

Andrea Gyger

From: Harvie Branscomb [REDACTED]
Sent: Tuesday, December 08, 2015 3:51 AM
To: SoS Rulemaking
Cc: [REDACTED]
Subject: Comments - working draft election rules
Attachments: Branscomb_comments_on_Amendments_to_8CCR1505.docx

Please find attached comments on proposed election rules. Please forward these for consideration and publication on the SOS website.

Harvie

Harvie Branscomb comments on Dec 1 2015 proposed election rules.

See <http://electionquality.com> for other information related to Colorado election quality.

Harvie Branscomb's annotations on proposed election rules changes in color: **Red** and ~~strikethrough~~ represent deletion. **Green font and bold** represent addition. **Highlight green represents strong support for the rule.** **Highlight yellow is an additional comment.**

Preparation of this document was made much more difficult when the proposed document was issued as a pdf and not as a word document. PDF converters tend not to copy strikethrough and as a result this document will not fully represent the original. This can be done in a better way in the future.

I have not made comments about needed rules outside of the context of the rules changes proposed. However they are much needed.

It is particularly unfortunate that post election audit rules allow machine retabulation of selected ballots after unofficial results are produced even though many counties' equipment is capable of auditing to election night totals and some counties actually do that. Of course the audit to election night subtotals is a far more accurate audit and complies with statute. The 500 ballot maximum for the audit is an embarrassment for large counties where it becomes an insignificant percentage of an election where the statute envisioned 5% of ballots being audited. The 500 ballots is simply a rule, not statute.

The rules for recount are really in need of repair- the size of the test for the recount is far too small, and the use of LAT ballots that are required to be marked according to instructions is a relatively useless test. Far more appropriate would be a selection of poorly marked ballots from the actual election to be tested to see what percentage are incorrectly interpreted. From that one could estimate how many errors were included in the original unofficial counts.

Thank you for consideration of my comments. This has taken many hours away from my effort to evaluate the 4 pilot voting systems.

Harvie Branscomb 12/8/2015 2:41AM

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Amendments to 8 CCR 1505-1 follow:

Amendments to Rule 2.10.2 concerning voter registration; new voter notification under section 1-2- 509(3), C.R.S.:

2.10.2If after the 20-day period outlined in section 1-2-509(3), C.R.S, the United States Postal Service returns a new voter notification to the county clerk as undeliverable, or provides the clerk with a postcard notice of mail forwarding, the county clerk must mark the voter's record "Inactive" and mail a confirmation card.

New Rule 2.14.5, concerning voter registration records and data:

PERSON WHO REQUESTS A CERTIFICATE OF REGISTRATION OR OTHER ELECTION RECORD THAT CONTAINS HIS OR HER PERSONALLY IDENTIFIABLE INFORMATION MUST PROVIDE A TYPE OF IDENTIFICATION LISTED IN SECTION 4.1.3 THE COUNTY CLERK MUST INCLUDE ALL COORDINATING DISTRICTS IN THE SCORE DISTRICTS AND PRECINCTS MODULE AND ELECTION SETUP MODULE BEFORE CONDUCTING A COORDINATED ELECTION.

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New Rule 4.8.6, concerning ballot format and printing:

4.8.6 THE COUNTY CLERK MUST USE THE SECRETARY OF STATE APPROVED NAMING CONVENTIONS FOR NAMING BALLOT STYLES IN THE COUNTY'S ELECTION MANAGEMENT SYSTEM, SCORE, AND .PDFS. THE COUNTY CLERK MUST USE THE APPROVED NAMING CONVENTION FOR CONTEST NAMES IN THE ELECTION NIGHT REPORTING SYSTEM.

Amendments to Rule 6:

Rule 6. Election Judges

6.1 Appointment of election judges under section 1-6-104, C.R.S.

6.1.1 The county clerk must request an updated list of election judges from each major party before each election the clerk conducts.

[Current Rule 6.1.2 is amended and recodified as New Rule 6.2.1]

6.1.3 6.1.2 The county clerk must reasonably attempt to exhaust the list provided by the major parties before supplementing with ADDITIONAL MAJOR PARTY JUDGES OR minor party or unaffiliated judges, or staff.

6.1.3 IF A MAJOR POLITICAL PARTY FAILS TO PROVIDE AN ADEQUATE LIST OF ELECTION JUDGES BY THE 60TH DAY BEFORE ELECTION DAY THE COUNTY CLERK MUST NOTIFY THE SECRETARY OF STATE. THE COUNTY CLERK MAY CONSIDER A SUPPLEMENTAL LIST FROM A MAJOR POLITICAL PARTY AFTER THE 60 DAY DEADLINE.

6.1.4 THE COUNTY CLERK MUST PROVIDE THE LIST OF ELECTION JUDGES, INCLUDING POLITICAL PARTY AFFILIATIONS AND ASSIGNMENTS, TO EACH APPOINTING PARTY NO LATER THAN THE 45-DAY JUDGE-TRAINING DEADLINE.

6.1.5 THE COUNTY CLERK MAY NOT ASK AN ELECTION JUDGE, OR COUNTY STAFF MEMBER, TO CHANGE HIS OR HER PARTY AFFILIATION TO ACHIEVE THE BIPARTISAN BALANCE REQUIRED UNDER SECTION 1-6-109, C.R.S.

[Current Rules 6.2, 6.3, and 6.4 are amended and recodified as New Rules 6.5, 6.6, and 6.7.]

6.2 ASSIGNMENT OF ELECTION JUDGES

6.1.2 6.2.1 The county clerk may assign election judges to positions based upon appropriate skill level and interest **AND PARTY BALANCE EXCEPT THAT EACH MAJOR POLITICAL PARTY MAY DESIGNATE WHICH ELECTION JUDGES FROM ITS LIST WILL BE APPOINTED AS SIGNATURE VERIFICATION JUDGES. EACH SIGNATURE-VERIFICATION JUDGE DESIGNATED BY THE PARTY MUST COMPLETE THE TRAINING REQUIRED BY RULE 6.8, AND IS SUBJECT TO REMOVAL OR REASSIGNMENT UNDER RULE 6.2.2.**

6.2.2 THE COUNTY CLERK MAY REMOVE OR REASSIGN AN ELECTION JUDGE PERFORMING SIGNATURE VERIFICATION AT ANY TIME FOR CAUSE, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO:

(A) AN INABILITY TO PERFORM SIGNATURE VERIFICATION;

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(B) AN INABILITY TO SERVE FOR THE REQUISITE AMOUNT OF TIME NEEDED; OR
(C) AN **IRREGULAR EXCEPTIONAL** ACCEPTANCE OR REJECTION RATE, AS DETERMINED BY THE COUNTY CLERK OR HIS OR HER DESIGNEE.

6.3 THE COUNTY CLERK MAY NOT PERSONALLY CONDUCT SIGNATURE VERIFICATION.

6.4 A COUNTY WITH MORE THAN 5,000 ACTIVE ELECTORS BY THE 90TH DAY BEFORE ELECTION DAY MAY NOT USE REGULAR STAFF AS SIGNATURE VERIFICATION JUDGES. A COUNTY WITH FEWER THAN 5,000 ACTIVE ELECTORS BY THE 90TH DAY BEFORE ELECTION DAY MAY USE REGULAR COUNTY STAFF THAT ARE SWORN IN AS ELECTION JUDGES TO CONDUCT SIGNATURE VERIFICATION **IF NO JUDGES APPROVED BY THE PARTIES ARE AVAILABLE.**

6.2 6.5 For purposes of training election judges, an “election cycle” means all elections held during a calendar year beginning January 1 and ending December 31.

