**ESRC Comments to the Secretary of State Regarding Working Draft of Proposed Rules
Dated June 27, 2017**
We have added Boulder County's comments in blue.

Boulder County fully supports the comments submitted by the ESRC except where noted**.**

Rule 2.5.4 – Various clarifications requested:
In VSPCs
- If the elector wishes to remain unaffiliated, do they have to declare a party preference prior to issuing a ballot?
- Does this rule apply in the same manner for ballot preference updates?
- Does this rule apply to voters who wish to unaffiliate?

In offices
- Should also allow counties to defer processing a new ballot preference if the voter establishes a preference after the ballot has been mailed?
- How are affiliation request/ballot preference requests handled if they accompany a change of address or other update on the voter registration application?
- Clarify that any change to an unaffiliated voter's ballot preference must be made using the voter registration form.

There seems to be some conflict with this Rule and Rule 2.17

Rule 2.13.2. – Recommend striking this Rule. The current SOS training for voter registration is not up-to-date. Replace with a requirement to complete a training course provided by or approved by the County Clerk.

Rule 2.14.4 – Recommend striking this Rule until a working group of county and SOS staff have had a chance to discuss automatic reports in SCORE and perform a test run in November 2017.

Other considerations include:
- This Rule would preclude counties from running needed daily balancing reports, signature uploads, etc. This will cripple counties using a mail ballot sorter system.
- How is "schedule" defined? Is it acceptable to schedule a report during business hours that won't run until after hours?
- Will the SOS run more reports and post to the FTP sites to compensate? How often will these reports be available (daily, hourly, etc.)?

Boulder County Comment – we are in alignment with ESRC recommendation to form a working group this year, in addition we request SOS to provide list of reports and exports that should not be run during regular business hours.

Rule 2.14.5 – As above, recommend striking this Rule until working group of county and SOS staff have had a chance to discuss automatic reports in SCORE and perform a test run in November 2017.

Rule 2.15.1 - Counties support this change. We do request clarification of who is defined as "election administrator". Is it someone with administrative SCORE user privileges or is it a Director-level person?

Rule 2.17: Boulder County comment: We believe this rule should be struck as it exceeds the SOS authority. The issues of an unaffiliated voter declaring a preference before a primary election was debated and removed from the legislation to implement prop 107 and 108 during the 2017 legislative session.

Rule 2.17 – Strike "…IN THE NEXT PRIMARY ELECTION."
Please clarify if an unaffiliated voter may change preferences within the 29 day window.

This Rule seems to conflict with proposed Rule 2.5.4.

Rule 7.2.12 – Clarify that any change to an unaffiliated voter's ballot preference must be made using the voter registration form, even when requesting a replacement ballot.

Suggest adding a field to the Signature Card to indicate ballot preference for in-person voters at a VSPC.

Rule 7.5.5 - Counties generally support this Rule. Does there need to be a definition or qualifications for what qualifies as "remote drop off locations"?

Rule 7.5.5 (A)(1) – Clarify the phrase "after ballots are mailed". Is this after UOCAVA ballots are mailed or after the 22 day deadline?

Some counties concerned with publicizing the dates and pick up times and potential for sabotage of a collection box/24 hour box. Voters are not aware of the day/times now.

Rule 7.5.9 - How is this enforced or documented?

Rule 7.5.10 - Counties **strongly** oppose this change.

It is 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 would see increase postage costs.

Some clarification is requested?
- 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.
- 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?

- What are receiving counties expected to do with the received scanned images since we receive the envelope. Is there a SCORE function for these scans?
- Does either county retain the scanned images as voter records?
- Will the SOS provide counties access to "secure electronic transmission" through the FTP site? (The scans will contain signatures.)
- Could quantity logs be sent to receiving counties instead?
- Will the SOS have a Scanning module in place for counties to use for this task?
- Large counties receive thousands of ballots from other counties. Denver would be especially hard hit.

Potential compromises:
- Change "next business day" to "day after election day" on the last sentence.
- Have SOS compile all of the lists for each county – each county send their info to the SOS and they send to the counties.
- SOS could receive late arrivals at the GMF for all metro counties and then document and distribute.

