Harvie Branscomb electionquality.com 7/17/2017 annotation of ESRC Comments to the Secretary of State Regarding Working Draft of Proposed Rules Dated June 27, 2017

(ESRC= Election Statute Review Committee of the Colorado County Clerks Association)

source document:
http://www.sos.state.co.us/pubs/rule_making/written_comments/2017/20170711Hall-ESRCandBoulderCounty.pdf

Boulder County's comments in blue. Harvie Branscomb comments in yellow highlighter.
A draft of these comments was distributed on 7/14/2017 to some Colorado election officials with the hope of receiving constructive correction but as of 7/17/2017 5PM none has been received. Please direct comments to harvie at electionquality dot com. [no need to redact the email address]

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

New Rule 1.1.10: [Not in ESRC comments]
1.1.10 "CAST VOTE RECORD" OR "CVR" MEANS THE AGGREGATED BALLOT-LEVEL DATA ON BALLOTS COUNTED, CONSISTING OF A SINGLE RECORD FOR EACH BALLOT **PAGE** TABULATED, SHOWING THE MANNER IN WHICH THE VOTING SYSTEM INTERPRETED AND TABULATED THE VOTER'S MARKINGS ON THE BALLOT, AS ADJUDICATED AND RESOLVED BY ELECTION JUDGES, IF APPLICABLE.
[If Dominion creates a CVR per page (two sides) then the above modified definition (in bold) is more correct. There are great advantages to be obtained from releasing counties from the requirement to track groups of pages returned by a voter as a single ballot as well as to produce several pages as a single ballot style. If each page is treated as a single page ballot with a separate style, far fewer styles are needed and ballot anonymity is much better protected. Smart allocation of contests to separate pages can produce additional efficiency and voter privacy and simpler election process.]

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?

[In other words, can a U elector request a two party U ballot packet in-person and receive one? Without this rule, if a U voter has mailed back one of the two party primary ballots and then affiliates within 29 days with the other party, do the election judges have to remove the returned ballot as ineligible if they catch it in time?]

- Does this rule apply in the same manner for ballot preference updates?
- Does this rule apply to voters who wish to unaffiliate?

[all good questions]
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.

[all good points and questions]

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

Rule 2.13.2. [SOS election judge training required]– 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 [prohibition running SCORE reports near elections in business day]– 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 [required to get reports from SOS instead]– 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.

Rules 2.15.1 [clerk or administrator to request credentials for credential administration] - 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 [send unaffiliated voters expressing party preference only preferred ballot]:
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 [replacement packet to U electors]– 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 [waiver for drop-off locations]- 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.

[watchers aren't aware of them either, and may need to; support transparency of pickup times]

Rule 7.5.9 [DA notification of violation of excess receiving of ballots] - How is this enforced or documented?

Rule 7.5.10 [dissociate SCORE batches from batches before tabulation] - 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.

[The draft rule is a great improvement and will lead to better integrity. It need not decrease the accountability of election in Colorado. - Cases forwarded to the DA related to individual ballot packets can be limited to envelopes, identified in envelope batches that have no need to correspond to tabulation batches.

Only the total number of ballots removed from envelopes and already approved for tabulation needs to equal the total number of ballots leaving tabulation and the total number of ballots actually tabulated. None of those comparisons need to relate to envelope batches, nor should they. The removal of association between envelope batches and tabulation batches should consist of more than just changing the batch number. The batch contents should not match between groups of envelopes and associable groups of tabulated ballots, regardless of sequence.

Obviously larger batch sizes make it easier for batches to contain multiple styles without likely finding unique styles, but smaller batch sizes are better for identifying CVRs with ballots (not envelopes) by using the sequence or position of the ballot in the batch.

I recognize it will be hard for some counties to modify their practices to separate and disassociate envelope batches from tabulation batches. Disassociation of only batch numbers is a lesser step that can initially be taken but is not sufficient to gain full advantage. ESRC mentions the need to account for envelopes through tabulation. It should be impossible for the county or anyone to determine which counted ballot was associated with a problematic envelope even if there is a unique ballot style in a single batch. Likewise the pattern of styles in the tabulation batch may easily uniquely associate it with an envelope batch and must not be allowed to. We need to follow a standard procedure for de-associating batches without harming an effective method of accountability for all sheets of paper passing through the process.

The risks of maintaining batch equality from envelope to tabulation are probably not sufficiently understood, nor are the benefits of full separation of envelope-related voter identity and ballot anonymity needed for publicly verifiable audits.]

