

Proposed Election Rules Markup as of 2/27/2018

Recent contributors of comments: Harvie Branscomb (HB) and Philip Stark (PS)

This markup is associated with two other posted rule comments:

http://www.sos.state.co.us/pubs/rule_making/written_comments/2018/20180223BranscombEtAl.pdf

http://www.sos.state.co.us/pubs/rule_making/written_comments/2018/20180223Branscomb.pdf

red highlighter over ~~striketrough~~ is deletion; insertions are underlined

Preliminary Draft of Proposed Rules

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

January 31, 2018

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the March 2, 2018 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **February 23, 2018**.²

Please note the following formatting key:

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

Amendments to 8 CCR 1505-1 follow:

Amendments to Rule 7.2.16 concerning mail ballot instructions:

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2017). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2017). "[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing."

- 7.2.16 Each mail ballot return envelope and mail ballot instruction for an unaffiliated voter WHO HAS NOT DECLARED A PREFERENCE in a primary election must include a statement instructing the voter to return only one ballot.

Amendments to Rule 7.5.4 concerning drop-off locations:

- 7.5.4 The county clerk must arrange for the collection of ballots by bipartisan teams of election judges OR STAFF from all drop-off locations and receive them into SCORE:

Amendments to Rule 10.4; cross-reference update:

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

Amendments to Rule 10.9 concerning recount:

(No changes to Rule 10.9.1)

- 10.9.2 ~~A COUNTY THAT HAS SUCCESSFULLY COMPLETED A COMPARISON AUDIT OF A CONTEST THAT RESULTED IN A FULL HAND COUNT OF ONE OR MORE CONTESTS UNDER RULE 25.2, NEED NOT RE-SCAN OR REINTERPRET BALLOTS DURING A RECOUNT OF ANY CONTESTS THAT WERE FULLY HAND-COUNTED THAT CONTEST. BUT MUST RE-ADJUDICATE BALLOT IMAGES FOR VOTER INTENT IN ACCORDANCE WITH RULE 10.13.3~~

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

- ~~10.9.3~~-10.9.4 If there is a recount in a local jurisdiction whose borders encompass area in 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.

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

Amendments to Rule 10.12 concerning testing recount equipment:

Commented [HB1]: Dominion scans may not be all present, may not reflect the contents of the paper (red, etc.) or a batch of ballots may have been double scanned while another was missed. Going to the paper is an essential element for election accuracy and that is why the RLA may result in a hand count. The RLA of a contest does not validate the images of another contest, and particularly not for purposes of a recount where very high accuracy is required.

Commented [HB2]: The presumed losing candidates should not have the ability to deny the public the statutory right to a reassessment of the outcome with higher accuracy methods, suited to a very narrow victory margin.

10.12 Testing recount equipment

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

10.12.2 ~~The~~ **BEFORE** THE COUNTY RE-SCANS BALLOTS DURING THE RECOUNT, THE county clerk must test all ~~optical~~ BALLOT scanners ~~and software~~ that will be used ~~to tabulate votes in the recount~~. The purpose of the test is to ensure that the ~~tabulation machines are counting properly~~ VOTING SYSTEM ~~ACCURATELY~~ TABULATES VOTES IN THE RECOUNTED CONTEST WITH SUFFICIENT ACCURACY TO DETERMINE THE CORRECT ELECTORAL OUTCOME.

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

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

(2) In a requested recount, the person requesting the recount may mark up to ~~25~~ **10** ~~50~~ ballots. Any other candidate in the ~~race~~ CONTEST, OR PERSON OR ORGANIZATION WHO COULD HAVE REQUESTED THE RECOUNT, may also mark up to ~~50~~ **25** ~~10~~ ballots. ~~The canvass board must randomly select ballots from the county's test deck for the Public Logic and Accuracy test to ensure the minimum number of test ballots required by this Rule.~~

(3) IN A MANDATORY RECOUNT, AT LEAST TWO CANVASS BOARD MEMBERS OF DIFFERENT PARTY AFFILIATIONS MUST EACH MARK AN ADDITIONAL ~~50~~ **10** BALLOTS CONTAINING THE RECOUNTED CONTEST.

Commented [HB3]: "Before" is important here.

Commented [HB4]: Of course the test should be made including voted ballots- and preferably ones that might cause a problem with Dominion- red marks, light marks, marks outside of the target area.

Commented [PS5]: I agree with Harvie

Commented [HB6]: This will make IRV impossible to test.

Commented [7]: Under votes and over votes as well as marginal marks are important to test the adjudication threshold although the requirement may be satisfied by the previous edit to 10.12.2 (a) if it is accepted.

Commented [HB8]: 10 ballots and one contest is simply far too few. This should be a test of accuracy at a resolution of a few votes in the entire election.

Commented [PS9]: Would be nice to key this to the diluted margin.

Commented [PS10]: Again, it this were keyed to the margin, we could learn more.

- (b) ~~Sworn judges~~ A BIPARTISAN TEAM OF ELECTION JUDGES or staff must hand tally the RECOUNTED CONTEST ON ~~EACH OF~~ THE test ballots ~~for comparison to the tabulation results~~ AND VERIFY THAT ~~EACH~~ THE HAND TALLY MATCHES THE TABULATION OF THE VOTING SYSTEM'S ~~TABULATION~~ CAST VOTE RECORDS.

Commented [HB11]: Since we have the CVR, of course the test is far more accurate if it is a ballot level comparison. (Ballot polling counties ought to follow the original text).

- (c) The test is limited to the races or measures that are recounted.

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

Commented [PS12]: If this is supposed to give evidence that the outcome is correct, the sample size should depend on the number of votes cast on each machine, the margin, etc.