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 or have SOS staff receive and distribute final GMF ballots.

Rule 7.5.13 –

7.5.13(A)
- Recommend this be expanded to also include ballot sorters.
- Consider automated removal via Opex systems.
- Secrecy sleeves not always enclosed with ballot in return envelope.
- Focus on the outcome about maintaining voter privacy versus specific requirements.
- Clerks suggest flexibility in language such as…"within reason" or "to the extent possible"…

7.5.13(C) – Recommend allowing counties to decide the location of tracking the party information before recording it in SCORE.

Rule 7.5.14(A) – Is this legal? Treating unaffiliated voters differently because we are allowing the credible ballot to be accepted versus voters who return primary and general for example.

Boulder County Comment – We support this rule. It allows us to mitigate voter confusion for voters who receive 2 ballots. Suggest that we have the bipartisan team mark the unvoted ballot to indicate it was returned blank. Having unvoted blank ballots need to be accounted for to ensure security.

Rule 7.5.14(B) – Counties primary concern here is ensuring that an unaffiliated voter who returns two blank ballots receives vote credit/history in SCORE.

Clarify procedures to account for unvoted ballots in light of requirement for RLA to have hand count of ballots match SCORE.

Rule 7.9.9 – Counties support this Rule.

Rule 7.9.10 – Counties request clarification on format for results report. Will this be a SCORE module or SOS provided template?

Rule 7.16 – Counties without automated ballot sorters strongly oppose this Rule because of the added cost and time required to comply. There is concern that in years with 3 elections, it may not be possible for all counties to comply. Counties recommend:
- Changing "must" to "may".
- Clarify the word "following" due to the length of time it takes for manual entry into SCORE.
- Add "or cure affidavit" to cover discrepant ballots which were cured.
- Define "date". Is this the signature date or the date received by the county?
  - What if the voter does not date their signature?
  - Capturing the date with the signature will be a problem for counties using automatic ballot sorters. The date image adds "noise" and interferes with the signature recognition software. The work around would be to upload a cropped signature image into SCORE and upload the full return ballot envelope image into SCORE.
- If the Rule is adopted, clarify that it only applies to primary, coordinated and general elections, not to elections conducted on behalf of another jurisdictions

Boulder County's comments: In addition to the ESRC comments, we suggest additional rules be added to clarify how the signatures uploaded to SCORE may be used. If no additional rules for use are included, Boulder County opposes this rule.

Rule 8.1.5 - Make certificate expire after current year, for the following reasons:
- Laws and rules change each spring. Last years' training may not apply.
- As written, this Rule creates a situation where two different watchers for the same election could be certified under two different training programs.
- We train our judges **every year,** why would watchers have a different standard?

Rule 8.15.8 – Majority of counties support this Rule.

Rule 10.4 - How do counties provide public notice of the canvass date if they have to wait for authorization to certify results?

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, A COUNTY THAT CONDUCTS A COMPARISON AUDIT AS DEFINED IN RULE 25.1.4 MUST MANUALLY ADJUST THE PRELIMINARY RESULTS TO REFLECT ALL DISCRPANCIES IDENTIFIED IN THE RISK-LIMITING AUDIT?
Counties have concerns about manually adjusting results.

Rule 10.5 – Canvass will now be held on multiple days in most counties due to RLA requirements. We recommend striking "the day of".

10.5.1(e) – The word "INCLUDING" is spelled wrong.

Boulder County Comment
10.5.1(G) What is the purpose of this addition? Once a ballot is cast, it should not matter the source of the ballot. Emergency ballots should be treated like all others. It is fine to report to canvass how many were issued.

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

10.5.1(i) - Counties request a canvass report from SCORE to help provide these totals.

Rule 10.13.1/10.13.6 - Numbering does not follow logic.

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 "a read-only, write once" and replace with "encrypted".