[The proposed draft rule is sufficient and desirable. The best practice that would comply to it can be described for clarity and to demonstrate its feasibility.

Eligibility determination is done on batches that are equivalent or equal to SCORE batches of envelopes. Ballots in these batches may be kept in order of envelopes, in the order of known elector identity. Discrepancies in counts between envelopes and ballot batches must be discovered and addressed within process prior to a revised batching that occurs at the beginning of the tabulation step.

Re-batching is needed to conform to the draft rule and to protect ballot anonymity and voter privacy by eliminating association of envelope batches to tabulation batches. It can easily be expressed as a series of steps:

1) Target envelope batch sizes and target tabulation batch sizes are planned such that they are significantly different and not multiples of each other.

2) Envelopes are batched and numbered in SCORE and batches are accumulated into collections as they proceed toward tabulation, preferably in a single container per collection. Envelope batch accounting is done (page counts of batches, SCORE batch numbers, etc.) are recorded and compared to envelope batches and discrepancies resolved. Collection accounting is also done by summing the batch page counts to produce the total page count within the collection container and recorded on a collection accounting sheet attached to the container.

3) Such collections must contain a total ballot page count of at least 5 (arguably, per CRS 24-72-205.5, 10) times the number of styles found within. Existing smaller collections may be merged to reach this threshold.

4) Sorting by style prior to batching can be used to reduce the number of styles contained and reduce the allowed minimum size of each collection. Unique styles if encountered may be moved to other collections to join other instances of same style.

5) Without changing the content of the collection, and without changing the contents of a single container, batch separators within each such collection are removed. Batch level accounting for the collection is removed leaving collection sums (calculated from the previous batch totals) attached.

6) Handfuls of ballots within the container/collection smaller than envelope batch size are moved into a different location within the container (shuffled minimally) to jumble any order of batch or batch definition from the envelope batch structure without changing the aggregate contents of the collection.

7) New batch separators may be inserted into the collection at approximate tabulation batch intervals. Batch sizes of the tabulation batches need not be uniform.

8) The ballot manifest is created by counting by hand or by hand plus machine the newly defined tabulation batches, naming/numbering them, and recording the page count onto new batch separator cards.

9) Upon scanning, the tabulator assigns a batch number to each tabulation batch that is also manually recorded on the batch separator card before the ballots are returned to a same size container for the collection.

10) Manifest batch page counts and tabulator batch page counts are compared and discrepancies resolved at the scanner.

11) The manifest batch number and tabulator batch number and associated page counts are recorded on the associated separator card and signed off by election judges.

12) The manifest page counts and tabulator page counts for each batch are summed by election judges and recorded on the accounting log for the container/collection and compared to the container/collection page count from eligibility.

13) Discrepancies such as ballots removed for duplication/remaking are logged and resolved prior to sealing the container and the seal number is recorded such that the data is visible from outside the container.

For example, for a county with 10 precinct styles in a general election, the container/collection must contain at least 50 ballots or an average of 5 per style. For a 300 style county, the container/collection must hold 1500.]

Rule 7.5.11[secure electronic transmit image of wrong county dropped envelope to correct county] – 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.

[postage? This is electronic transmission. Large counties already share wrong county ballots morning after election day (Wednesday) at Denver Elections Dept. If they did that on Friday and Monday and Tuesday as well, they would not be subject to this requirement as the rule is written. Suggest rule say "within two business days" in which case the ballot packet swap could occur on Thursday and Monday and Wednesday only.]

Some clarification is requested?
● Is it necessary, early in the voting season, to forward ballots by the next business day?
[timely isn't next business day- secure electronic transmission starts on Thursday- does rule

say early in voting season ballots must forward next business day?]

- If the Rule is adopted, counties prefer this requirement apply only after Election Day.

[two business days is a better solution- problem being in small counties election judges are not available for signarure verification after election day until near 8th 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?

[missing ballot packet is a serious flaw that should generate an investigation involving SOS. Voter credit is several things- it adds to ballots cast, it prevents voting other ballots in same election, and it begins clock for removal of registration. These conditions should all be separately treated. For missing ballot, obviously the elector should be allowed to vote in person or with another ballot, so as things stand today, the voter should not get "credit" in SCORE.]

- 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?

[SCORE does not need enhancement to store these SCANS as the envelope will produce the permanent record of the incoming signature when it arrives.]