6.3 6.6 In lieu of the oath for other election judges prescribed in section 1-6-114, C.R.S., each student election judge must take a self-affirming oath or affirmation before serving, in substantially the following form:

“ I, _____ do solemnly swear (or affirm) that I am a citizen of the United States and state of Colorado; that I am at least 16 years of age and a High School Junior or Senior; that I will perform the duties of an election judge according to law and to the best of my ability; that I will studiously strive to prevent fraud, deceit, and abuse in conducting the same; that I will not try to determine how any elector voted, nor will I disclose how any elector voted if in the discharge of my duties as a student election judge such knowledge shall come to me, unless called upon to disclose the same before some court of justice; that I have never been convicted of election fraud, any other election offense, or fraud and that, if any ballots are counted before the polls close on the date of the election, I will not disclose the result of the votes until after the polls have closed. “

6.4 6.7 A supervisor judge in a voter service and polling center must complete a training course provided by or approved by the Secretary of State CONDUCTED BY THE COUNTY CLERK. THE SECRETARY OF STATE MUST PROVIDE OR APPROVE THE TRAINING CONTENT.

6.8 SIGNATURE VERIFICATION JUDGES MUST COMPLETE A TRAINING COURSE CONDUCTED BY THE COUNTY CLERK AT LEAST ONCE PER ELECTION CYCLE. THE SECRETARY OF STATE MUST PROVIDE OR APPROVE THE TRAINING CONTENT.

Amendments to Rule 7.1:

Rule 7. Elections Conducted by the County Clerk and Recorder

7.1 Mail ballot plans

7.1.1 The county clerk must submit a mail ballot plan to the Secretary of State by email no later than 90 days before every election. The county clerk must submit with the mail ballot plan the voter instructions and secrecy sleeve that the clerk intends to use in the election.

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7.1.2 THE COUNTY CLERK MUST LIST IN THE MAIL BALLOT PLAN ALL MATERIALS IT WILL INCLUDE IN ITS MAIL BALLOT PACKET.

7.1.2 7.1.3 Approval of mail ballot plans and submission of amendments

(a) If the Secretary of State requests modifications to a plan prior to approval, the county clerk must submit the modified plan within ten days from the request. The Secretary of State will approve or disapprove the modified plan within 15 days from the date it is received.

(b) A county clerk may amend a timely submitted mail ballot plan by submitting a written statement outlining the amendment. The amendment must state the specific section of the plan amended and the reason for the amendment. The Secretary of State will approve or disapprove the amendment within 15 days from the date it is received. If the amendment is received within

30 days before the election, the Secretary of State will approve or disapprove the amendment within two business days.

7.1.3 7.1.4 The county clerk must submit a security plan under Rule 20 in addition to the mail ballot plan submitted in accordance with this Rule.

New Rules 7.2.8 and 7.2.9, concerning ballots and ballot packets:

7.2.8 THE COUNTY MUST PRINT THE ELECTOR'S FULL NAME UNDER OR NEAR THE SELF-AFFIRMATION SIGNATURE LINE ON EACH BALLOT RETURN ENVELOPE. THE COUNTY MUST PRINT ITS MAILING ADDRESS IN THE RETURN ENVELOPE RETURN ADDRESS FIELD.

7.2.9 THE COUNTY MUST PROVIDE A SPACE ON THE BALLOT RETURN ENVELOPE FOR AND A NOTICE TO THE EFFECT THAT A WITNESS TO THE ELECTOR'S MARK TO MUST PROVIDE HIS OR HER FULL LEGAL NAME IN ADDITION TO A SIGNATURE.

Amendments to Rule 7.5.1(c), concerning receipt and processing of ballots:

(c) Signage at each drop-off location must inform voters that it is a violation of law to ~~drop-off~~ RECEIVE more than ten ballots FOR MAILING OR DELIVERY in any election, AND THAT ELECTIONEERING IS WITHIN 100 FEET OF ANY DROP-BOX.

[note from Harvie: It is extremely desirable on behalf of election integrity to provide evidence for casting of the ballot at election judge monitored drop boxes - a capability to scan the barcode of envelopes at the time of casting should be provided.]

Amendments to Rule 7.5.1(d):

(d) The minimum number of drop-off locations must be open during reasonable business hours as defined in Rule 7.8.1(a) 7.9.1(A) and from 7:00 a.m. through 7:00 p.m. on election day.

Amendments to Rule 7.8:

7.8 Signature verification procedures

[Current Rule 7.8.1 is amended and recodified as New Rule 7.8.3]

[Current Rule 7.8.2 is amended and recodified as New Rules 7.8.4, 7.8.5, and 7.8.6]

7.8.1A SINGLE ELECTION JUDGE MAY CONDUCT THE FIRST LEVEL OF SIGNATURE VERIFICATION.

7.8.2 IF THE ELECTOR'S SIGNATURE APPEARS ANYWHERE ON THE ~~BACK OF THE~~ BALLOT RETURN ENVELOPE, THE ELECTION JUDGE MUST REVIEW THE SIGNATURE.

[Some counties put the signature line on the "front" of the envelope in order to make sure all voter specific id is on one side of the envelope- this is a best practice.]

7.8.1 ~~7.8.3 The election judges~~ **AN AT LEAST ONE ELECTION JUDGE OR AN AUTOMATIC SIGNATURE RECOGNITION DEVICE** must compare the signature on the self-affirmation on each BALLOT return envelope with the ELECTOR'S signature in **SCORE PRIOR TO APPROVAL FOR COUNTING**. ~~The~~ **AT LEAST TWO** election judges **OF DIFFERENT PARTY AFFILIATION** must research the signature further ~~if there is:~~ **IN ACCORDANCE WITH THE SECRETARY OF STATE'S SIGNATURE VERIFICATION GUIDE PRIOR TO REJECTION OF AN ENVELOPE.**

~~(a) An obvious change in the signature's slant.~~

~~(b) A printed signature on one document and a cursive signature on the other document.~~

~~(c) A difference in the signature's size or scale.~~

~~(d) A difference in the signature's individual characteristics, such as how the "t's" are crossed, "i's" are dotted, or loops are made on "y's" or "j's".~~

~~(e) A difference in the voter's signature style, such as how the letters are connected at the top and bottom.~~

~~(f) Evidence that ballots or envelopes from the same household have been switched.~~

~~(g) Any other noticeable discrepancy such as misspelled names.~~

[It is crucial that the 7 criteria be clearly explained in the guide now that the criteria are about to be removed from rule.]

Current Rule 7.8.2 is amended and recodified as New Rules 7.8.4, 7.8.5, and 7.8.6 as follows:

7.8.2 ~~7.8.4 In conducting further research~~ IF AN ELECTION JUDGE MUST CONDUCT FURTHER RESEARCH ON AN ELECTOR'S SIGNATURE, the election-judges JUDGE must check SCORE for at least two additional documents signed by the voter, if available.

7.8.5 ~~The judges~~ AN ELECTION JUDGE may compare additional information written by the voter on the return envelope, such as the voter's address and date of signing. Any similarities noted when comparing other information may be used as part of the signature verification decision process.

7.8.6 If it appears to the judges that **TWO OR MORE** members of the same household have inadvertently switched envelopes or ballots, the ballot or ballots must be counted and no letter of advisement to the electors is necessary. IF AN ELECTION JUDGE DETERMINES THAT A VOTER INADVERTENTLY RETURNED HIS OR HER BALLOT IN ANOTHER HOUSEHOLD MEMBER'S BALLOT RETURN ENVELOPE, **AND AT LEAST ONE CORRESPONDING SWITCH WAS ALSO MADE**, THE ELECTION JUDGE MUST PROCESS AND PREPARE THE VOTER'S BALLOT FOR COUNTING IF IT IS OTHERWISE VALID. THE ELECTION JUDGE NEED NOT SEND A SIGNATURE DISCREPANCY LETTER TO THE VOTER.

