

Draft rules issued for comment on July 20, 2016.

Public Comment:

Proposed Rule	Commenter	Comment	Department action
1.1.8	Kolwicz Eberle	“Ballot cast” should be when voter relinquishes control of a marked, sealed ballot.	No action taken. Proposed definition is too broad; the county clerk can only account for what he or she receives. The canvass board must ensure that the number of ballots counted does not exceed the number of ballots cast, Section 1-10-101.5(1)(a), C.R.S., so it is important to have an ascertainable number and that the number not be so large as to render the canvass meaningless.
	Branscomb	“Ballot cast” involves what voter did, not what clerk did.	No action taken. See above.
	Boulder Co.	Supports clarification	
1.1.13	Branscomb Eberle	(c) allows clerk to duplicate ballots with identifying marks which could expedite a CORA request	No action taken. The definition of damaged ballot should reflect when a ballot must be duplicated because it is unreadable or incapable of being tabulated. It should not be used to facilitate CORA. The original ballot with identifying marks remains subject to CORA (after redaction) even if the clerk duplicates the ballot. In addition, proposed Rule 18.3.2 does not prohibit a county from duplicating a ballot with identifying marks if it chooses.
	Adams Co.	Supports repeal of (c)	
1.1.30	ESRC	Strike “optical” for consistency	No action taken. The term “optical” is in statute – will eventually phase this term out of rule, but cannot at this time.
1.1.44	Kolwicz	Generally disagrees with definition based on similar arguments regarding Rule 1.1.8.	Proposed definition deleted.
	Branscomb Eberle	General objections to definition.	Proposed definition deleted.

2.3	ESRC	SSN – shouldn't the records be marked "ID Required" when a registrant uses SSN?	Amended to remove SSN portion.
	Morrow	Concerns regarding photo I.D.	No action taken.
	Eberle	Unclear why this rule is being deleted.	Amended for clarity.
2.10.2	Eberle	Legislature needs more information about election integrity.	No action taken.
2.14.1	Wojciechowski (Ouray Co.)	Leaves clerks without guidance; general comment that all rules should be effective 6 mo. prior to election.	No action taken. SB 16-142 gives the clerk guidance on when records may be destroyed.
3.3.3	CCC	Insert word "or" before the phrase "if the organization has not be qualified"	Amendment made.
	Eberle	Content of rule should be dependent on the bylaws of the political organization to comply with constitution.	No action taken. QPOs are wholly created by Rule.
6.9	ESRC	Suggest "processing voter registration applications" rather than "conducting voter registration activities"	Amended to "with access to SCORE or electors' confidential or personally identifiable information."
	Branscomb	It should be made clear that the criterion for rejection as a result of the background check are specific and not left up to the official.	No action taken. Because it is impossible to pre-define all circumstances, clerks need discretion to reject an individual as an election judge.
	Eberle	"Confidential" should be narrowly defined for purposes of elections – the CORA definition is not helpful.	No action taken.
7.5.1	Bacon/ESRC	(a) Likes this change	
	ESRC	(b) strike "at all times"	Stricken.
	ESRC	(e) strike "clerk" and change to "county" to be inclusive of county IT departments that actually store the records.	No action taken. The clerk is ultimately responsible for the retention of the record, even if another department is actually storing it.
	Branscomb	There are many cases where drop boxes are inadequately monitored by video and some perhaps not monitored at all. Proposed language "when they are open to receive ballots or contain ballots."	No action taken.
8.1.5	ESRC	Good clarification	
	Eberle	Requiring watcher training is outside the SOS authority under the law. Watching should not be delayed by the training.	No action taken.
8.15.8	ESRC	Add rule re: Election Alert 2016-01; Remove rule as too restrictive.	Rule deleted. Clerks concerned about unnecessary animosity between county and watcher, and liability of confiscating phones. Existing Rule 8.15 should provide sufficient protection of

