

Working Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

January 16, 2018

Disclaimer:

The following is a working draft concerning the Election Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by 5:00 PM on January 23, 2018. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-1 follow:*

2 *Amendments to Rule 10.4; cross-reference update:*

3 10.4 No canvass board may certify official results until authorized to do so by the Secretary of State.
4 The Secretary of State may extend the canvass deadline for one or more counties in order to
5 complete the risk-limiting audit in accordance with Rule 25.2. Before certifying official results, a
6 county that conducts a comparison audit as defined in Rule ~~25.1.5~~ 25.1.4 must manually adjust
7 the preliminary results to account for discrepancies identified in the risk-limiting audit if directed
8 by the Secretary of State.

9 *Amendments to Rule 10.9 concerning recount:*

10 *(No changes to Rule 10.9.1)*

11 10.9.2 A COUNTY THAT HAS SUCCESSFULLY COMPLETED A COMPARISON AUDIT UNDER RULE
12 25.2, NEED NOT RE-SCAN BALLOTS DURING A RECOUNT BUT MUST RE-ADJUDICATE
13 BALLOT IMAGES FOR VOTER INTENT IN ACCORDANCE WITH RULE 10.13.3.

1 ~~10.9.2~~10.9.3 For statewide or federal races, ballot issues or ballot questions, the county clerk
2 must coordinate scheduling the recount through the Secretary of State's office so that it
3 can ensure adequate observer coverage.

4 ~~10.9.3~~10.9.4 If there is a recount in a local jurisdiction whose borders encompass area in more
5 than one county, the controlling county, as defined in Rule 4.2.2, must coordinate the
6 scheduling and conduct of the recount with each county that shares the jurisdiction.

7 10.9.5 IF ALL LOSING CANDIDATES WHO RECEIVED ENOUGH VOTES TO TRIGGER A MANDATORY
8 RECOUNT SUBMIT LETTERS OF WITHDRAWAL TO THE DEO IN ACCORDANCE WITH
9 SECTION 1-4-1001, C.R.S., THE DEO MUST IMMEDIATELY NOTIFY THE COUNTY CLERK
10 AND THE COUNTY CLERK NEED NOT CONDUCT THE RECOUNT.

11 *Amendments to Rule 10.12 concerning testing recount equipment:*

12 10.12 Testing recount equipment

13 10.12.1 The canvass board must review the post-election audit before selecting the equipment for
14 testing under section 1-10.5-102(3), C.R.S. ~~To the extent feasible, the board must select~~
15 ~~equipment for testing that was not included in the post election audit.~~

16 10.12.2 ~~The~~ IF THE COUNTY RE-SCANS BALLOTS DURING THE RECOUNT, THE county clerk must
17 test all ~~optical~~ BALLOT scanners that will be used ~~in the recount~~. The purpose of the test is
18 to ensure that the ~~tabulation machines are counting properly~~ VOTING SYSTEM
19 ACCURATELY TABULATES VOTES IN THE RECOUNTED CONTEST.

20 (a) ~~The test deck must include 50 ballots or 1% of the total number of ballots~~
21 ~~counted in the election, whichever is greater, except that the total number~~
22 ~~of ballots tested may not exceed the total number of ballots comprising~~
23 ~~the county's test deck for the Logic and Accuracy test before the~~
24 ~~election. The ballots must be marked to test every option for the race or~~
25 ~~measure that will be recounted.~~ THE COUNTY MUST PREPARE AND
26 TABULATE THE FOLLOWING TEST DECKS:

27 (1) ~~In a mandatory recount, the canvass board must select the ballots to be~~
28 ~~tested from the county's test deck for the Public Logic and Accuracy test.~~
29 THE COUNTY RECOUNT TEST DECK MUST INCLUDE EVERY BALLOT STYLE
30 AND, WHERE APPLICABLE, PRECINCT STYLE CONTAINING THE
31 RECOUNTED CONTEST. IT MUST CONSIST OF ENOUGH BALLOTS TO MARK
32 EVERY VOTE POSITION AND EVERY POSSIBLE COMBINATION OF VOTE
33 POSITIONS, AND INCLUDE OVERVOTES, UNDERVOTES, MARGINAL MARKS,
34 AND BLANK VOTES IN THE RECOUNTED CONTEST.

