counties would support a different option where Rule more broadly states that counties must use a procedure to determine which ballot was voted without compromising the voter's anonymity. The specificity in the current options is not necessary.

Regarding Option 1 - Even with some sort of indicator, what if the voter returns both ballots? How will the county know which one the voter voted? (Assuming they only vote one)

This would likely increase printing costs.

Regarding Option 2 -

Clarify that bi-partisan judges must shield the ballot contents from the 1st judge.

Regarding Option 3 – Counties have the same comments as stated above.

Rule 7.5.5 - Counties generally support this Rule. There is some concern about posting approximate pickup times and whether or not this becomes a security issue. What is considered "remote"?

Rule 7.5.9 - How is this enforced or documented?

Rule 7.5.10 - Counties strongly oppose this change. It's critical for counties to keep batch association through tabulation in preparation for, and through, canvass. Also, in the case of a recount, batch association is necessary for reconciliation.

Batch association also allows counties to pull envelopes post-election for cases submitted to the District Attorney's office.

Rule 7.5.11 – A majority of counties oppose this Rule for the following reasons:

1. This would be significant burden to larger counties.
2. Counties would see increased costs for hiring more judges.
3. Counties with shared drop boxes would see a tremendous impact given the number of ballots received daily.

Is it necessary, early in the voting season, to forward ballots by the next business day? If the Rule is adopted, counties prefer this requirement apply only after Election Day.

The Rule should not apply to counties that physically exchange ballots.

If receiving county does not receive a ballot as notified from the sending county within 8 days of the election, does the voter get credit?

Does either county retain the scanned images as voter records?

Will the SOS provide counties access to "secure electronic transmission" through the FTP site?

Is there real value in scanning the image or could we accomplish the goal by sending a list of voter IDs, names, etc.?

Rule 7.5.12 - Does "U.S. Postal Service" refer only to the GMF or does it also refer to local post offices?

Need to provide some alternative to date stamping for large counties that pick up trays and pallets of ballots.

Rule 7.5.13 – See Comments on proposed Rule 7.2.10.

Rule 7.7.3 - Clarify that if a county uses email notifications, they must send email notifications to only those voters who have provided an email address.

Clarify "similarly situated" language.

Rule 7.9.3 - Use SCORE or webSCORE consistently throughout the Rules.

Clarify that using ballot-on-demand printers establishes having a "sufficient number".

Rule 7.9.6 - Will SCORE print the voter's preference on the ballot label? Is there some other method the county should use to record the preference at VSPCs?

Will unaffiliated voters be required to establish a preference if they request a mail ballot replacement at a VSPC or will they be issued both party's ballots?

Rule 7.9.8 - Establish a timeframe for wait time monitoring. If counties are required to do this every day a VSPC is open, additional judges will be required resulting in increased costs. Monitoring should be for Election Day only.

Additionally, allow an exception for remote VSPC locations and consider increasing the voter count threshold to 50,000.

Rule 7.9.9 - Define format for results report. Or will this be a SCORE module?

Rule 7.16 - Several counties strongly oppose the Rule because of the added cost and time required to comply.

For counties without ballot envelope sorters, this is an added burden. There is concern that in years with 3 elections, it may not be possible for all counties to comply. Recommend changing "must" to "may".

For ballot sorter counties, the cropped signature is uploaded into SCORE. If the Rule is adopted, clarify that this is an acceptable alternative to scanning the envelope.

If the Rule is adopted, clarify that it only applies to primary, coordinated and general elections, not to elections conducted on behalf of another jurisdiction.

Also clarify that only accepted signatures are uploaded.

Rule 8.1.5 - Make certificate expire after current year. If multiple years are included, rules and processes may be different.

Rule 8.15.8 – Majority of counties support this Rule.

There is concern from some counties that this proposal limits the Clerk's discretion on determining where electronic devices are allowed.

Rule 10.4 - How do counties send public notice of the canvass date if we don't know when we will be authorized by the SOS?

One day to conduct canvass is insufficient. Clarify that counties may convene the canvass board to review all other reports/data before RLA, but the board can't sign the official canvass cert until post-RLA.

What does this sentence mean: BEFORE CERTIFYING OFFICIAL RESULTS, THE COUNTY MUST MANUALLY ADJUST THE RESULTS OF THE AUDITED CONTESTS TO REFLECT ALL VARIANCES AND DISCREPANCIES IDENTIFIED IN THE RISK-LIMITING AUDIT.? Counties have concerns about manually adjusting results.

Rule 10.5.1 (g) - Counties are concerned about protecting voter anonymity given the small number of Emergency Ballots issued/received.

Change term to "Emergency Replacement Ballots" for consistency in Rule.

Rule 10.5.1 (i) - Consider modifying this requirement for counties that print ballots using an MBP - no pre-printed ballot stock.

Rule 10.13.1/10.13.6 - Numbering does not follow logic. There is no 10.13.2-10.13.5.

Rule 11.3.2 (c)(1) – Write-in votes are not currently included in ENR. What is the purpose of this rule?

Rule 14.1.1 (a) – Counties support this change.

Rule 14.3.4 – Is there an opportunity to increase enforcement ability here?

Rule 20.17.3 - Strike "write once" and allow counties to use encryption.

Rule 25, generally- Rule 25.3 changes Post-Election Audit to Random Audit. Needs to be consistent.

Please include Rule establishing what happens if there is a difference in interpretation between the adjudication judges and the audit board. Also need to address how to handle obvious errors.

Rules need to address how RLA works with recounts/recalls.

Define Ballot Manifest.

Rule 25.1.1 - Clarify if definition pertains to election or contest.

Rule 25.2.2(b) - Define random seed in Definitions section.

Rule 25.2.2 (c) - What happens if the parties don't appoint audit board members? What happens if an audit board member doesn't show up for the audit?

Having the canvass board observe the RLA adds another day for them. In some counties it's already difficult to find people willing to serve and this would create an additional day of expense.

Some counties use the canvass board as their audit board. Requiring separate people will be an added expense.

Rule 25.2.2(d) - Ballot manifest should also include the seal number of ballot storage container.

Rule 25.2.2 (e) - During the RLA meetings the intent was to conduct a single audit, not a statewide and a countywide (or county-specific) contest. This language appears to require the county to conduct two audits.

Rule 25.2.2 (f) - Why would property owner ballots not be included in the 9th day tabulation?

Rule 25.2.2 (g)(3) - This sub-rule 3 is more of a canvass function and does not belong here. Sub-rule 2 is sufficient to verify that the number of ballots contained in the CVR is correct. Counties recommend striking this entire sub-rule. At a minimum, strike everything after "the number of mail ballots". Because of the way property owner ballots are tracked, these are not included in SCORE totals. This would also apply to cases where an envelope was received and accepted, but the envelope was empty.

Rule 25.2.2 (h)(3) - Clarify what the RLA Tabulation Results Export is.

Rule 25.2.3 (c) – On line 31, what is "them" referring to? Need to clarify what is being compared.

Rule 25.2.3 (e) - Limit to only when there is a discrepancy between the audit board's interpretation and a discrepancy with the CVR.

Rule 25.2.3 (f) – For consistency, recommend deadline be changed to 11:59 pm.

Clarify that each county submits the report, not the Audit Board. Will there be a required format for submittal?

Rule 25.2.3(g) - Reword "until a full hand count results" to "until a full hand count is required".