			confidential information and personally identifiable information.
	Branscomb	Wants use of phone for acceptable timing applications	See above.
	Eberle	Believes rule is overly restrictive	See above.
	CCC	Overly broad in prohibition	See above.
	Adams Co.	Opposes rule	See above.
9.2	Branscomb Eberle	There is no need to notify the voter if the challenge is withdrawn; the challenger should be provided a copy of the notification.	Amended to address concerns.
	ESRC	Unclear whether an elector must be notified regardless of the outcome of the challenge; unclear whether rule applies to signature escalation.	Statute requires notice to the elector regardless of the outcome of the challenge. This rule does not apply to signature verification escalation under Rule 8.13.
10.5.2	Kolwicz	See comments to Rule 1.1.8.	No action taken.
10.11.2	Kolwicz	See comments to Rule 1.1.8.	No action taken.
10.11.3	Kolwicz	See comments to Rule 1.1.8.	No action taken.
11.3.3	Branscomb	<p>Rules should address how the county selects ballot batches to be audited to ensure random selection. Rule should be more specific about what random means.</p> <p>The selection of the audit board by the official whose work is to be audited is not in accordance with best audit practice; the inclusion of staff lacks independence. The canvass board should manage audit, but they also lack independence. Recommends deleting the phrase. 11.3.3(b) statutory reference should be 1-7-514, C.R.S.</p>	<p>No action taken. Section 1-7-509(1)(b), C.R.S., requires DEOs to conduct three separate tests on voting systems, one of which is the post-election audit. Subsection (1)(c) mandates the composition of the “testing board.” Election Rule 11.3.2 has long contained references to the testing board in the context of the logic and accuracy test, and the use of the same term for the post-election audit will cause confusion. For that reason, proposed Rule 11.3.3 introduces the term audit board to identify the individuals who conduct the post-election audit. However, the rule requires the audit board to be composed in the same manner as the testing board for the logic and accuracy test, as required by Section 1-7-509(1)(b), C.R.S.</p>

		Members of election staff should not conduct the audit	No action taken. Rule 11.3.3(b) permits the DEO and staff members to assist with the audit, not conduct the audit.
	ESRC	Clarify if the “audit board” must be different from the “canvass board”	No action taken. The audit board may be the canvass board (without the county clerk) if the county chooses.
	San Miguel Co.	Does this indicate that the canvass board and audit board are separate functions?	See above. The functions of the audit board and the canvass board are clearly separate, but the audit board members may be the same as the canvass board members appointed by county party chairs (in partisan elections), or the election judges who serve as canvass board members (in nonpartisan elections). The clerk and recorder is a member of the canvass board under sections 1-10-101(1)(a) and 1-10-201(1), C.R.S., but cannot serve as a member of the audit board under Section 1-7-509(1)(b), C.R.S.
	Eberle	Revise according to 1-7-509(1)(c)(I), C.R.S.	Amended to address concerns.
11.10	ESRC	Changes to ENR file may require vendors to modify uploads.	No action taken.
	ESRC	Hart counties (with Tally) should verify export layout and determine if modifications need to be made.	No action taken.
	ESRC	(a)(1) apply to the back-end of the system?	No action taken.
	ESRC	(e) incorrect citation; provisional “precinct” is unnecessary in the Dominion system – recommends “counting group”	Corrected citation and modified language to “precinct or counting group”.
	Hart	Certain requirements should apply only to voting systems purchased after January 1, 2016.	No action taken. Counties utilizing voting systems certified before 1/1/2016 have been required to use the state ENR system for several years. The ENR export format required by proposed Rule 21.4.15 applies only to voting systems certified on or after 1/1/16, however.
11.10.1	Hart	Current wording binds vendor to change software as ENR requirements change. Export doesn’t matter, only data for import.	No action taken. As before, the rule simply requires the county to program