- 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.)

[interesting question but why not?]

- Could quantity logs be sent to receiving counties instead?

[smaller counties need the opportunity to do sigver when they have election judges available and not wait until too late for cure for the sigver to take place.]

- Will the SOS have a Scanning module in place for counties to use for this task?

[will counties now expect every single task to be guided and captured by SCORE, even knowing that SCORE is fallible and unable to handle the report requests that it fields from legitimate users?]

- Large counties receive thousands of ballots from other counties. Denver would be especially hard hit.

[The existing ballot swap takes care of this and can be extended to three days as proposed above.]

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.

[Its apparent these comments were written from large counties not small. The ballot swap system exists and takes care of large counties who do bring in election judges after election day. Small counties are the ones who need to serve their voters effectively with this rule.]

Rule 7.5.12 [date stamp ballots received from USPO for other county election night]- 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.
[ballots from GMF intended for other counties have been misrouted in past. Accountability is needed.]

Rule 7.5.13.[method for checking party of returned voted ballot by manual inspection]
Rule 7.5.13 –

7.5.13(A)

● Recommend this be expanded to also include ballot sorters.
[This rule is for manual override of conditions that can't be handled by ballot sorters looking through windows in the envelope such as two ballots returned in envelope.]

● Consider automated removal via Opex systems.
[This rule must apply for the exception encountered at Opex that is two ballots returned in envelope- if the envelope is from a U voter, the two ballots must be examined to determine if one and only one ballot is voted. Opex operators must find and isolate all instances of double ballot and return the ballots to the envelope for this special processing.]

● Secrecy sleeves not always enclosed with ballot in return envelope.
[Prior to this rule, the secrecy sleeve seemed not needed in Opex counties because the envelope address isn't visible to the operator when the ballot and sleeve is removed. Now that double ballots must be examined while the identifiable envelope remains associated, the secrecy sleeve is important in case of double ballots and should be added by the Opex operator upon removal of the ballots. In non-Opex counties, The potential for loss of voter privacy always exists and must be protected by careful use of isolation of envelopes from ballots. A major means to protect privacy is to arrange for all voter ID to be on one side of the envelope as Arapahoe and others have done. There is no need for a return address on a ballot and the county address can be put in place of the return address. In Arapahoe a further step was taken to move all voter specific data to one side of the envelope including the postage. Under either of these conditions, the envelopes can be handled with the voter ID side down to protect privacy.]

● 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"…

[If oversight was adequate, such as via watchers, county flexibility in administering process to maintain anonymity of ballots and privacy of voters would be more desirable and acceptable.]

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) [manual process to check voter intent on multiple returned ballots from U electors to see if only one is legally voted]– 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.

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.

[I'm unclear about the RLA requirement mentioned but wouldn't object.Yes all pieces of paper need to be accounted for including returned blank or unvoted primary ballots that accompany legally voted primary ballots.]

Rule 7.9.9 [wait time recording]– Counties support this Rule.

Rule 7.9.10 [wait time reporting to SOS] – Counties request clarification on format for results report. Will this be a SCORE module or SOS provided template?

Rule 7.16 [scan signature and date from ballot envelope plus cure letter to SCORE]– 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

[ESRC questions are good questions. I am not sure why this is controversial- in what case do counties not scan to capture the signature into SCORE? Is the concern about the date only? I understand that date added to signature would interfere with automatic signature verification.

It makes sense to strongly support the capture of the signature on the cure letter as a signature to be given priority over the likely defective signature uploaded from the envelope that caused

Rule 8.1.5 [certificate of web watcher training expires end of following year] - 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?
[in fact, watchers should be invited to e-judge training. Watcher training can expire each year.]

Rule 8.15.8 [cell phone possession not allowed for watchers in vicinity of confidential info]– Majority of counties support this Rule.

[There is a big negative reaction to this rule and for good reason. Watchers are severely incapacitated without the ability to communicate, particularly when only one watcher per appointing authority is allowed in any one area. Cell phones and computers can be used to beneficial and harmless effect including in circumstances where PII is present. This rule should not be adopted.]

Rule 10.4 [SOS approves timing and may extend certification deadline] - 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.

[Large counties often have multi-day canvass meetings but this varies a lot. Canvass should not be described as a single day. Agree with above comment. Certification deadline delay, at discretion of SOS, due to longer time required for audit, would simply involve changing the publicly announced canvass schedule and certification date. That isn't difficult or unusual.]