7.8.3 7.8.7 If, AFTER BIPARTISAN REVIEW, the election judges ~~dispute the signature they~~ DETERMINE THAT A SIGNATURE IS DISCREPANT, THE JUDGES must document the discrepancy and the research steps taken in a log. THAT:

(A) ~~The election judges must identify~~ IDENTIFIES the elector **AND THE JUDGES TEAM NUMBER** in the log using a unique tracking number ~~The tracking number may~~. THAT DOES not contain the elector's

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social security number, **OR** Colorado driver's license number, **or the identification number issued by the Department of Revenue.**

[The SCORE voter ID is of course available to be referenced and can be included- it is not PII. IF not the SCORE voter ID, then a number that can be related to it must be used.]

(B) ~~The log may~~ DOES not contain the elector's signature.

(C) ~~The election judges must note~~ NOTES the **INITIAL DECISION AND ANY** final resolution and ballot disposition on the research log.

7.8.8 THE COUNTY CLERK MUST PERIODICALLY AUDIT SIGNATURE VERIFICATION JUDGES. IF A JUDGE OR TEAM OF JUDGES HAS AN UNEXPLAINED, IRREGULAR EXCEPTIONAL ACCEPTANCE OR REJECTION RATE, THE COUNTY CLERK MUST REMOVE THAT JUDGE OR TEAM OF JUDGES FROM CONDUCTING SIGNATURE VERIFICATION.

7.8.4 7.8.9 The election official must use the letter and the signature verification form approved by the Secretary of State. (Section 1-7.5-107.3(2)(a), C.R.S.) The letter and signature verification form does not violate section 1-13-801 C.R.S.

7.8.5 7.8.10 All uncounted **VOTED** ballots must remain sealed in the return envelope and stored as election records in accordance with section 1-7-802, C.R.S.

7.8.6 7.8.11 Use of ballot envelope sorters and signature capture devices. If the county uses a ballot sorting and signature capture device, the county clerk must test the device before using it in an election to ensure that it properly sorts envelopes, and accurately and clearly captures the signature on the envelope for comparison to the ~~correct~~ voter record **RECORDED IN SCORE.**

7.8.7 7.8.12 Use of automated Signature Verification Devices under section 1-7.5- 107.3(5)(b), C.R.S.

(a) ~~If the county uses a signature verification device for automated signature verification on ballot envelopes, the~~ **THE** county clerk must test the device

SIGNATURE VERIFICATION DEVICES ~~before using it~~ **USE** in an election.

(1) The testing must verify the accuracy of the device and ensure that the device will not accept a signature that a reasonably trained election judge would reject.

(2) The county must pull and test a minimum of 150 ballot envelopes received in the election and conduct an audit of the machine-verified signatures.

(A) A team of bipartisan election officials must manually review the signatures identified on the Automated Signature Recognition report following the procedures in section 1-7.5-107.3, C.R.S., and this Rule.

(B) The election judges conducting the audit must sign and date the Automated Signature Recognition Report and the report must be maintained with all other election records under section 1-7-802, C.R.S.

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(b) ~~In addition to the initial test, the~~ **THE** county must conduct a regular audit of the

~~device~~ **EACH SIGNATURE VERIFICATION DEVICE** during its use.

(1) The county must pull a random sampling of no fewer than one in every fifty machine-verified signatures daily.

(2) A team of bipartisan election judges must manually review the signatures identified on the Automated Signature Recognition report following the procedures in section 1-7.5-107.3, C.R.S., and this Rule.

(3) The election judges conducting the audit must sign and date the Automated Signature Recognition Report and the report must be maintained with all other election records under section 1-7-802, C.R.S.

(4) If the device fails the audit, the county must immediately cease use of automated signature verification and notify the Secretary of State. The Secretary of State and the county must work in coordination to identify the issue and implement a solution.

(c) The county must operate the device on ~~a dedicated~~ **AN ISOLATED** and secure network.

(1) The county may connect the device to the county network only for maintenance and support.

(2) The device must be secured by the county firewall.

(3) The county must maintain a maintenance and support log that includes the name of the person providing maintenance or support, the date and time the device was accessed, and the specific reason for access.

7.8.8 7.8.13 If a county uses a signature capture device to compare a ballot envelope signature to a signature maintained in SCORE, the system may display only one voter's signature at a time.

[Current Rule 7.8.9 is amended and recodified as New Rule 7.9.1(d)]

7.8.14 ~~IF THE COUNTY CLERK CONDUCTS SIGNATURE VERIFICATION BEFORE ELECTION DAY, THE CLERK~~ MUST SEND SIGNATURE DISCREPANCY LETTERS TO ELECTORS WITH DISCREPANT SIGNATURES AS SOON AS PRACTICABLE.

7.8.15 FOLLOWING THE ELECTION, THE COUNTY CLERK MUST REPORT TO THE SECRETARY OF STATE IN WRITING THE NUMBER OF BALLOT RETURN ENVELOPES WITH DISCREPANT SIGNATURES THAT THE CLERK FORWARDED TO THE DISTRICT ATTORNEY FOR INVESTIGATION.

Current Rule 7.8.9 is amended and recodified as New Rule 7.9.1(d):

7.9 Voter service and polling centers

7.9.1 The county clerk must designate and open the minimum number of voter service and polling centers. The centers must be open during reasonable business hours for the

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minimum number of days outlined in section 1-5-102.9, C.R.S., for a general election and 1-7.5-107(4.5), C.R.S., for all other elections.

[Current Rules 7.9.1(a-c) are retained, unaltered]

7.8.9 (D) Signage at each voter service and polling center must indicate that it is a violation of law to ~~drop off~~ RECEIVE more than ten ballots FOR DELIVERY in any election.

Amendments to Rules 7.11 through 7.14:

7.11 Voter service and polling center connectivity

7.11.1 The county must have real-time access to SCORE and WebSCORE at every voter service and polling center designated by the county clerk.

[Current Rule 7.11.2 is amended and recodified as New Rule 7.12]

7.11.3 7.11.2 At no time may an election official open simultaneous sessions of both SCORE and WebSCORE on a single workstation.

7.11.4 7.11.3 Every voter service and polling center designated by the county clerk must meet the minimum security procedures for transmitting voter registration data as outlined in section 1-5-102.9, C.R.S., and Rule 2.16.

7.11.2 7.12 ~~The county clerk must instruct~~ AT EACH VOTER SERVICE AND POLLING CENTER, election judges and, if appropriate, election staff, ~~to~~ MUST:

7.12.1 PROVIDE ALL SERVICES OUTLINED IN 1-5-102.9, C.R.S.;

(a) 7.12.2 Use WebSCORE to register voters; update existing voter registrations; issue and replace mail ballots; and issue, spoil, and replace in-person ballots;; and

(b) 7.12.3 Offer an in-person voter the opportunity to obtain a replacement mail ballot rather than a provisional ballot in the event the voter service and polling center loses connectivity to WebSCORE but retains connectivity to SCORE.

7.12 7.13 Assisting voters with disabilities in a voter service and polling center

7.12.1 7.13.1 The designated election official must post a sign at the voter service and polling center that states:

NOTICE

VOTING ASSISTANCE FOR ELECTORS WITH DISABILITIES

Colorado law protects a voter's legal right to assistance in voting if assistance is needed because of a disability.

1.If you require assistance, please inform an election judge.

2.Any person, including an election judge, may assist you.

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3.If you select a person other than an election judge, he or she must complete a Voter Assistance Form, which includes an oath that states:

I,, certify that I am the individual chosen by the elector to assist the elector in casting a ballot. I further certify that I will not in any way attempt to persuade or induce the elector to vote in a particular manner, nor will I cast the elector's vote other than as directed by the elector I am assisting.

4.The person you select may provide any assistance you need, including entering the voting booth, preparing the ballot, or operating the voting machine.

5.The person assisting you may not seek to persuade you or induce you to vote in a particular manner.

6.The election judge must record the name of each voter who receives assistance and the name of the person who provides assistance on the signature card.

7.12.2 7.13.2 If a voter has spoiled two ballots and requests a third ballot, an election official must offer assistance in voting procedures and casting the ballot.

