

This document is an edit of the Jan 16 CO SOS draft rulemaking for elections. Editors are among members of the RLA Advisory group as seen in the identities shown in comments. There are three contributors to comments: Harvie Branscomb, Mark Lindeman and Neal McBurnett.

## Help Shape Colorado's Election Rules

Topic: Rules Concerning Elections

January 16, 2018

### Working Draft of Proposed Rules

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

January 16, 2018

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.

*Line hAmendments to Rule 10.9 concerning recount:*

9 *(No changes to Rule 10.9.1)*

10 ~~10.9.2 A COUNTY THAT HAS SUCCESSFULLY COMPLETED A COMPARISON AUDIT OF A CONTEST  
THAT RESULTED IN A FULL HAND COUNT~~

~~11 UNDER RULE~~

~~12 25.2, NEED NOT RE-SCAN OR REINTERPRET BALLOTS DURING A RECOUNT OF THAT  
CONTEST BUT MUST RE-ADJUDICATE~~

~~13 BALLOT IMAGES FOR VOTER INTENT IN ACCORDANCE WITH RULE 10.13.3.~~

**Commented [1]:** This color comment is from Harvie Branscomb. Only if the contest has satisfied the risk limit is there no additional need for a recount. This is the only effect on recount method that we should support at this time- rescan of ballots for recount should be performed except in the case a RLA hand count has been completed for the recount contest.

**Commented [2]:** This color comment is from Neal McBurnett. It is extremely important that a successful RLA of one contest not be interpreted as demonstrating anything about other contests. Years of RLA and Evidence-Based Election theory are very clear about this, since there are many situations in which issues would only exist with a single contest.

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**Commented [3]:** This color comment is from Harvie Branscomb. Only if the contest has satisfied the risk limit is there no additional need for a recount

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

21 (a) ~~The test deck must include 50 ballots or 1% of the total number of ballots  
22 counted in the election, whichever is greater, except that the total number  
23 of ballots tested may not exceed the total number of ballots comprising  
24 the county's test deck for the Logic and Accuracy test before the  
25 election. The ballots must be marked to test every option for the race or  
26 measure that will be recounted.~~ THE COUNTY MUST PREPARE AND  
27 TABULATE THE FOLLOWING TEST DECKS IN ADDITION TO A DECK OF 500  
28 SELECTED FROM BALLOTS CONTAINING THE CONTEST THAT ARE  
29 CONSIDERED POTENTIAL PROBLEMS FOR CORRECT INTERPRETATION:

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

38 (2) In a requested recount, the person requesting the recount may mark up to  
39 ~~25~~ 50 ballots. Any other candidate in the ~~race~~ CONTEST, OR PERSON OR  
40 ORGANIZATION WHO COULD HAVE REQUESTED THE RECOUNT, may also  
41 mark up to ~~25~~ 50 ballots. ~~The canvass board must randomly select  
42 ballots  
43 from the county's test deck for the Public Logic and Accuracy test to  
44 ensure the minimum number of test ballots required by this Rule.~~

**Commented [4]:** This is a very low integrity provision. The mandatory recount protects all voters, not just losing candidates. Presumed losing candidates must not be able to withdraw from a recount that the contest deserves for technical reasons or narrow margin. Note also that CO's margin formula is weaker than other states and that weakness amplifies with additional candidates and undervotes. The Governor primary contests both have 9 candidates. if several of those candidates are close, the likelihood of a mandatory recount will be reduced in like proportion to the number of candidates drawing votes in the contest. The recount threshold should be corrected in rule or in statute before this crucial primary election.

**Commented [5]:** This sentence has never made any sense and it should have been deleted long ago. It is incompatible with RLA.

**Commented [6]:** 50 ballots and 1% has been a pathetic and inadequate stand-in for a test that would ascertain the additional accuracy needed to justify sufficient accuracy of the results of a recount

**Commented [7]:** For multi-winner contests and IRV/RCV, this could be an astronomical number. Marking every vote position, or with RCV, every vote position once in every ranking, is sufficient.