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 DISCREPANCIES IDENTIFIED IN

Counties have concerns about manually adjusting results.

[Counties occasionally need to hand modify the results in EMS due to discrepancies discovered. The audit can be treated similarly. It is important that the audit affect results as it also escalates to a full hand count that corrects all the results. That hand count must be accurate and self-healing of any discrepancies. See separate document for a solution. The adjudication performed during audit will be the most patient and careful adjudication of voter intent compared to the actions of adjudicators operating at speed. If the audit board has a difference of opinion about voter intent, after application of the voter intent guide, then a tie breaking decision is needed. Rule could be specific about how to handle this. Rules should also encourage a very careful selection of audit board to achieve the highest possible credibility and trust. Whomever performs the role as tie breaker ought not be a local election official.]

Boulder County Comments: There needs to be a definition of what makes an actual discrepancy. Who makes decision that we should adjust our results? We would like you to explain that discrepancy is attributed to "voter error" it is not a discrepancy that would impact the results- the way audit used to have it outlined. When do the results get updated and does this work with canvass deadlines?

[the voter intent guide helps define what is effectively a "voter error" that leads to a non-counted vote and what is not. Because Colorado is according to statute a voter intent state, voter error isn't a reason for not counting a vote. Ambiguous or missing expression of voter intent leads to not counting a vote. Voters are not machines and neither are election judges nor are audit board members. Audit board members should be appointed carefully and if escalation of a tie is needed, that person should be identified in advance and be independent of the election management (as the audit board members should be)]

Rule 10.5 [procedures for day of canvass]– 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) [number of emergency replacement ballots] 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.

[Once a ballot is tabulated is should not matter the source of the ballot. However, to audit the eligibility of the ballots themselves the source of the ballot is important. Canvass must address the eligibility of the ballots as well as the tabulation. These data points help substantiate the chain of custody of the various sources of ballots and permit accounting of the numbers from input to output.]

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

[ESRC comment remains a mystery.]

10.5.1(i) [numbers of party primary ballots]- Counties request a canvass report from SCORE to help provide these totals.

<mark>[Are the canvass reports sourced from SCORE or from original records? At some place we should have a way to authenticate and verify the data that is in SCORE.]</mark>

Rule 10.13.1/10.13.6 - Numbering does not follow logic.

Rule 14.1.1 (a) [Voter Registration Drive statement of intent required] – Counties support this change.

Rule 14.3.4 [VRD must report name of circulator]– Is there an opportunity to increase enforcement ability here?

Rule 20.17.3 [backup election setup records] - 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.

<mark>[obvious errors can be remedied after deliberation by the appropriate authority subject to public oversight and appropriate documentation.]</mark>
- Address how RLA works with recounts/recalls.

<mark>[this is addressed separately]</mark>

Rule 25.1.2 "AUDITED CONTEST" MEANS A CONTEST SELECTED BY THE SECRETARY OF STATE FOR A RISK-LIMITING AUDIT. THE AUDITED CONTEST(S) DETERMINE THE NUMBER OF BALLOTS THAT MUST BE EXAMINED AND VERIFIED DURING THE RLA.

<mark>[It is helpful to add this definition although it is not part of the ESRC comments.]</mark>

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.

[This is a controversial issue for which we still have insufficient information- particularly the actual workload involved in executing the RLA capture of contests on sampled ballots. It makes sense to advocate for 5% at this time till more data is available.]

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.

[One major improvement that the RLA brings to the table is independence of the findings of the audit from those who are responsible for decisions affecting the original pre-audit election results. It makes no sense then to unbalance the audit board with someone who has a potential conflict of interest regarding the audit process. The rule now says "assist" and that is an appropriate role for the clerk and staff.]

- Add in (as is stated in LAT rule) statement clarifying that Audit will proceed even if Audit board members don't show.

[Some language to this effect is appropriate, including a method for selecting alternate members of the audit board. The language should specify partisan balance, a means for resolution/escalation of a tie, a requirement for replacement, and a process for replacement that ensures adequate independence of the auditors. I presume some of this will have to wait for future rulemaking.]