7.13 7.14Voter history

7.13.1 7.14.1 After the canvass, the designated election official must give vote credit to each voter who **SIGNED AND RETURNED THE RETURN ENVELOPE OR** OTHERWISE voted in the election.

7.13.2 7.14.2 If the voter history records do not match the number of voters who voted at that election, the designated election official must ensure the following:

(a)Each voter received credit for voting; and

(b)All signature cards are accounted for.

7.13.3 7.14.3 All research concerning discrepancies must be explained and documented.

7.14 7.15 Reimbursement to counties for state ballot measure elections. No later than 90 days after an election, the county must submit a completed request for reimbursement under section 1-5- 505.5, C.R.S. The county must submit the request using the form provided by the Secretary of State.

Amendments to Rule 8:

Rule 8. Watchers

8.1 Watchers must affirm that they are qualified under sections 1-1-104(51), 1-7-105, 1-7- 106, 1-7-107, and 1-7-108(2), C.R.S., as applicable. Watchers must take the oath described in section 1-7-108(1), C.R.S. and, upon first entering the polling location, surrender the certificate of appointment to the supervisor judge at each location where the watcher is designated to observe. **A WATCHER MUST AFFIRM THAT HE OR SHE IS QUALIFIED TO ACT AS A**

WATCHER UNDER COLORADO LAW. THE COUNTY CLERK MUST ACCEPT ~~MAY NOT REFUSE~~ THE APPOINTMENT OF ALL ELIGIBLE WATCHERS DULY CERTIFIED BY A POLITICAL PARTY, CANDIDATE OR ISSUE COMMITTEE UNDER SECTIONS 1-1-104(51), 1-7-105, 1-7-106, OR 1-7-107, C.R.S.

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[Stricken portions of Current Rule 8.1 are amended and recodified in Rule 8.1, New Rule 8.5, [Current Rule 8.11 is amended and recodified as the last sentence of Rule 8.1]

[Current Rules 8.1.1, 8.1.2, and 8.1.3 are amended and recodified as New Rules 8.4.1, 8.4.2, and 8.4.3]

8.1.1 THE REGISTERED AGENT OR DESIGNATED FILING AGENT FOR AN ISSUE COMMITTEE IS THE

AUTHORIZED REPRESENTATIVE TO APPOINT WATCHERS FOR THE ISSUE COMMITTEE.

8.1.2 ~~THE COUNTY CLERK MUST CONFIRM A WATCHER'S ELIGIBILITY BEFORE ALLOWING THE WATCHER TO PERFORM HIS OR HER DUTIES.~~ IF THE COUNTY CLERK ELECTION OFFICIAL RECEIVING THE WATCHER CREDENTIAL IS UNABLE TO CONFIRM THE WATCHER'S ELIGIBILITY, HE OR SHE MUST PROMPTLY INFORM ~~THE COUNTY CLERK WHO MUST INFORM~~ THE APPOINTING ENTITY.

[While some of election watching is habitual and predictable, much of it is not and occurs only when narrow margins are encountered. In these cases, the requirement for the county clerk to be initially involved prior to making access to a watcher is prohibitively obstructive. The law clearly allows for appointing entities to confirm eligibility and for watchers to affirm eligibility. The provision in these rules for watchers to carry proof of eligibility is sufficient to relieve the need for the county clerk to personally confirm eligibility of any watcher. This is a crucial consideration and will be harmful to election oversight if county clerks are placed in every path between an appointing entity and an election process that deserves to be watched.]

8.1.3 ~~TO AVOID THE NEED FOR RESEARCH PRIOR TO CONFIRMATION BY THE RECEIVING OFFICIAL.~~ A WATCHER MAY PROVIDE HIS OR HER CURRENT REGISTRATION RECORD WITH THE CERTIFICATE OF APPOINTMENT TO SATISFY THE ELIGIBILITY-CONFIRMATION REQUIREMENT.

8.1.4 A WATCHER FOR AN ISSUE COMMITTEE MAY PROVIDE A TRACER PRINT-OUT OF THE ISSUE COMMITTEE REGISTRATION WITH THE CERTIFICATE OF APPOINTMENT TO SHOW THE COMMITTEE'S ELIGIBILITY TO APPOINT WATCHERS.

8.1.5A WATCHER MUST COMPLETE A TRAINING PROVIDED BY OR APPROVED BY THE SECRETARY OF STATE BEFORE OBSERVING ELECTION ACTIVITIES WHERE CONFIDENTIAL OR PERSONALLY IDENTIFIABLE INFORMATION MAY BE WITHIN VIEW.

[It is within the power of the SOS to adjust SCORE so that PII is not spread throughout every screen that is used for signature verification. In fact, it is harmful to the integrity of signature verification that such PII exists on the same forms that are observed by judges while deciding the eligibility of the envelope. This harm is particularly problematic in case signature verification is taking place after 7PM on election night once close election margins are known.]

8.14 8.2 Watchers may be appointed to observe recall elections held under Article 12, Title I, C.R.S., and must be certified in accordance with sections 1-7-106 and 1-7-107, C.R.S.

8.2 8.3 A political party attorney may not be in the polling location unless he or she is a duly appointed watcher or is casting his or her ballot.

8.3 The supervisor judge must provide to each watcher on request a list, log, check-in card, or other similar information of voters appearing in the polling location to vote. The watcher may not remove the ~~information or~~ documents from the polling location. A watcher may maintain a list of eligible electors who have voted by using only information provided by the supervisor judge or a list of electors previously maintained by the watcher. [Section 1-7-108(3), C.R.S.]

[Really? The whole point if watching for GOTV is to remove the information from the polling place.]

8.13 8.4 Watchers may be certified to observe more than one polling location. See section 1-7-106, C.R.S.

A WATCHER MUST PRESENT A **COPY OF A** CERTIFICATE OF APPOINTMENT AT EACH LOCATION WHERE THE WATCHER IS DESIGNATED TO OBSERVE, UNLESS THE COUNTY CLERK HAS ESTABLISHED AN ALTERNATE PROCESS.

8.1.1 8.4.1 If a watcher leaves a polling location but returns to the same location, another certificate of appointment is not necessary.

8.1.2 8.4.2 A new watcher who is replacing an original watcher must provide an original certificate of appointment for that polling location.

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8.1.3 8.4.3 A certificate of appointment as a watcher is not transferable to another individual.

8.5 WATCHERS MUST TAKE THE OATH DESCRIBED IN SECTION 1-7-108(1), C.R.S.

[New Rule 8.5 is a recodified portion of current Rule 8.1]

8.12 8.6 Removal of Watchers.

8.12.1 8.6.1 A county clerk or his or her designee may remove a watcher upon finding that the watcher:

- (a) Commits or encourages fraud in connection with his or her duties;
- (b) Violates any of the limitations outlined in Rule 8.6 8.15;
- (c) Violates his or her oath; or
- (d) Is abusive or threatening toward election officials or voters.

8.12.2 8.6.2 Upon removal of a watcher, the county clerk must inform the political party, candidate, or committee who appointed the watcher.

8.12.3 8.6.3 A removed watcher may be replaced by an alternate watcher duly certified in accordance with sections 1-7-105, 1-7-106, or 1-7-107, C.R.S.

8.7 THE COUNTY CLERK MUST SUBMIT A WATCHER ACCOMMODATION PLAN TO THE SECRETARY OF STATE BY EMAIL NO LATER THAN 90 DAYS BEFORE AN ELECTION.

8.7.1 WATCHERS MAY BE PRESENT AT EACH STAGE OF THE CONDUCT OF THE ELECTION, INCLUDING WHEN ELECTORS ARE VOTING OR WHEN ELECTION JUDGES ARE PRESENT AND PERFORMING ELECTION ACTIVITIES.

[This word "**including**" is essential to honor the meaning of the statute. Any attempt in rules to curtail watching by limiting the watchers only to situations where voting is taking place or election judges are performing activities would be destructive to the statutory purpose of watching. The reason is that many steps in the conduct of the election are performed by election officials who are not acting as election judges. If officials are alone with election records, it must be possible for a watcher to be present. At some point and in some conditions steps performed only by officials and staff must be watched in order to verify integrity of the election.]