**Commented [8]:** This is a new and welcome addition to rules- and important. However, the test ballots should also be taken from existing voter marked ballots that might be poorly interpreted. Counties increasingly pre-stack ballots upon opening if they are considered problems for machine interpretation. Those ballots should be included in those that are tested.

**Commented [9]:** This is an important point and a good proposal.

1 (3) IN A MANDATORY RECOUNT, AT LEAST TWO CANVASS BOARD MEMBERS  
2 OF DIFFERENT PARTY AFFILIATIONS MUST EACH MARK AN ADDITIONAL  
3 ~~10~~50 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.

**Commented [10]:** This color comment is from Harvie Branscomb. Because of this limitation, there is no excuse to limit the marked ballots to only 10 by each role.

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.

**Commented [11]:** This color comment is from Neal McBurett. It is important to include marginal marks. Thank you!

20 (b) The judges conducting the voter intent review may resolve the intent differently  
21 than the judges in the election.

**Commented [12]:** Agree-this is an important inclusion both for accuracy and for anonymity.

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. BALLOT CARDS NEED NOT BE KEPT  
ADJACENT OR RELATED TO EACH OTHER AFTER REMOVAL IF APPLICABLE  
FROM THE RETURN ENVELOPE.

**Commented [13]:** This distinction is needed to avoid extra effort that only makes voter privacy more difficult to maintain. Ballot cards once removed from the return envelope can and should be separately and independently tabulated in most circumstances. Exceptions are provisional where the cards are kept together until eligibility is confirmed but need not be kept associated afterwards.

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

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cards seeking strong evidence that the reported tabulation outcome is correct.

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

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~~25.1.6~~ 25.1.5 “Reported tabulation outcome” means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results OF TABULATION FOR A SPECIFIC COLLECTION OF BALLOTS DETERMINED TO BE ELIGIBLE.

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

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

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

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

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25.1.10 “TARGET CONTEST” MEANS A CONTEST SELECTED BY THE SECRETARY OF STATE FOR A RISK-LIMITING AUDIT. ~~THE ONE OR MORE TARGETED CONTESTS DETERMINES THE NUMBER OF BALLOT CARDS THAT MUST BE EXAMINED AND VERIFIED DURING THE RLA.~~

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

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

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25.2.2 Preparing for the audit

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

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(1) Its verified and hashed ballot manifest, and the ballot manifest’s hash value, to the ~~SECRETARY OF STATE’S OFFICE~~ RLA tool;

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(2) Its verified and hashed CVR export, and the CVR export’s hash value, to the ~~SECRETARY OF STATE’S OFFICE~~ RLA tool; and

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

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

**Commented [14]:** Especially for primary elections, it is critical to allow multiple contests to be targeted in each county, and it is important in general, since often there is great interest in achieving the highest quality risk limits for multiple contests. There is no guarantee that any given contest will be robustly audited unless it is targeted, and it is common for issues to affect some contests and not others. Selection of multiple target contests per county is already supported by the ColoradoRLA software.

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**Commented [15]:** Likely alternative is use of FTP site- must be allowed

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upload:

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(1) Its verified and hashed ballot manifest, and the ballot manifest's hash value, ~~by email~~ to the Secretary of State's office;

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(2) Its cumulative tabulation report, ~~by email~~ to the Secretary of State's office; and

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

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(i) Selection of ~~audited~~ TARGET contests. No later than 5:00 p.m. MT on the Friday after election day, the Secretary of State will select ~~for audit~~ THE TARGET CONTESTS. IN A GENERAL OR COORDINATED ELECTION, THE SECRETARY OF STATE WILL SELECT at least one statewide contest, and for each county at least one ~~countywide~~ LOCAL contest. ~~The Secretary of State will select other ballot contests for audit if in any particular election there is no statewide contest or a countywide contest in any county.~~ IN A PRIMARY ELECTION, THE SECRETARY OF STATE WILL SELECT AT LEAST ONE STATEWIDE AND ONE COUNTYWIDE CONTEST OF EACH MAJOR POLITICAL PARTY IN EACH COUNTY. The Secretary of State will publish a complete list of all ~~audited~~ TARGET contests on the Audit Center. The Secretary of State will consider at least the following factors in ~~determining which contests to audit~~ SELECTING THE TARGET CONTESTS:

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(1) The closeness of the reported tabulation outcome of the contests;

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(2) The geographical scope of the contests;

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(3) The number of ballots counted in the contests;

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(4) Any cause for concern regarding the accuracy of the reported tabulation outcome of the contests;

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(5) Any benefits that may result from opportunistically auditing certain OTHER

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contests WITHIN THE SAME SCOPE AS THE TARGET CONTEST;

25

and

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(6) ~~The ability of the county clerks to complete the audit before the canvass deadline.~~

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(j) Number of ballot cards to audit. The Secretary of State will determine the number of ballot cards to audit to satisfy the risk limit for the ~~audited~~ TARGET contests based on the ballot manifests submitted by the counties. The number of AND BALLOT STYLE OF THE ballot cards to audit will be determined according to the formulas and protocols published by Mark Lindeman and Philip B. Stark in *A Gentle Introduction to Risk-limiting Audits*, as applied in Philip Stark's *Tools for Comparison Risk-Limiting Election Audits*, and *Tools for Ballot-Polling Risk-Limiting Election Audits*, BUT EACH COUNTY CONDUCTING AN ELECTION MUST AUDIT A MINIMUM OF 40 ~~40~~ BALLOTS. ~~These materials~~ THE PUBLICATIONS CITED IN THIS RULE are incorporated by reference in the election rules and do not include later amendments or editions of the incorporated material. The following materials

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**Commented [17]:** No advantage to require use of email- perhaps secure ballot return system is appropriate

**Commented [18]:** It should be made clear that contests with closer outcomes should be preferred, since closeness indicate more interest from the public, and auditing close contests generally makes opportunistic audits more robust.

**Commented [19]:** Selection of the narrowest victory margin almost guarantees adequate sampling for other contests within the same scope- such as countywide. It does not guarantee adequate sampling for any other scope.

**Commented [20]:** This ease of auditing consideration is a mistake and will lead to criticism on the basis of partisanship and or unjustified protection of officials.

**Commented [21]:** The correct solution is to extend the certification deadline, as already arranged for and included in upcoming legislation.

**Commented [22]:** This color comment is from Mark Lindeman. That isn't how it works -- unless we're relying on CVRs, which we aren't. Audits based on diluted margin don't go after specific ballot styles.

**Commented [23]:** The 2017 audits demonstrated that auditing can be very efficient. The extra evidence provided by auditing a minimum of 40 ballots in each county would help public confidence significantly.

**Commented [24]:** Agree- the inclusion of a minimum of 10 was good, but 40 is better and not going to overload any county.

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 **SHORTLY PRIOR TO AND GENERALLY ON**  
**THE SAME DAY THE AUDIT BOARD CAPTURES VOTER INTENT FROM**  
**THE SAME BALLOTS.** 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.

**Commented [25]:** Harvie Branscomb: This prevents unfair communication about ballots to be audited that could violate the principle of blind capture of voter intent.

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 **ONLY** in order to **ASSIST IN**  
**RETRIEVING** ~~confirm it retrieved~~ the correct  
26 ballot card randomly selected for audit **AND NOT TO**  
**INFLUENCE** ~~ADVISE THE INTERPRETATION OF VOTER INTENT.~~  
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.

**Commented [26]:** Neal McBurnett: Neither the CVRs nor the ballot images can be trusted, so examining them can't "confirm" proper retrieval.

**Commented [27]:** Agree.

**Commented [28]:** Again, about the blind capture of voter intent (that failed to be maintained in Adams County, if not others).

**Commented [29]:** I agree with this edit

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~~ **ALL THE** ~~contests~~ 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~~

**Commented [30]:** This additional capture of voter intent is needed for any opportunistic auditing, as with the comparison audit process.