35 (2) In a requested recount, the person requesting the recount may mark up to
36 ~~25~~10 ballots. Any other candidate in the ~~race~~ CONTEST, OR PERSON OR
37 ORGANIZATION WHO COULD HAVE REQUESTED THE RECOUNT, may also
38 mark up to ~~25~~10 ballots. ~~The canvass board must randomly select ballots~~
39 ~~from the county's test deck for the Public Logic and Accuracy test to~~
40 ~~ensure the minimum number of test ballots required by this Rule.~~

- 1 (3) IN A MANDATORY RECOUNT, AT LEAST TWO CANVASS BOARD MEMBERS
 2 OF DIFFERENT PARTY AFFILIATIONS MUST EACH MARK AN ADDITIONAL
 3 10 BALLOTS CONTAINING THE RECOUNTED CONTEST.
- 4 (b) Sworn judges or staff must hand tally the RECOUNTED CONTEST ON THE test
 5 ballots ~~for comparison to the tabulation results~~ AND VERIFY THAT THE HAND
 6 TALLY MATCHES THE VOTING SYSTEM'S TABULATION.
- 7 (c) The test is limited to the race or measure that is recounted.

8 10.12.3 ~~The~~ IN A COUNTY USING A VOTING SYSTEM CERTIFIED BEFORE JANUARY 1, 2016, THE
 9 county clerk must test the VVPAT records from ~~1%~~ AT LEAST ONE of the DREs that had
 10 votes cast on the ballot ~~style~~ STYLES containing the race or measure being recounted.

- 11 (a) Sworn judges or staff must manually verify the results OF THE RECOUNTED
 12 CONTEST on the machines selected for the test AND VERIFY THAT THE TALLY
 13 MATCHES THE VVPAT RECORD.
- 14 (b) The test is limited to the race or measure that is recounted.

15 *Amendments to Rule 10.13.3 concerning counting ballots during recount:*

- 16 10.13.3 Ballots must be reviewed for voter intent using the standards in Rule 18.
- 17 (a) Every ~~over vote or under vote~~ OVERVOTE, UNDERVOTE, BLANK VOTE,
 18 MARGINAL MARK, AND WRITE-IN VOTE in the race(s) or measure(s) subject to the
 19 recount must be reviewed for voter intent under Rule 18.
- 20 (b) The judges conducting the voter intent review may resolve the intent differently
 21 than the judges in the election.

22 *Amendments to Rule 25.1 concerning post-election audits:*

- 23 25.1 Definitions. As used in this rule, unless stated otherwise:
- 24 *(No changes to Rule 25.1.1)*
- 25 ~~25.1.2 “Audited contest” means a contest selected by the Secretary of State for a risk limiting~~
 26 ~~audit. The audited contest determines the number of ballot cards that must be examined~~
 27 ~~and verified during the RLA.~~
- 28 ~~25.1.3~~ 25.1.2 “Ballot cards” means the individual pieces of paper that together constitute a
 29 single ballot containing all of the contests an elector is eligible to vote. For example, a
 30 ballot consisting of a single piece of paper with content printed on the front or the front
 31 and back contains one ballot card, and a ballot consisting of two pieces of paper with
 32 content printed on the front and back of the first page and the front or front and back of
 33 the second page contains two ballot cards.
- 34 ~~25.1.4~~ 25.1.3 “Ballot polling audit” means a type of risk-limiting audit in which the audit board
 35 examines and reports to the Secretary of State voter markings on randomly selected ballot
 36 cards seeking strong evidence that the reported tabulation outcome is correct.