8.7.2 THE COUNTY CLERK MUST PROVIDE, AND IDENTIFY IN SOME MANNER, AT LEAST ONE PRIMARY CONTACT FOR WATCHERS AT EACH LOCATION WHERE ELECTION ACTIVITIES ARE BEING PERFORMED WHEN WATCHERS ARE PRESENT.

8.4.1 8.7.3 The AT ~~VOTER SERVICE AND POLLING CENTERS~~, **ALL ELECTION LOCATIONS** THE designated election official must position the voting equipment, voting booths, and the ballot box so that they are in plain view of the election officials and watchers.

8.4.2(b) 8.7.4 Watchers must remain outside the immediate voting area while an elector is voting. **THE SIX FOOT LIMIT IN RULE 1.1.26 APPLIES ONLY TO VOTING.**

8.8 THE MINIMUM NUMBER OF WATCHERS THE COUNTY CLERK MUST ACCOMMODATE FOR EACH APPOINTING ENTITY IS AS FOLLOWS:

8.8.1 IN A CENTRAL COUNT FACILITY, ONE WATCHER PER CENTRAL COUNT PROCESS, BUT IN ANY CASE NO LESS THAN ONE WATCHER FOR EVERY GROUP OF TEN OR FEWER ELECTION JUDGES.

8.8.2 DURING SIGNATURE VERIFICATION, ONE WATCHER FOR EVERY GROUP OF FOUR OR FEWER ELECTION JUDGES.

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8.8.3 AT EACH VOTER SERVICE AND POLLING CENTER, ONE WATCHER OR ONE WATCHER PER VOTER SERVICE AND POLLING CENTER PROCESS.

8.4.2(e) 8.8.4 The number of watchers permitted in any room at one time is subject to SPACE LIMITATIONS AND local safety codes.

8.9A WATCHER MAY OBSERVE ELECTION ACTIVITIES AT A GROUP RESIDENTIAL FACILITY, AS DEFINED IN SECTION 1-1-104(18.5), C.R.S., ONLY IF THE WATCHER CONTACTS THE COUNTY CLERK BEFOREHAND TO ARRANGE THE TIME AND LOCATION. WHILE AT A GROUP RESIDENTIAL FACILITY, A WATCHER MUST MAINTAIN AN ADEQUATE DISTANCE FROM THE ELECTOR SO THE ELECTOR MAY MARK HIS OR HER BALLOT IN PRIVATE.

[This requirement may be conducive to better operation at HCFs when watchers notify in advance, but will not permit watchers to oversee activities at HCFs without warning. Experience suggests that special preparations will be made for watchers when they are expected at HCFs.]

8.4 8.10 Watchers are subject to the provisions of section 1-5-503, C.R.S.

8.4.3 8.10.1 A watcher may witness and verify activities described in Title 1, C.R.S., that are outside the immediate voting area, including ballot processing and counting. If election officials are conducting elections ELECTION-RELATED activities in separate rooms or areas of a building or buildings, the county clerk must allow additional watchers to observe and verify each separate activity in each room or area in the building or buildings.

8.4.2 8.10.2 Watchers must be permitted access that would allow them to attest to the accuracy of election-related activities, including recall elections. This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens and reasonable proximity to hear election-related discussions AMONG AND between ELECTION OFFICIALS election judges and electors. Witness and verify means to personally observe, actions of election officials in each step of the conduct of an election.

[The last sentence of Current Rule 8.4.2 is recodified as New Rule 8.10.2(b)]

(a) Election-related activities include ~~all activities in a polling location and ballot processing and counting, such as:~~

~~8.4.2(e) (1) Watchers may be present at each stage of the conduct of the election, including the setup~~ Setup and breakdown of polling locations and ballot receipt and processing VOTER SERVICE AND POLLING CENTERS.

(1) ~~(2) Observing voter~~ VOTER check-in and registration activities.

(3) BALLOT RECEIPT AND PROCESSING.

[A portion of Current Rule 8.4.2(c) is recodified as this New Rule 8.10.2(a)(3)]

(2) ~~(4) Witnessing the signature~~ SIGNATURE verification of mail ballot envelopes at close enough distance to verify or challenge the signature.

(3) ~~(5) Witnessing ballot~~ BALLOT duplication to verify accuracy according to voter intent.

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(4) ~~(6) Observing the BALLOT tabulation, process or display screens of voting equipment at any time that an elector is not in the immediate voting area for purposes of voting or casting a ballot.~~

(5) **Witnessing hand count tabulations as they are being conducted**

[This line does not deserve to be removed from rules.]

(6) ~~(7) Observing all documents and materials during the~~ LAT THE LOGIC AND ACCURACY TEST and post-election audit.

[Portions of Current Rule 8.4.2(d) are amended and recodified as New Rules 8.10.2(a)(8) and (9):]

(8) PROVISIONAL BALLOT PROCESSING.

(9) UOCAVA BALLOT PROCESSING.

[Current Rule 8.4.4 is amended and recodified as New Rule 8.10.2(a)(10)]

(10) CANVASS.

[Current Rule 10.11 is amended and recodified as New Rule 8.10.2(a)(11)]

(11) RECOUNT.

[The last sentence of Current Rule 8.4.2 is recodified as New Rule 8.10.2(b)]

(B) **WITNESS AND VERIFY MEANS TO PERSONALLY OBSERVE DOCUMENT AND REPORT ON ACTIONS OF ELECTION OFFICIALS IN EACH STEP OF THE CONDUCT OF AN ELECTION.**

[This line is an appropriate extrapolation of the crux of the enabling statute for watching.]

[Current Rule 8.4.2(c) is recodified as New Rules 8.10.2(a)(1) and 8.10.2(a)(3)]

~~(d) Watchers may be present during provisional ballot processing, signature verification, and UOCAVA ballot processing, but may not have access to confidential voter information.~~

[A portion of Current Rule 8.4.2(d) is recodified as New Rule 8.10.2(a)(8)]

[Current Rule 8.4.2(e) is recodified as New Rule 8.8.4]

8.10 8.11 ~~To assist Watchers in performing their tasks at a polling location, the~~ THE county clerk must provide a list of all voters who have voted or returned a ballot in the county. The county clerk must make the list available at least daily at the clerk's main office or provide the list electronically.

~~8.4.4 Watchers appointed under this Rule 8 may observe the canvass board while it performs its duties.~~

[A portion of Current Rule 8.4.4 is recodified as New Rule 8.10.2(a)(10)]

8.4.5 8.12 A watcher may track the names of electors who have cast ballots, challenge electors under section 1-9-203, C.R.S., and Rule 9, and submit written complaints in accordance with

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~~section 1-1.5-105, C.R.S., and Rule 13. A watcher may observe all activities in a polling location and the processing and counting of ballots. A watcher may be present at each stage of the election including the receiving and bundling of the ballots.~~

8.13 UNLESS THE COUNTY CLERK AUTHORIZES A GREATER NUMBER, DURING ~~INITIAL~~ SIGNATURE REVIEW BY AN ELECTION JUDGE **OR JUDGES**, A WATCHER MAY ESCALATE NO MORE THAN TEN BALLOT ENVELOPE SIGNATURES IN AN HOUR FOR A SECOND REVIEW BY A BIPARTISAN TEAM OF ELECTION JUDGES. **BY THE TIME SUCH LIMIT HAS BEEN REACHED THE SUPERVISOR JUDGE SHALL BEGIN A REVIEW THE PERFORMANCE OF BOTH THE JUDGES AND THE WATCHER FOR THE PURPOSE OF TAKING REMEDIAL ACTION.**

[What I have written honors the intention expressed in discussions by the Election Watcher Advisory Committee. After the target number of 10 escalations per hour has been reached a

review is expected to take place of both the judges and the watchers. Sigver escalation must be possible at first or second tier: it must be possible to challenge either an acceptance or a rejection at either level. This does not mean that it should be possible to challenge the decision made after escalation.]