37 ~~ballot card captured by the voting system in order to confirm it retrieved~~  
3835 ~~the correct ballot card.~~ If a randomly selected ballot card was duplicated  
3936 prior to tabulation, the audit board must retrieve, compare, and report the  
4037 voter markings in the ~~audited~~-TARGET contest from the original ballot  
4138 card rather than the duplicated ballot card. The audit board must  
4239 complete its reports of all ballot cards randomly selected for audit no  
4340 later than 5:00 p.m. MT one business day before the canvass deadline.

**Commented [31]:** Use of the ballot images during retrieval for ballot polling should be prohibited. Allowing the audit board to look thru images introduces a new risk, that the ballot images (which cannot be trusted) might actually lead to the wrong ballot card. It is better to blindly select a paper ballot card without actually looking at it, with a small risk that the wrong one was selected, than to introduce a new weakness in selection.

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 ~~OTHER~~  
5 ~~THE~~  
~~BALLOT POLLING AUDIT FORM APPROVED BY THE SECRETARY OF STATE.~~

**Commented [32]:** I agree. There is no reason for any use of a ballot image in conducting a ballot polling audit.

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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~~ INCLUDING UNTIL a full hand  
10 count results IF APPLICABLE. If the  
11 county audit reports reflect that the risk limit has not been satisfied in ~~an audited~~  
12 A TARGET contest, the Secretary of State will randomly select additional ballots  
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 DETAILS ON ANY DISCREPANCIES  
17 FOUND AND THE  
CORRESPONDING BALLOT IMAGES.

**Commented [33]:** Dangerous opening to avoid the RLA even for a target contest.

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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~~ THE RISK LIMITING AUDIT BY ACHIEVING OR EXCEEDING THE  
RISK LIMIT OF ANY CONTEST. ~~AUDIT OR OTHER ACTION.~~

**Commented [34]:** Note that any contest may be subject to audit, not just the target contest.

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23 25.2.4 PUBLIC ACCESS TO AUDIT RECORDS AND PROCEDURES. CAPTURE OF VOTER  
INTENT IN RULE 25.2.3(A)(1) AND (2) MUST BE ACCOMPLISHED DURING ONE OR  
MORE PUBLIC OPEN MEETINGS. BALLOTS FOR WHICH CONSTITUTIONAL  
ANONYMITY CANNOT BE PROVIDED SHOULD BE TREATED AS INACCESSIBLE TO  
THE AUDIT AND SUBJECT TO RULES TO BE PROMULGATED BY THE SECRETARY OF  
STATE. REDACTION OF SUBSTANTIVE SELF-IDENTIFYING MARKS AND OTHER  
MEANS TO DISASSOCIATE BALLOTS FROM ELECTOR IDENTITIES SHALL BE  
CONDUCTED PRIOR TO TRANSMISSION OF CAST VOTE RECORDS AND BALLOT  
MANIFESTS PURSUANT TO RULE 25.2.2. RECORDS CREATED PURSUANT TO 25.2.2(F)  
AND (G) SHALL BE MADE AVAILABLE TO THE PUBLIC AT THE EARLIEST PRACTIBLE  
TIME. ~~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~~

**Commented [35]:** This requirement is defective. CO law does not require any such deadline, nor is the requirement to redact given CVR entries necessary or required by CORA or any other law. SOS has authority to authorize production of records regardless of CORA. Non-redacted CVRs are necessary to the audit. Redaction for purposes of tabulation and audit must take place prior to audit selection. The only exception would require affected ballots to be excepted from the audit and treated as if adverse to the outcome of each contained contest.

**Commented [36]:** A substitute for this rule should call for anonymity provisions to take effect prior to publication of CVR and ballot manifests, prior to selection of ballots for audit. This borrowing and extension of CORA law is inappropriate here- as the SOS has no authority to redefine CORA. Also this step is hardly the "conclusion" of the audit. Public access to audit data is of paramount importance, as is the timing of that access.

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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.

**Commented [37]:** May be considered acceptable for a brief ramp up period- but ought not stay in rule forever. Yes, during the ramp-up period it makes sense to provide time for counties to understand and revise their procedures.