			its election database so that the results file format conforms to the requirements specified in in the subsections. If the voting system does not permit the county to do so, then the Secretary of State’s office collaborates with the county to develop a workaround.
	Branscomb	Identifying information requirements should also apply to the voter choice ballot format created by BMDs.	No action taken.
	San Miguel Co.	What form is the “tabulation report”	Amendments made to address concerns.
	Eberle	“Ascending alphabetical order” – should “descending” be used? Split precincts must be handled in a useful way	No action taken. “Ascending alphabetical order” starts with A and ends with Z. The state ENR system utilizes summary results until the final canvass upload; precinct splits are not pertinent.
14.2	Eberle	VRD circulators should also be required to have background checks if they are receiving confidential information or PII.	While it may be a good practice for VRD organizers to conduct such background checks, statute does not require it.
14.4	ESRC	14.4.7 – insert “paper” before application. Say “provide” rather than offer so the VRD could have the pens available but the circulator is not required to perform the act.	“Offer” was changed to “provide”; no action taken on “paper” recommendation – only paper VRD forms at this time.
18	Bacon	Would like the process for manual and digital duplication to be separated.	These processes have been separated to the extent possible.
18.2	Branscomb	Rules should be modified to be sure integrity steps are taken in case of recount.	No action taken.
18.3	Clear Ballot	Change limits polling place optical scan voting machines to the type that contain a physical diverter – newer systems place ballots with programmed conditions into virtual ballot boxes, from which authorized jurisdiction staff can adjudicate write-ins and other required conditions electronically.	Amended to address concerns.
	ESRC	18.3.1(a) – some counties’ scanners cannot separate 18.3.1(b) – why is VSPC struck and polling location added?	All suggestions considered and amendments made to address concerns.

		18.3.1(c) – La Plata scans on site and doesn't bring back the ballots each night; with a small amount of write-ins they leave them at the sites – Hart counties cannot physically separate write-ins.	
	ESRC	18.3.2(a) – Dominion scanners will stop scanning once they encounter a physically damaged ballot; previous wording more permissive and better for county-specific processes. 18.3.2(b) – use “adjudication” instead of resolution; incorrect Rule reference. 18.3.2(c)(3) – confusing; “single”?; smaller counties use judges for various purposes; unclear what “a resolution board must work at each resolution workstation” means - clarify	Amendments made to address concerns; rule references corrected.
	Hart	Recommends adding “or digital media” to accommodate systems that allow the electronic adjudication of write-in votes. 18.3.2(b)(1) as worded, prescriptive of a single vendor's voting system	Amendments made to address concerns.
	Branscomb Eberle	18.3.2 Updated to account for electronic resolution or adjudication. Reducing the number of judges required for duplication is a mistake. The audit process should be scheduled so it can be watched. 18.3.2(f) duplicates should not be recounted by machine.	No action taken.
	Eberle	Suggest rules for “sort and stack” counting be added.	No action taken.
18.4	ESRC	18.4.2 – change resolution to duplication 18.4.1 Change “markings” to “choices” to clarify 18.4.6 Add “Before retention for storage” at beginning	Amendments made to address concerns.
	Branscomb	18.4.1 Preferable if the term duplication instead of resolution were used to distinguish from electronic adjudication for cases where duplication is needed prior to scanning. Anonymity of ballot concerns. 18.4.2 Cross check should be done by a different resolution team. 18.4.6 Not necessary to seal log, but should be retained; sealing is an impediment to verification of chain of custody 18.4.6(b) “x” or “check	18.5.2(b) repealed.
	Eberle	Add “or marks that identify the voter, if applicable”	No action taken.
18.5	ESRC	18.5.2 remove “counting” from “counting judge” throughout – change “code” to “record”	Amendments made to address concerns.
	Delta County	18.5.2(a)(2) – if a ballot is truly blank, the resolution board must code the ballot as a blank ballot – “must code” should be “record” – current system isn't capable of coding a ballot in this manner.	Amendments made to address concerns.
	Hart	18.5.1 change wording to allow the jurisdiction to use systems with different ways of handling ballots with marginal or ambiguous markings.	No action taken. Ambiguous markings must be resolved according to the Voter Intent Guide, without regard to the