8.5 8.14 In addition to the oath required by section 1-7-108(1), C.R.S., a watcher must affirm that he or she will not:

8.5.1 8.14.1 Attempt to determine how any elector voted ~~or review confidential voter information;~~

8.5.2 8.14.1 Disclose or record any confidential voter information that he or she may observe; or

8.5.3 8.14.1 Disclose any results before the polls are closed.

8.6 8.15 A watcher may not:

8.6.1 8.15.1 Personally interrupt or disrupt the processing, verification, and counting of any ballots or any other stage of the election.

8.6.2 8.15.2 Write down any ballot numbers or any other PERSONALLY identifying information about the electors.

8.6.3 8.15.3 Touch or handle the official signature cards, ballots, mail ballot envelopes, provisional ballot envelopes, voting or counting machines, or machine components.

8.6.4 8.15.4 Interfere with the orderly conduct of any election process, including issuance of ballots, receiving of ballots, and voting or counting of ballots.

8.6.5 8.15.5 Interact with election judges ~~except for the supervisor judge~~ OTHER THAN A

DESIGNATED WATCHER CONTACT, EXCEPT AS PERMITTED IN RULE 8.

8.6.6 8.15.6 Use a mobile phone or other electronic device to make or receive a call in any polling location or other place election activities are conducted.

8.6.7 8.15.7 Use any electronic device to take or record pictures, video, or audio in any polling location or other place election activities are conducted **UNLESS AT A PUBLIC MEETING PER CORA.**

8.6.8 8.15.8 Attempt to determine how any elector voted.

8.6.9 8.15.9 Disclose or record any confidential voter information as defined in section 24-72-204(8), C.R.S., that he or she may observe.

8.6.10 8.15.10 Disclose any results before the polls have closed.

8.16 IF A WATCHER DISPUTES A DECISION MADE BY AN ELECTION JUDGE OR ALLEGES A DISCREPANCY, THE ELECTION JUDGE MUST ALERT THE DESIGNATED WATCHER CONTACT.

8.17 A WATCHER MAY REQUEST OF THE DESIGNATED WATCHER CONTACT TO ALERT HIM OR HER WHEN EXCEPTIONAL CONDITIONS ARE ENCOUNTERED BY ELECTION JUDGES.

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8.7 8.17 The Secretary of State must approve Official Observers appointed by the federal government. Official observers are subject to Colorado law and these Rules as they apply to Watchers. But an Official Observer is not required to be an eligible elector in the jurisdiction. This Rule does not apply to Official Observers appointed by the United States Department of Justice. Official Observers appointed by the Secretary of State are subject to the rules and regulations as prescribed by the Secretary of State. Official Observers must obtain a letter of authority from the Secretary of State and surrender the letter to the county clerk.

~~8.8 Watchers, Official Observers, and Media Observers may be present during a recount. Watchers, Official Observers, and Media Observers must be qualified and sworn in for a recount as described in Rule 8.1 and are subject to all other provisions related to the recount process. Any political party or candidate involved in the recount or proponents or opponents of an issue or question involved in the recount may appoint one or more watchers to be present at any time during the recount. A candidate who is subject to a recount may appoint himself or herself, or a member of the candidate's family as a watcher at a recount. [Sections 1-7-105 and 1-7-106, C.R.S.]~~

8.9 8.18 Media Observers may witness all election activities. A county clerk may, in his or her discretion, require a media observer to appoint a pool reporter and a pool photographer to represent all media observers. All media observers are subject to the Guidelines established by the Colorado Press Association in conjunction with the Colorado County Clerks' Association and the Secretary of State as outlined below:

Guidelines for Member of the Media Who Observe Election Counts and Recounts (to be distributed to members of the Colorado Press Association):

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters' Association and Colorado Press Association have collaborated to develop the following guidelines and protocols for use when members of the media observe the counting or recounting of ballots. You are strongly encouraged to follow these guidelines to allow meaningful media access while not disrupting the work of county clerks to count ballots or doing anything to compromise the integrity of the election process.

1.If practical, please contact the county clerk’s office prior to coming to observe the counting of ballots. If the county clerk knows you are coming, it will be easier to accommodate your request for a place to observe the count or to interview an election official.

2.At the discretion of the county clerk, a specific viewing area for members of the media and other observers may be available. To the extent practicable, the area will have been designated with sight lines to allow you to observe and take pictures or video of the counting process. If there are insufficient sight lines for you to take the photos or video you need, the county clerk may be able to make arrangements to accommodate your needs.

3.Please observe counting procedures without disrupting the count. Please take pictures or video without the use of supplemental lighting. Do not talk to people participating in counting ballots. There may be workers who ask you not to include their images in your pictures or video. We encourage you to honor those requests if you can reasonably do so.

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4.The Secretary of State’s Election Rules state that if observers leave the area during a recount, they may not reenter without the consent of the county clerk. If you have occasion to leave the area, you may be denied re-admittance.

5.Please do not use the information you see when observing vote counts to report on partial election results. Please do not report anything that could be used to identify the person who casts a particular ballot.

The Colorado State Association of County Clerks and Recorders, Colorado Broadcasters’ Association and Colorado Press Association are all committed to working together to ensure the media has access to election counts and recounts, but that access is afforded in manners that do not disrupt the counts and do nothing to compromise the integrity of the process. Your cooperation in following these standards will help us to meet all these goals.

[Current Rule 8.11 is amended and recodified as the last sentence of Rule 8.1]

Amendments to Rule 10.5.2(e):

(e)The Canvass ENR upload required under Rule 11.10.4 11.10.5.

New Rule 10.8.3, concerning recount generally:

10.8.3FOR RECOUNTS IN LOCAL JURISDICTIONS SHARED BY MORE THAN ONE COUNTY, THE CONTROLLING COUNTY, AS DEFINED IN RULE 4.2.2, MUST COORDINATE THE SCHEDULING AND CONDUCT OF THE RECOUNT WITH EACH COUNTY THAT SHARES THE JURISDICTION.

[Current Rule 10.11 is amended and recodified as New Rule 8.10.2(a)(11)]

[Then where is the text of this new recodified rule 8.10.2(a)(11)? I see only the one word "RECOUNT"]

~~10.11 Watchers and observers during a recount~~

~~10.11.1 The Secretary of State may appoint official observers in any recount.~~

10.11.2 Each candidate, BALLOT ISSUE COMMITTEE REPRESENTATIVE or the ~~candidate's~~ **watcherS THEREOF**, media observers, and official observers, may be present and witness the recount in accordance with Rule 8.

~~10.11.3 The recount board must take the canvass board oath, assisting election judges must take the election judge's oath, and any person observing the recount must take a watcher's oath.~~

[Note part of the watchers and judges oath is inappropriate to a recount- the part about no reporting results until the polls are closed. This has been an issue- there should be no restriction on reporting results during a recount. I suggest that a special oath for recounts be written.]

~~10.11.4 Complaints. A watcher may submit a complaint in writing to the county clerk or designee. Written complaints during a recount will be addressed in accordance with Rule 13.~~

The remainder of Rule 10 is renumbered. Additionally, the following rule cross-references are amended accordingly:

10.13.1 ~~10.12.1~~ In accordance with section 1-10.5-102(3)(b), C.R.S., if there are no discrepancies in the test under Rule ~~10.12~~ 10.11, the recount must be conducted in the same manner as the ballots were counted in the election except as outlined in this Rule. If there are

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unresolvable discrepancies in the test, the recount must be conducted as a hand count under Rule ~~10.13.5~~ 10.12.5.

[The miniscule test in Rule 10.11 is utterly inadequate to determine if the election equipment is capable of achieving the accuracy needed by the recount. This is a serious flaw that must be corrected to avoid incorrect election outcomes during recounts. The risk limiting audit will be helpful in this regard.]

