

**Rule 7.5.10 [dissociate SCORE batches from batches before tabulation] –**

ESRC writes:

*“Counties strongly oppose this change.*

*It is critical for counties to keep batch association through tabulation in preparation for, and through, canvass. Also, in the case of a recount, batch association is necessary for reconciliation.*

*Batch association also allows counties to pull envelopes post-election for cases submitted to the District Attorney's office.”*

Kyle Rulli, Douglas County writes:

*“Douglas County is in strong opposition to the changes to Rule 7.5.10, and in agreeance with others who have submitted comments. We depend on the original version of this rule to our internal operation, and the proposed version would hinder our ability to conduct the extremely accurate operations that we do year in and year out.”*

Chuck Broerman, El Paso County writes:

*“We would like to see Rule 7.5.10 go unchanged. It is important to allow a counting batch and SCORE batch number to be tied together until final election certification because it allows us to resolve a discrepancy with a batch of ballots should one occur. If a batch of ballots can't be tied back to the group of envelopes those ballots came from, a county has no way to attempt to resolve a balancing situation. Even if a county uses ballot stubs, there is no way to tie a ballot back to a person once that ballot has gone through counting, because the stub must be removed before counting, so voter privacy is not at risk here.”*

(Unfortunately voter privacy and public access to the RLA are at risk here, nothing to do with the removal of the stub. Access to CVR amplifies an existing risk. HB)

Angela Myers, Larimer County writes:

*“Disassociating counting batches from any SCORE batch numbers will be detrimental to canvass, recount, Risk Limiting Audit, etc. The batch number “shuffle” needs to occur after the deadline to request a Recount.”*

(Shuffling batch numbers and batch contents prior to tabulation need not be detrimental to canvass, and will not be detrimental to recount or RLA. HB)

Dan Volkosh, Denver County writes:

*“The Division strongly agrees with ESRC's comments and would like the Secretary to keep the original timeline of performing this function ‘no later than the final certification of the abstract of votes cast.’”*

The draft rule is a great improvement and will lead to better integrity. It need not decrease the accountability of election in Colorado. Cases forwarded to the DA related to individual ballot packets can be supported with evidence that is on envelopes, identified in envelope batches in SCORE that have no need to correspond to tabulation batches. Collections of those batches in containers can be kept at constant or accounted for quantities throughout the election without equating envelope batches with tabulation batches whose batch numbers are encoded into CVRs and scanned ballot image file names. When envelope batches are referenced even indirectly on CVRs, officials are needlessly providing a means to identify voters with tabulated ballots by addressing the corresponding envelope batch.

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

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

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

The risks of maintaining batch equality from envelope to tabulation are probably not sufficiently understood, nor are the benefits of full separation of envelope-related voter identity and ballot anonymity needed for publicly verifiable audits. The importance of facing these risks and remedying them in advance, prior to tabulation, multiplies with the availability of the CVR.

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

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

Re-batching needed to best conform to the draft rule will protect ballot anonymity and voter privacy by eliminating association of envelope batches to tabulation batches. It will pave the way for public access to all public election records- including ballots, scans and CVRs.

Removal of batch identity after tabulation only protects paper ballots and not the scans and not the CVRs.

A best practice in accordance with the draft rule can easily be expressed as a series of steps:

- 1) Target envelope batch sizes and target tabulation batch sizes are planned such that they are significantly different and not multiples of each other.
- 2) Envelopes are batched and numbered in SCORE and these batches are accumulated into collections as they proceed toward tabulation, preferably in a single container per collection. Envelope batch accounting is done (page counts of batches, SCORE batch numbers, etc.). Envelope/voterID related counts are recorded and compared to envelope batches and discrepancies resolved. Collection accounting is also done by summing the batch page counts to produce the total page count within the collection container and recorded on a collection accounting sheet attached to the container. This becomes an accounting log for the container/collection.
- 3) Such collections ideally (preferably by rule) contain a total ballot page count of at least 5 (or arguably, per CRS 24-72-205.5, 10) times the number of styles found within. Existing smaller collections may be merged to reach this threshold.
- 4) Sorting by style prior to batching can be used to reduce the number of styles contained and reduce the allowed minimum size of each collection. Unique styles if encountered may be moved to or swapped with other collections to join other instances of same style.
- 5) Prior to tabulation, without changing the content of the collection, and preferably without changing the contents of a single container, batch separators within each such collection are removed. Batch level accounting for the collection is removed leaving collection sums (calculated from the previous batch totals) recorded and attached.
- 6) Handfuls of ballots within the container/collection smaller than envelope batch size are moved into a different location within the container (shuffled into groups, minimally) to jumble any order of batch or batch definition from the envelope batch structure without changing the aggregate contents of the collection.
- 7) New batch separators may be inserted into the collection at approximate tabulation batch intervals. Batch sizes of the tabulation batches need not be uniform.
- 8) The ballot manifest is created by counting by hand or by hand plus machine the newly defined tabulation batches, naming/numbering them, and recording the page count onto the new batch separator cards.
- 9) Upon scanning, the tabulator assigns a batch number to each tabulation batch that is also manually recorded on the batch separator card before the ballots are returned to a same size container for the collection.
- 10) Manifest batch page counts and tabulator batch page counts are compared and discrepancies resolved at the scanner. These are batches that relate only to tabulation, not envelopes.
- 11) The manifest batch number and tabulator batch number and associated page counts are

recorded on the associated separator card and signed off by election judges.

12) The manifest page counts and tabulator page counts for each batch are summed by election judges and recorded on the accounting log for the container/collection and compared to the container/collection page count from step 2.

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

-end of procedure-

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

Douglas County reported on ENR from 2016 General 160782 total votes counted and 192489 ballots cast. According to Kyle Rulli (comments of 7/17/2017) those ballots were in about 2,000 batches and 200 boxes. This suggests an average batch size of almost 100 and an average box contents of almost 1000 ballots. Douglas County has 155 precincts and likely additional styles due to splits. If Douglas County has 200 styles, a proposed metric of 5 ballots in a collection per style would match the existing Douglas County box size.

If Douglas County were to treat each box as a collection of ballots for which the total count of ballots remains the same throughout the election, and shuffled the batch separation within each of those 200 boxes before tabulation, Douglas County would accommodate the draft rule and also observe a best practice to protect voter privacy in all ballots that are public records, including scanned ballot images as well as the Cast Vote Records that will be observed by the public during the audit.

With the state adopting a very new and different voting system this year, there is no better time to revise and improve the means for protecting voter privacy through ballot anonymity than now. Without this step, public access to election records even for purposes of audit may be placed at risk. Please, staff at the SOS, stand up to the reticence of the counties to revise their processes and encourage them by rule to adopt the correct and best practice in handling batch accounting.

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