Rule 25, generally-
- Please include Rule establishing what happens if there is a difference in interpretation between the adjudication judges and the audit board.
- Address how to handle obvious errors.
- Address how RLA works with recounts/recalls.

Rule 25.2.2(A) – Support the risk limit not exceeding 5% for statewide audit but recommend increasing it to 10% for countywide and below.

Boulder County Comment
Rule 25.2.2(B) –
- Add in, The Clerk/Designated Representative should also be part of the Audit Board. County is accountable for submitting the official results and should be part of board.
- Add in (as is stated in LAT rule) statement clarifying that Audit will proceed even if Audit board members don't show.

Rule 25.2.2(C) - Ballot manifest should also include the seal number of ballot storage container.
Boulder County Comment - Would be helpful for state to provide a sample Ballot Manifest.

Rule 25.2.2(D) - Why would property owner ballots not be included in the 9th day tabulation? Change "the county **must** finish tabulating" to "**may**".
Boulder County Comment – Is the purpose of how this is worded intended to give flexibility in case provisional ballots cannot be processed by the 9th day? If so we agree with how this is written. We recommend adding a statement that counties include provisional ballots to the extent possible. It would be important to include provisionals in the ballot manifest on the 9th day, especially if we have the amounts we have seen in 2014, and 2015. If we do not, we could create voter anonymity issues. Counties would need to tabulate provisional ballots after counties and finished accepting all 8 day ballots. We also recommend that landowner ballots be required to be included in the 9th day tabulation to ensure privacy.

Rule 25.2.2(E)(3) – This 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". Various issues cause cloudiness here that are accounted for/explained in the Canvas report:
- Ballot envelopes received but no ballot counted (spoiled/blank/two voted ballots).
- Empty envelopes.
- Wrong ballot in the envelope.

This will muddy the lines between RLA and Canvass.
Boulder County Comment – Strongly support ESRCs comments. The reason we have as long as we do to canvass is to look at any human errors and explain these issues to canvass. And example of this would be when a VSPC judge marks in person voting when they actually gave the voter a mail ballot. This work cannot be completed by the 9th day.

Rule 25.2.2 (F)(3) - Clarify what the RLA Tabulation Results Export is. Counties request this information before Rule is in place.
Boulder County Comment - Clarify the report reference, this is confusing. Isn't this just ENR results after 9th day?

Rule 25.2.2(I) - Clarify if counties will be required to conduct one audit or two (statewide and countywide).
Boulder County Comment: For 2017 we should audit a maximum of 1 contest.
Future rules should be written after our 2017 experience to determine the maximum number of contests going forward. If there is no statewide contest then only the countywide contest should be audited (don't make it mandatory to have 2 contests). If local contests are selected then there should be parameters around how contests are selected; need to account for voter privacy concerns.

Boulder County Comment
Rule 25.2.3(A) – This rule should be written so that election staff do the actual retrieval and handling of ballot boxes and ballots. The Audit board must observe this process, ensure that ballots have been properly retrieved and that chain of custody is intact. Suggest adding process if there is a chain of custody issue.

Rule 25.2.3(B) - For consistency, can this deadline be 11:59 p.m. to match other timed deadlines?

Boulder County Comment; Impact of county holidays and not knowing until Monday if there is an escalation of audit. How do you canvass the election if you don't have the state results posted or if there is an RLA escalation? For this year, is there a way to have audit results due by Wednesday, November 22 and have canvass sign off on Monday, November 27, if there are no audit escalation's?

Remove – If the scanned ballot was duplicated prior to tabulation, the audit board must also retrieve and compare the markings on the original ballot. This exceeds the purpose and authority of an RLA. This step is auditing judges. If we want to audit judges' work, then statue should be added to allow for this.

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

Boulder County Comment - What if your audit board disagrees with the results, what is the escalation path?

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

Boulder County Comment - Clarify what triggers a hand count – provide guidance for this year.

Rule 25.2.4 – Boulder County Comment - Is there a time frame for this to occur? Impact of unknown could be hard to respond to. We like having a provision to adjust should something occur, but wonder if the SOS has the authority to wave a statutory requirement.