10.13.6 ~~10.12.6~~ For tabulation of DREs, if there are no discrepancies in the test under Rule ~~10.12.3~~ 10.11.3, the county clerk must upload the memory cards.

[Ditto.]

Amendments to Rule 11.2.3 concerning Voting System Inventory:

11.2.3 The designated election official must file the inventory with the Secretary of State no later than ten days before the election for use in the Logic and Accuracy Test and the Post-Election Audit Test.

Amendments to Rule 11.3.2:

11.3.2 Logic and Accuracy Test

(a) The county clerk must conduct the public Logic and Accuracy Test no later than the 18th day before election day.

(b) The county must ensure that the Logic and Accuracy Test is open to the extent allowable in accordance with section 1-7-509(2)(b), C.R.S. The county clerk may limit the number of representatives from each group because of space limitations.

(c) Preparing for the Logic and Accuracy Test

(1) The county must prepare a ~~sufficient number of test ballots that~~

~~represent~~ TEST DECK OF BALLOTS THAT INCLUDES every ballot style and, WHERE APPLICABLE, precinct, ~~if applicable,~~ THE COUNTY TEST DECK

MUST INCLUDE ~~allow for~~ a sufficient number of ballots to mark every vote position for every ~~candidate on every race~~ CONTEST including write-in candidates, allow for situations where a ~~race may~~ CONTEST ~~permit~~ PERMITS an elector to vote for two or more positions, ~~where applicable,~~ and include overvotes and undervotes for each ~~race~~ CONTEST.

(2) The county must ~~create~~ CONVENE a Testing Board of one registered elector from each of the major political parties, ~~if appointed.~~ Testing Board members must be registered to vote in the county.

(3) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member.

(4) Testing Board members must ~~secretly vote~~ MARK their TEST ballots following the instructions printed on the ballots and retain a record of the tally.

[Note that this requirement to mark following the instructions harms the effectiveness of the test and also now makes the test for recount almost useless to achieve the accuracy needed when stray marks and incorrect marks will make the difference in the outcome. Rules now require the recount test to be performed with LAT ballots.]

(5)The Testing Board must test the ballots on each type of voting device used in the election and each type of ballot including audio ballots.

(d)Conducting the Test

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(1)The county and Testing Board must observe the tabulation of all test ballots, compare the tabulation with the previously retained records of the test vote count, and correct any discrepancies before the device is used in the election.

(2)The county must reset the public counter to zero on all devices and present zero tapes to the Testing Board for verification. ~~For any device capable of producing or verifying the trusted build hash value (MD5 or SHA-1) of the firmware or software, the county clerk must verify and document the accuracy of the value for the device.~~

[I don't see why this sentence was removed. The trusted build seems important to confirm at this point in the test.]

(3)The county must make an appropriate number of voting devices available and the Testing Board may witness the programming and/or downloading of memory devices necessary for the test.

(4)The Testing Board and designated election official must count the test ballots as follows, IF APPLICABLE:

(A)Optical Scanners:

(i)The Testing Board must ~~count test ballots on~~ TEST at least one, ~~but not more than five,~~ central count optical ~~scanners~~ SCANNER and at least one optical scanner used at a voter service and polling center, if applicable.

(ii)~~The Testing Board must randomly select the machines to test.~~

[I don't see why this sentence was removed. Will the county test the machine most likely to be accurate?]

(iii)(II) The Testing Board must count the board and county's test ballot batches separately and generate reports to **DETERMINE IF** ~~verify that~~ the machine count is identical to the predetermined tally.

(B)DREs:

~~(i)The Testing Board must count the test ballots on at least one, but not more than five, DREs. TEST AT LEAST ONE DRE.~~

~~(ii)The Testing Board must randomly select the machines to test.~~

[Ditto]

EACH MEMBER OF THE TESTING BOARD MUST SEPARATELY CAST HIS OR HER TEST BALLOTS ON THE SELECTED DRES. EACH TESTING BOARD MEMBER MUST CAST AT LEAST TWO OF HIS OR HER TEST BALLOTS USING THE AUDIO BALLOT PLAYBACK AND ACCESSIBLE INPUT DEVICES.

~~(iii)The Testing Board must identify and test two ballots as~~

~~audio ballots.~~ EACH TESTING BOARD MEMBER MUST EXAMINE THE TABULATION TAPE OR REPORT AND **DETERMINE IF** ~~VERIFY THAT~~ THE DRE TABULATED THE BALLOTS AND

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VOTES CAST IN THE SAME MANNER THAT THE TESTING BOARD MEMBER MANUALLY MARKED HIS OR HER TEST BALLOTS.

~~(iv)The Testing Board must count at least 50 of the board's ballots and a random sampling of at least 25 of the county's test ballots separately and generate reports to verify that the machine count is identical to the predetermined tally. For DREs with VVPAT devices, the Testing Board must manually count the paper record to verify that the pre-determined totals of the Testing Board and county test ballot batches match the VVPAT total.~~

(C)BALLOT MARKING DEVICES (BMDS):

- (I) THE TESTING BOARD MUST TEST AT LEAST ONE BMD.
- (II) EACH MEMBER OF THE TESTING BOARD MUST USE THE SELECTED BMD TO MARK AND PRINT AT LEAST 25

BALLOTS IN THE SAME MANNER THAT THE TESTING BOARD MEMBER MANUALLY MARKED HIS OR HER TEST BALLOTS. EACH TESTING BOARD MEMBER MUST MARK AT LEAST TWO OF HIS OR HER TEST BALLOTS USING THE AUDIO BALLOT PLAYBACK AND ACCESSIBLE INPUT DEVICES.

- (III) A TESTING BOARD MEMBER OR COUNTY ELECTION OFFICIAL MUST SEPARATELY SCAN AND TABULATE THE TEST BALLOTS MARKED WITH AND PRINTED FROM THE BMD ON ONE CENTRAL COUNT OR POLLING LOCATION SCANNER, AND GENERATE A RESULTS REPORT.
- (IV) EACH TESTING BOARD MEMBER MUST VERIFY THAT THE RESULTS REPORT GENERATED FROM THE SCANNER EXACTLY CORRESPONDS TO THE TESTING BOARD MEMBER'S TALLY OF THE VOTES ON THE MANUALLY MARKED PAPER BALLOTS COMPRISING HIS OR HER TEST BALLOTS.

(e) Completing the Test

(1) The county must keep all test materials, when not in use, in a durable, secure box. Each member of the Testing Board must verify the seals and initial the chain-of-custody log maintained by the county clerk. If the records are opened for inspection, at least two election officials must verify the seals and initial the chain-of-custody log.

(2) THE COUNTY MUST UPLOAD THE RESULTS FROM ALL TESTED SCANNERS AND DRES TO THE TABULATION SOFTWARE, AND SAVE THE TABULATION RESULTS FOR THE ENR TEST REQUIRED UNDER RULE 11.10.3.

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(2)(3) After testing, the Testing Board must watch the county reset and seal each voting device.

(3)(4) The Testing Board and the county clerk must sign a written statement attesting to the qualification of each device successfully tested, the number of the seal attached to the voting device at the end of the test, any problems discovered, and any other documentation necessary to provide a full and accurate account of the condition of a given device.

(4)(5) After testing, the ~~testing board~~ TESTING BOARD must watch the county create a backup copy of the election database.

(5)(6) The county may not change the programming of any voting device after completing the logic and accuracy test for an election, except as required to conduct a recount or as authorized by the Secretary of State.

Amendments to Rule 11.10:

11.10 Election Night Reporting (ENR). The county must report election night results for all primary, general, coordinated and recall elections.

11.10.1 A data entry county must program the election to support the exporting of election night results in accordance with the following upload requirements:

[Current Rules 11.10.1(a) through (h) are retained; unaltered]

(I) IN A PRIMARY ELECTION, CONTEST NAMES MUST INCLUDE PARTY ABBREVIATION.