1 ~~25.1.5~~ 25.1.4 “Comparison audit” means a type of risk-limiting audit in which the audit board
2 examines and reports to the Secretary of State voter markings on randomly selected ballot
3 cards, then compares them to the voting system’s tabulation as reflected in the
4 corresponding cast vote records.

5 ~~25.1.6~~ 25.1.5 “Reported tabulation outcome” means the presumed winning and losing
6 candidates or voting choices of a ballot contest as reflected in preliminary results.

7 ~~25.1.7~~ 25.1.6 “Risk limit” means the largest statistical probability that an incorrect reported
8 tabulation outcome is not detected and corrected in a risk-limiting audit.

9 ~~25.1.8~~ 25.1.7 “Risk-limiting audit” or “RLA” means a post-election audit of votes on paper
10 ballot cards and VVPAT records, conducted in accordance with section 1-7-515, C.R.S.,
11 and Rule 25.2, which has a pre-specified minimum chance of requiring a full hand count
12 if the outcome of a full hand count would differ from the reported tabulation outcome.

13 ~~25.1.9~~ 25.1.8 “RLA tabulation” means the tabulation of all in-person and accepted mail ballots
14 cast by electors registered in the county, and any accepted provisional and property
15 owner ballots that the county opts to include on the ninth day after election day.

16 ~~25.1.10~~ 25.1.9 “RLA Tool” means the software and user interfaces provided by the Secretary of
17 State in order to conduct RLAs.

18 25.1.10 “TARGET CONTEST” MEANS A CONTEST SELECTED BY THE SECRETARY OF STATE FOR A
19 RISK-LIMITING AUDIT. THE TARGET CONTEST DETERMINES THE NUMBER OF BALLOT
20 CARDS THAT MUST BE EXAMINED AND VERIFIED DURING THE RLA.

21 *Amendments to Rule 25.2 concerning risk-limiting audits:*

22 25.2 Risk limiting audit. The designated election official must conduct a risk-limiting audit in
23 accordance with section 1-7-515, C.R.S. and this rule.

24 25.2.2 Preparing for the audit

25 (f) Comparison audit uploads. No later than ~~4:59~~ 5:00 p.m. MT on the ninth day
26 after election day, each county conducting a comparison audit must upload:

27 (1) Its verified and hashed ballot manifest, and the ballot manifest’s hash
28 value, to the RLA tool;

29 (2) Its verified and hashed CVR export, and the CVR export’s hash value, to
30 the RLA tool; and

31 (3) Its RLA tabulation results export to the Secretary of State’s election
32 night reporting system.

33 (g) Ballot polling audit uploads. No later than ~~4:59~~ 5:00 p.m. MT on the ninth day
34 after election day, each county conducting a ballot polling audit must submit or
35 upload:

- 1 (1) Its verified and hashed ballot manifest, and the ballot manifest's hash
2 value, by email to the Secretary of State's office;
- 3 (2) Its cumulative tabulation report, by email to the Secretary of State's
4 office; and
- 5 (3) Its RLA tabulation results export to the Secretary of State's election
6 night reporting system.
- 7 (i) Selection of ~~audited~~-TARGET contests. No later than 5:00 p.m. MT on the Friday
8 after election day, the Secretary of State will select ~~for audit~~-THE TARGET
9 CONTESTS. IN A GENERAL OR COORDINATED ELECTION, THE SECRETARY OF
10 STATE WILL SELECT at least one statewide contest, and for each county at least
11 one ~~countywide~~-LOCAL contest. ~~The Secretary of State will select other ballot~~
12 ~~contests for audit if in any particular election there is no statewide contest or a~~
13 ~~countywide contest in any county.~~ IN A PRIMARY ELECTION, THE SECRETARY OF
14 STATE WILL SELECT AT LEAST ONE COUNTYWIDE CONTEST OF EACH MAJOR
15 POLITICAL PARTY IN EACH COUNTY. The Secretary of State will publish a
16 complete list of all ~~audited~~-TARGET contests on the Audit Center. The Secretary
17 of State will consider at least the following factors in ~~determining which contests~~
18 ~~to audit~~-SELECTING THE TARGET CONTESTS:
- 19 (1) The closeness of the reported tabulation outcome of the contests;
- 20 (2) The geographical scope of the contests;
- 21 (3) The number of ballots counted in the contests;
- 22 (4) Any cause for concern regarding the accuracy of the reported tabulation
23 outcome of the contests;
- 24 (5) Any benefits that may result from opportunistically auditing certain
25 contests; and
- 26 (6) The ability of the county clerks to complete the audit before the canvass
27 deadline.
- 28 (j) Number of ballot cards to audit. The Secretary of State will determine the
29 number of ballot cards to audit to satisfy the risk limit for the ~~audited~~-TARGET
30 contests based on the ballot manifests submitted by the counties. The number of
31 ballot cards to audit will be determined according to the formulas and protocols
32 published by Mark Lindeman and Philip B. Stark in *A Gentle Introduction to*
33 *Risk-limiting Audits*, as applied in Philip Stark's *Tools for Comparison Risk-*
34 *Limiting Election Audits*, and *Tools for Ballot-Polling Risk-Limiting Election*
35 *Audits*, BUT EACH COUNTY CONDUCTING AN ELECTION MUST AUDIT A MINIMUM
36 OF 10 BALLOTS. ~~These materials~~-THE PUBLICATIONS CITED IN THIS RULE are
37 incorporated by reference in the election rules and do not include later
38 amendments or editions of the incorporated material. The following materials
39 incorporated by reference are posted on the Secretary of State website and
40 available for review by the public during regular business hours at the Colorado
41 Secretary of State's office:

1 (1) Mark Lindeman and Philip B. Stark, *A Gentle Introduction to Risk-*
2 *limiting Audits*, IEEE Security and Privacy, Special Issue on Electronic
3 Voting, (Mar. 16, 2012), at
4 [https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditReso](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html)
5 [urces.html](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html).

6 (2) Philip B. Stark, *Tools for Comparison Risk-Limiting Election Audits*,
7 (Feb. 26, 2017), at
8 [https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditReso](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html)
9 [urces.html](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html).

10 (3) Philip B. Stark, *Tools for Ballot-Polling Risk-Limiting Election Audits*,
11 (Feb. 16, 2017), at
12 [https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditReso](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html)
13 [urces.html](https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html).

14 25.2.3 Conducting the audit

- 15 (a) The audit board must locate and retrieve, or observe the location and retrieval by
16 county election staff, each randomly selected ballot card or VVPAT record from
17 the appropriate storage container. The audit board must verify that the seals on
18 the appropriate storage containers are those recorded on the applicable chain-of-
19 custody logs.
- 20 (1) In counties conducting comparison audits, the audit board must examine
21 each randomly selected ballot card and report the voter markings or
22 choices in all contests using the RLA Tool or other means specified by
23 the Secretary of State. If supported by the county’s voting system, the
24 audit board may refer to the digital image of the audited ballot card
25 captured by the voting system in order to confirm it retrieved the correct
26 ballot card randomly selected for audit. If the scanned ballot card was
27 duplicated prior to tabulation, the audit board must retrieve, compare,
28 and report the markings on the original ballot card rather than on the
29 duplicated ballot card. The audit board must complete its reports of all
30 ballot cards randomly selected for audit no later than 5:00 p.m. MT one
31 business day before the canvass deadline.
- 32 (2) In counties conducting ballot polling audits, the audit board must
33 examine and report the voter markings or choices in only the ~~audited~~
34 TARGET contest on each randomly selected ballot card in a form
35 approved by the Secretary of State. If supported by the county’s voting
36 system, the audit board may refer to the digital image of the audited
37 ballot card captured by the voting system in order to confirm it retrieved
38 the correct ballot card. If a randomly selected ballot card was duplicated
39 prior to tabulation, the audit board must retrieve, compare, and report the
40 voter markings in the ~~audited~~-TARGET contest from the original ballot
41 card rather than the duplicated ballot card. The audit board must
42 complete its reports of all ballot cards randomly selected for audit no
43 later than 5:00 p.m. MT one business day before the canvass deadline.