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.
[The format of the ballot manifest will presumably be standardized by the SOS, but the source of the data may not be because of county variations in process. Ideally ballot manifest is not sourced from the voting system but from manually verified counts created as or shortly after ballots are removed from envelopes and deemed eligible for tabulation. As for the seal number to be included, the box seal number will change as the container is closed after tabulation. Would we prefer that seal number to be added at that time after tabulation even as the ballot manifest is created prior to tabulation? Would ballots be removed or added to the manifest in the course of tabulation? Presumably not. If the manifest is expected to be updated after tabulation, then the seal number could be added and this would easily allow audit personnel to verify the box and seal is correct but there are other means to check the seal log prior to opening the box. There is a concern about multiple versions of the ballot manifest that suggest that seal number ought not be included.]

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.
[Agree with Boulder - ideally all ballots including provisional and land owner will be included in the reported tabulations. The current obstacle is a later statutory deadline for those two categories of ballot. Statutory improvements in schedule could better support RLA in future. For 2017 it is only important to know if the provisionals and land owner ballots are included or not and how many there are. Probably these numbers should be part of the canvass report in 10.5.1 as well as annotations to the auditable tabulation report (ENR).]

Rule 25.2.2(E)(3) –
["THE NUMBER OF INDIVIDUAL CVRS IN ITS CVR EXPORT EQUALS THE NUMBER OF IN-PERSON BALLOTS ISSUED PLUS THE NUMBER OF MAIL BALLOTS IN VERIFIED-ACCEPTED STAGE IN SCORE, PLUS THE NUMBER

OF PROVISIONAL BALLOTS AND PROPERTY OWNER BALLOTS INCLUDED
IN THE RLA TABULATION, IF ANY;"]

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. An 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.

[Not clear what are the lines between RLA and Canvass and why we should be respecting them or avoiding the "muddying." Canvass depends on audit results, but audit depends on chain of custody and other compliance considerations that are of similar concern to canvass. Data provided to canvass should not be excluded from audit consideration. The audit is incorporating evidence for election quality that the canvass must receive and also attend to.]
- estimate of the number of ballots which are represented in the manifests but which are non-voter-verifiable
- upper limit on number of ballots which are not represented in the manifests, and may be included in the final canvassed results
- the number of ballots that are not accessible to audit due to privacy concerns

(see rule 25.2.2 (F) (3) below)]

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?

[The RLA tabulation results export should be what is also provided to the ENR system (Clarity) and if it includes under and overvotes and if it is possible to obtain the number of ballots counted in each contest from the total of the votes, under and overvotes, then the RLA Tabulation report is the ENR report. One point of concern is if it is possible to distinguish if the landowner ballots and provisional ballots have been included or not. Note that for some reason Boulder is the one county that does not provide a downloadable ENR county details report at the Clarity site and the reason for that might be of interest.]

[Suggest additional subparagraph (F) (4) as follows:
AN ACCOUNTING OF THE NUMBER OF LAND OWNER BALLOTS AND THE NUMBER OF PROVISIONAL BALLOTS THAT HAVE NOT BEEN INCLUDED IN THE CVR OR BALLOT MANIFEST UPLOAD THAT MAY YET BE INCLUDED IN THE ELECTION; THE UPPER LIMIT ON THE NUMBER OF AND REASON FOR ANY OTHER BALLOTS THAT HAVE NOT BEEN INCLUDED IN THE CVR UPLOAD OR THE BALLOT MANIFEST AND MAY BE INCLUDED IN THE FINAL CANVASSED RESULTS.

Suggest additional subparagraph (F) (5) as follows:
AN ACCOUNTING OF THE NUMBER OF BALLOTS INCLUDED IN THE BALLOT MANIFEST THAT MAY NOT BE MADE AVAILABLE FOR AUDITING FOR REASONS OF VOTER PRIVACY; THE NUMBER OF NON-VOTER-VERIFIABLE BALLOTS CAST;]

Rule 25.2.2(H) – [not addressed by ESRC] The rule must ensure publication of the results to be audited before selecting from those results. Before "*THE SECRETARY OF STATE WILL CONVENE".* insert "AFTER POSTING ON THE AUDIT CENTER FOR PUBLIC DOWNLOAD THE FULL SET OF BALLOT MANIFESTS, AND CVR UPLOADS FROM THE COUNTIES THAT HAVE THEM,"

[Public access to audit data is important for sharing the confidence that it is intended to generate.]