			capabilities of a particular voting system.
	Branscomb Eberle	18.5.3(a) this case is not in the voter intent guide, but should be.	No action taken. Chapter 5, Example 5 of the Voter Intent Guide specifically addresses this scenario.
	CCC	(b) is improperly placed under “Resolution of Blank Ballots” header.	Amendments made to address concerns.
21.4.12(d)(5)	Hart	Wants requirement to apply only to systems purchased after 1/1/16.	No action taken. No substantive amendments to Rule 21.4.12 have been proposed.
21.4.14	Branscomb	Concerned that CVR export is not required to separately contain location of detected overvotes. The CVR export format does not require mark density.	No action taken. A voting system’s tabulation incorporates resolved overvotes, among other things. The location of overvotes on any particular ballot will be apparent from examination of the paper ballot artifact that corresponds to any given CVR. Although the risk-limiting audit procedure rules have not yet been proposed, they will require the audit board to verify that any overvote on the paper ballot was properly resolved in accordance with Voter Intent Guide, and that the correct resolution is accurately reflected in the corresponding CVR. Rule 21.4.14 establishes the minimum content of CVR exports, in order to support efficient risk-limiting audits. Providers may capture additional information in the CVR export (such as mark density). However, mark density data is not necessary to conduct a risk-limiting audit, and therefore is not required by the proposed Rule.
21.4.14(b)	Hart	Delete the words “aggregate in a single file and”	No action taken. First, Rule 21.4.14 applies in its entirety to voting systems certified for use in Colorado after

			1/1/2016. Second, section 1-7-515(2)(a), C.R.S., effectively requires county clerks to conduct risk-limiting audits beginning in 2017. County clerks will be unable to do so efficiently unless all CVRs for ballots counted in any election are aggregated in a single file.
21.4.14(c)	Hart	Delete the words “with values populated by the voting system”	No action taken. See above response to Hart’s comments to Rule 21.4.14(b).
21.4.14(c)(3)	Clear Ballot	Delete second sentence, which requires target or batch header cards to be removed from the CVR’s ballot position count.	Rule is amended to address this concern.
21.4.14(c)(?)	Clear Ballot	Propose additional subsection requiring CVR field to state whether ballot was manually or digitally resolved or adjudicated, or corresponds to a target card rather than a ballot.	No action taken. Whether the corresponding ballot has been resolved or adjudicated will be apparent from examination of the paper ballot that corresponds to the CVR. Providers may include this additional information in their system’s CVR exports, but the proposed Rule does not require them to do so.
21.4.14(d)	Clear Ballot	Delete second sentence, which prohibits use of contest and choice ID numbers as a means of unambiguously corresponding CVR headers and fields to contests and choices on paper ballots.	Rule is amended to address this concern.
21.4.14(d)5)	Branscomb	Criticizes use of “votes cast” in proposed Rule.	Amendments made to address this concern, and deletion of formerly proposed definition of “votes cast”. Final rule uses the term “ballots counted.”
21.4.15(d)	ESRC	For systems certified going forward, might require vendors to update extracts.	No action taken.
21.5.2	San Miguel Co.	Does not understand this section – give greater clarification or context.	No action taken. This Rule mandates the minimum number of ballots that must be tested by a certified voting systems test laboratory during a certification campaign; it does not affect pre- and post-election testing performed by counties.
Other	Logan	Complaint about caucus system	No action taken.

	Smith	Prefers primary election over caucus system	No action taken.
	Schipper	Photo ID and primary system	No action taken.
	Hamilton	Voter ID and VSPC times/locations concerns	No action taken.
	Fiore	Presidential primary concerns	No action taken.
	Eberle	References throughout rules should be to DEO rather than CCR	No action taken.