1 (b) The audit board must interpret voter markings on ballot cards selected for audit
2 in accordance with the Secretary of State’s Voter Intent Guide. If the audit board
3 members cannot unanimously agree on the voter’s intent, they must indicate that
4 in the appropriate contest in the RLA tool’s audit board user interface, OR THE
5 BALLOT POLLING AUDIT FORM APPROVED BY THE SECRETARY OF STATE.

6 (c) To the extent applicable, the Secretary of State will compare the audit board’s
7 reports of the audited ballot cards to the corresponding CVRs and post the results
8 of the comparison on the Audit Center. The RLA will continue until the risk limit
9 for the ~~audited~~-TARGET contests is met or until a full hand count results. If the
10 county audit reports reflect that the risk limit has not been satisfied in an ~~audited~~
11 A TARGET contest, the Secretary of State will randomly select additional ballots
12 for audit.

13 (D) THE AUDIT BOARD MUST SIGN, DATE, AND SUBMIT A REPORT OF THE RESULTS OF
14 THE RISK-LIMITING AUDIT ON THE SECRETARY OF STATE’S APPROVED FORM NO
15 LATER THAN 5:00 P.M. MT ON THE BUSINESS DAY BEFORE THE CANVASS
16 DEADLINE. THE REPORT MUST INCLUDE ANY DISCREPANCIES FOUND AND THE
17 CORRESPONDING BALLOT IMAGES.

18 (E) THE SECRETARY OF STATE WILL REVIEW THE AUDIT BOARD’S REPORT AND MAY
19 DIRECT THE COUNTY CLERK TO CONDUCT ADDITIONAL AUDIT ROUNDS, A
20 RANDOM AUDIT, A FULL HAND COUNT, OR OTHER ACTION. THE SECRETARY OF
21 STATE MAY INSTRUCT THE COUNTY TO DELAY CANVASS UNTIL IT COMPLETES
22 ANY ADDITIONAL AUDIT OR OTHER ACTION.

23 25.2.4 ~~Concluding the audit.~~ No later than the third business day following the expiration of the
24 deadline to request a recount under section 1-10.5-106(2), C.R.S. or the completion of
25 any recount, whichever is later, a county that conducted a comparison audit must review
26 its CVR file and redact voter choices corresponding to any ballot card susceptible to
27 being personally identified with an individual voter ~~before sending it to the Secretary of~~
28 ~~State~~, as required by section 24-72-205.5(4)(b)(iii), C.R.S.

29 25.2.5 IF A COUNTY CLERK FAILS TO FOLLOW THE PROCEDURES FOR A RISK LIMITING AUDIT AS
30 OUTLINED IN THIS RULE, THE SECRETARY OF STATE WILL DIRECT THE COUNTY CLERK
31 ON THE STEPS TO TAKE TO COMPLETE A POST-ELECTION AUDIT. IN ADDITION, NO LATER
32 THAN 90 DAYS BEFORE THE NEXT ELECTION, THE COUNTY CLERK MUST SUBMIT A
33 WRITTEN RLA PLAN OUTLINING THE PROCEDURES THE COUNTY WILL FOLLOW TO
34 ENSURE COMPLIANCE WITH THIS RULE.

35 ~~25.2.5~~-25.2.6 The Secretary of State may, by order, alter any of the requirements outlined in
36 Rule 25.2.