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.
[Agree that local or multi county contests require some additional research based on experience from 2017. But to get that experience we need to have all the contests captured on ballots that are sampled in 2017 even as only one contest is being audited to reach the risk limit. The experience of expecting two contests to meet the risk limit will gather more relevant experience than the audit of just one contest. (when an active contest goes inactive by reaching the risk limit, another contest has not and the audit continues- it is good to test this transition) However under currently written rule, only if a statewide contest is on the ballot will two contests be "audited" to the risk limit. Others may be audited "opportunistically" as long as sampling continues and voter intent is being captured.]

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.
[Agree with Boulder, if deemed locally desirable, staff should deal with security and logistics for audit but not the adjudication of voter intent on the ballot nor entry of the captured data nor checking of the seal logs to ensure chain of custody. Audit board may perform the extra logistical functions if amenable with local policy. Yes, process is needed for an instance of detected interruption of chain of custody. Possible improvement:
25.2.3 CONDUCTING THE AUDIT
(A) THE AUDIT BOARD IS RESPONSIBLE FOR ARRANGING LOCATION AND RETRIEVAL FROM THE APPROPRIATE STORAGE CONTAINER OF EACH RANDOMLY SELECTED BALLOT.
]

Rule 25.2.3(B) -
["THE AUDIT BOARD MUST EXAMINE EACH RANDOMLY SELECTED BALLOT OR

VVPAT AND REPORT THE VOTER MARKINGS OR CHOICES USING THE RLA
TOOL OR OTHER MEANS SPECIFIED BY THE SECRETARY OF STATE.”…“THE
AUDIT BOARD MUST COMPLETE ITS REPORTS OF ALL BALLOTS RANDOMLY
SELECTED FOR AUDIT NO LATER THAN 5:00 P.M. MT ONE BUSINESS DAY
BEFORE THE CANVASS DEADLINE.”]

 For consistency, can this deadline be 11:59 p.m. to match other timed deadlines?

[Consistency of deadline is not a problem if SOS workforce is willing to accommodate.]

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?

[Obviously there are some unknowns and 2017 will answer some questions. SOS ability to delay
the certification deadline will solve some potential problems with the calendar.]

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.

[This audit is not a voting system audit per se. It is an audit of election outcome based on accuracy
of tabulation, including human adjudication and duplication. Auditing of Voter-Verifiable Paper
Records is a defining characteristic of RLAs, and this is a fundamental improvement that the RLA
provides. It is therefore necessary to capture voter intent from the original voter verified and, if
applicable, voter marked ballot that may have been duplicated (remade).]

Rule 25.2.3(C)

["THE AUDIT BOARD MUST INTERPRET VOTER MARKINGS ON BALLOTS
SELECTED FOR AUDIT IN ACCORDANCE WITH THE SECRETARY OF STATE'S
VOTER INTENT GUIDE."]

- 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?

[The decision of the audit board is final, subject to a recount. The audit board must be
selected in a manner to obtain sufficient credibility for their decisions, decisions that will
affect results if not outcome. The original adjudicators are working at a fast pace and are
potentially susceptible to error by accident, inconsistent training, etc. In addition, they are
working from the image not from the paper. Adjudication from the paper is the correct
source of the most accurate capture of voter intent. Adjudication quality will improve when
the pace is suited to auditing rather than production. Opportunities for accurate
adjudication are present on paper that are missing during original election processing via
onscreen adjudication because the image does not match the paper exactly.

At present there is no escalation path defined into the process other than a complaint to the SOS that always exists. There is no reason to give the original adjudicators equal credibility or authority over mark adjudication such that a disagreement with later auditors would produce some kind of escalation.]

[Suggest new language as follows: "(C) THE AUDIT BOARD MUST INTERPRET VOTER MARKINGS ON BALLOTS SELECTED FOR AUDIT IN ACCORDANCE WITH THE SECRETARY OF STATE'S VOTER INTENT GUIDE AND STATUTE. THE AUDIT BOARD DECISION TAKES PRECEDENCE OVER ANY PREVIOUS INTERPRETATION BECAUSE IT IS INTERPRETING DIRECTLY FROM THE VOTER-VERIFIABLE PAPER RECORD."]

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.
[See separate document for a rule proposal regarding definition and procedure for "full hand count" and its relationship to a recount.]

Rule 25.2.4 –

["FOR THE 2017 COORDINATED ELECTION, THE SECRETARY OF STATE MAY, BY ORDER, ALTER ANY OF THE REQUIREMENTS OUTLINED IN RULE 25.2."]

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.

[One issue here is will the SOS have the rule-based authority to extend the certification deadline to provide time for escalation or perhaps a hand count.]