11.10.2 No later than 14 21 days before the election, a county must send PROVIDE the following information to the Secretary of State, ~~at the address in Rule 11.6:~~

(a) A data entry county must email a sample or “zero” file. A DATA ENTRY COUNTY MUST NOT CHANGE OR ALTER THE ELECTION DATABASE OR EXPORT FILE AFTER SUBMITTING ITS ZERO FILE.

(b) A manual entry county must send a list of all ballot content.

11.10.3 NO LATER THAN 14 DAYS BEFORE THE ELECTION, A DATA ENTRY COUNTY MUST UPLOAD

THE LAT RESULTS FILE TO ENR.

11.10.3 11.10.4 ELECTION NIGHT UPLOADS. Manual entry counties must produce preliminary election results and upload them to the ENR system once counting is completed. All other counties must export or produce preliminary election results and upload them to the ENR system a minimum of three times on election night:

(a) After the close of polls but no later than 8:00 p.m.

(b) At or around 9:00 p.m.

(c) The county must indicate that ELECTION NIGHT reporting is complete in the ENR system for election day after the county uploads the last results on election night.

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11.10.4 11.10.5 CANVASS UPLOAD. The county must export or produce official election results, and check the appropriate box in the ENR system to indicate that the canvass upload is complete, not later than close of business of the first business day after the statutory deadline for completing the canvass.

Amendments to Rule 20.3.1 concerning physical locking mechanisms and seals:

20.3.1 DREs, ballot marking devices BMDS, and Judge's Booth Controllers (JBCs)

[The remainder of Rule 20.3.1 is retained; unaltered]

Amendments to Rule 20.6:

~~20.6 Temperature controlled storage. The county must maintain~~ KEEP all components of the voting

system, and ballots, SERVERS, WORKSTATIONS, DRES, OPTICAL SCANNERS, BMDS, VVPAT

RECORDS, AND VIDEO DATA RECORDS in a temperature-controlled storage environment THAT MAINTAINS A MINIMUM TEMPERATURE OF 50 DEGREES FAHRENHEIT AND A MAXIMUM TEMPERATURE OF 90 DEGREES FAHRENHEIT. THE STORAGE ENVIRONMENT MUST BE DRY WITH STORAGE AT LEAST FOUR INCHES ABOVE THE FLOOR. The county must attest to the temperature control settings used with the following components of a voting system. Information submitted to the Secretary of State must indicate the specifies for each type of component, as well as PROVIDE

THE SECRETARY OF STATE WITH A DESCRIPTION OF the specific environment used FOR EACH

TYPE OF COMPONENT., ~~which may include, but is not limited to controlled offices, controlled vaults, and controlled warehouses. The county must maintain the following required temperature settings:~~

~~20.6.1 Servers, and workstations. The county must maintain the temperature so that the maximum temperature at no time exceeds 90 degrees Fahrenheit.~~

~~20.6.2 DREs and optical scanners. The county must maintain the temperature at a minimum of 50 degrees Fahrenheit and a maximum of 90 degrees Fahrenheit.~~

~~20.6.3 VVPAT records, paper ballots, and video data records. In addition to the requirements set forth in Rule 11, the county must maintain a dry environment and a temperature at a minimum of 50 degrees Fahrenheit and a maximum of 90 degrees Fahrenheit, with storage at least four inches above the finished floor, for a period of 25 months following the election.~~

Amendments to Rule 21.4.5(f) concerning voting system functional requirements:

(f)The election management system must ensure that an election setup RECORD may not be changed once ballots are printed and/or election media devices are downloaded without proper authorization and acknowledgement by the application administrative account. The application and database audit transaction logs must accurately reflect the name of the system operator

making the change(s), the date and time of the change(s), and the “old” and “new” values of the change(s).

New Rule 21.4.7(e) concerning ballot definition subsystem requirements:

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(E) THE VOTING SYSTEM VENDOR MAY NOT ADD ANY CAPTION OR ENDORSEMENT TO BALLOT ARTWORK, INCLUDING COPYRIGHT NOTICE OR NAME OF SYSTEM PROVIDER. THE COUNTY MUST HAVE THE ABILITY TO SUPPRESS ANY CAPTIONS AND ENDORSEMENTS NOT AUTHORIZED BY SECTION 1-5-407(1), C.R.S.

Repeal of duplicate Rule 21.4.8 from publication:

~~21.4.8 Trusted Build. The voting system must allow the operating system administrative account to verify that the software installed is the certified software by comparing it to the trusted build or other reference information.~~

Amendments to Rule 21.4.10(g):

(g)All voting systems must meet the following minimum requirements for removable storage media with data controls:

(1)All ~~voting~~ data stored that includes, ballot images, tally data, and cast vote records must be authenticated, ENCRYPTED, and validated.

~~(2)All non-voting data stored must be authenticated, encrypted, and validated.~~

(3)(2) All removable media, upon insertion on server ~~and/or~~ workstations hosting the elections management software, must automatically be scanned by antivirus software.

Amendments to Rule 21.4.11:

21.4.11 Telecommunications requirements

(a)Telecommunications includes all components of the system that transmit data outside of the closed network as defined in this Rule.

(b)All electronic transmissions from a voting system must meet the 2002 Voting System Standards.

~~(c)Modems from remote devices must be programmed to be “dial only” and not receive a call;~~

~~(d) Any modem that fails to meet the requirements of this Rule may not be used by any voting system.~~

(e)(C) Line of sight infrared technology may only be used in a closed environment where the transmission and reception is shielded from external infrared signals and can only accept infrared signals generated from within the system.

(f)(D) All systems that transmit data over public telecommunications networks must maintain an audit trail when election results are transmitted.

(g)(E) Voting systems that transmit data through any telecommunications medium must be able to recover, either automatically or with manual intervention, from

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incomplete or failed transmission sessions and resume transmissions when telecommunications are reestablished.

(1) Recovery of transmissions must include notations of the interrupted transmission session and the resumed transmission session in the system and application transaction logs.

(2) Failure and recovery of transmissions must not cause any error in data transmitted from the voter service and polling centers to the central election site during a recovered transmission session.

Amendments to Rule 21.4.12(b)(1) concerning VVPAT component requirements:

(1) A paper audit trail writer or printer that must be attached, built into or used in conjunction with the DRE OR BMD, and must duplicate a voter's selections from the DRE OR BMD onto a paper record;

Amendments to Rule 21.4.12(c)(7) concerning VVPAT functional requirements:

(7) Upon spoiling, the voter must be able to modify and verify selections on the DRE OR BMD without having to reselect all of his or her choices.

Amendments to Rule 21.4.12(d)(3) concerning VVPAT design requirements:

(3) Allow each voter to verify his or her vote on a paper record in the same language that they voted in on the DRE OR BMD.

Amendments to Rule 21.4.13(l) through (r) concerning documentation requirements:

~~(l) The voting system provider must publish and specify processing standards for each component of the voting system as part of the documentation required for certification.~~

(m)(L) For the purpose of evaluating software, the voting system provider must provide detailed information as to the type of hardware required to execute the software.

(n)(M) The documentation supplied by the voting system must include a statement of all requirements and restrictions regarding environmental protection, electrical

service, telecommunications service and any other facility or resource required for the installation, operation and storage of the voting system.

(o)(N) The voting system provider must provide any available data on problems caused for persons who experience epileptic seizures due to the DRE voting device's screen refresh rate.

(p)(O) The voting system provider must deliver to the Secretary of State documentation detailing estimated time of battery operation for each type of device submitted for certification, assuming continuous use of the devices by voters during an interruption of normal electrical power.

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(q) (P) The voting system provider must deliver to the Secretary of State documentation specifying the steps and times required for charging batteries for each type of device submitted for certification.

(r) (Q) The voting system provider must submit documentation containing a list of minimum services and executables required to run the election management system.

Amendments to Rule 21.5.2(e)(2):

(2) Polling location / DRE OR BMD = 500;

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