- (a) ~~Sworn judges~~ A BIPARTISAN TEAM OF ELECTION JUDGES or staff must manually verify the results OF THE RECOUNTED CONTEST on the machines selected for the test AND VERIFY THAT THE TALLY MATCHES THE VVPAT RECORD.

- (b) The test is limited to the race or measure that is recounted.

Amendments to Rule 10.13.3 concerning counting ballots during recount:

10.13.3 Ballots must be reviewed for voter intent using the standards in Rule 18.

- (a) Every ~~over-vote or under-vote~~ OVERVOTE, UNDERVOTE, BLANK VOTE, AMBIGUOUS MARK, AND WRITE-IN VOTE in the race(s) or measure(s) subject to the recount must be reviewed ~~for voter intent under Rule 18~~ IN ACCORDANCE WITH THE VOTER INTENT GUIDE.
- (b) The judges conducting the voter intent review may resolve the intent differently than the judges in the election.

Commented [13]: Reference to the Voter Intent Guide in place of a rule takes this most crucial protocol for interpreting voter intent out of the realm of rulemaking and into the realm of non-public policymaking at the SOS. The document that controls verification at the essence of tabulation ought to be subject to public oversight and participation.

Amendments to Rule 20.9.3 concerning transportation of ballot boxes:

20.9.3 Required procedures for transportation of ballot boxes:

- (a) Election officials must seal all ballot boxes that contain voted ballots so that no person can access the ballots without breaking a seal in a way that the jurisdiction's procedures will almost certainly detect. At a minimum, tThe election officials must record all seals in the chain-of-custody log and two election judges must verify, and indicate by signing and dating the log, that the required seals are intact.
- (b) ~~Two election officials~~ A BIPARTISAN TEAM OF ELECTION JUDGES OR STAFF must accompany all ballot boxes that contain voted ballots at all times, except when the ballot box is located in an access-controlled vault or other secure physical location.
- (c) The ballot box exchange requirements of section 1-7-305, C.R.S., are met if a chain-in-custody log is completed for each ballot box.
- (d) If a seal is broken or chain-of-custody is unverifiable, the county clerk must investigate, document his or her findings, and report the incident to the Secretary of State, as appropriate.

Amendments to Rule 25.1 concerning post-election audits:

25.1 Definitions. As used in this rule, unless stated otherwise:

(No changes to Rule 25.1.1)

~~25.1.2~~ “Audited contest” means a contest selected by the Secretary of State for a risk limiting audit. ~~The audited contest determines the number of ballot cards that must be examined and verified during the RLA.~~

~~25.1.3~~ 25.1.2 “Ballot cards” means the individual pieces of paper that together constitute a single ballot containing all of the contests an elector is eligible to vote. For example, a ballot consisting of a single piece of paper with content printed on the front or the front and back contains one ballot card, and a ballot consisting of two pieces of paper with content printed on the front and back of the first page and the front or front and back of the second page contains two ballot cards. BALLOT CARDS SHALL NOT BE KEPT ADJACENT OR RELATED TO EACH OTHER AFTER REMOVAL, IF APPLICABLE, FROM THE RETURN ENVELOPE.

~~25.1.4~~ 25.1.3 “Ballot polling audit” means a type of risk-limiting audit in which the audit board examines and reports to the Secretary of State voter markings on randomly selected ballot cards seeking strong evidence that the reported tabulation outcome is correct.

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

Commented [HB14]: At one time, scanners were located at the point of casting the ballot, and therefore the voting system reported number of ballots cast. With a two-or-more card ballot, this becomes complex, due for example to the possibility only the second card is cast. With remote voting, none of this makes sense. The number of cast ballots in a two-card election must be counted at eligibility-check time rather than at central count. The central count only needs to know how many of each style (a.k.a. card) is scanned. The first card may be one style while the second is another. There is no advantage to keeping these associated with each other. In fact there are disadvantages including voter privacy risk due to recognizing the combined style of the two cards when kept together, or labeled as one style.

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

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

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

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

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

25.1.10 “TARGET CONTEST” MEANS A CONTEST **FOR WHICH THERE IS MORE THAN ONE CHOICE ON THE BALLOT** SELECTED BY THE SECRETARY OF STATE FOR A RISK-LIMITING AUDIT. THE TARGETED CONTESTS DETERMINE THE NUMBER OF BALLOT CARDS THAT MUST BE EXAMINED **AND VERIFIED** DURING THE RLA.

Commented [HB15]: This will avoid any wasted time thinking about auditing a contest for which there is no opposition.

Commented [PS16]: What does “verified” mean?

Amendments to Rule 25.2 concerning risk-limiting audits:

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

25.2.2 Preparing for the audit

- (c) Ballot manifest. The county must maintain an accurate ballot manifest in a form approved by the Secretary of State AND INDEPENDENT OF THE VOTING SYSTEM.
- (f) Comparison audit uploads. No later than ~~44:59~~ 5:00 p.m. MT on the ninth day~~e~~ after election day, each county conducting a comparison audit must upload:
 - (1) Its verified and hashed ballot manifest, and the ballot manifest’s hash value, to the ~~RLA tool~~ SECRETARY OF STATE’S OFFICE;
 - (2) Its verified and hashed CVR export, and the CVR export’s hash value, to the ~~RLA tool~~ SECRETARY OF STATE’S OFFICE; and
 - (3) Its RLA tabulation results export to the Secretary of State’s election night reporting system.
- (g) Ballot-polling audit uploads. No later than ~~44:59~~ 5:00 p.m. MT on the ninth day after election day, each county conducting a ballot-polling audit must submit or upload:

- (1) Its verified and hashed ballot manifest, and the ballot manifest's hash value, ~~by email~~ to the Secretary of State's office;
- (2) Its cumulative tabulation report, ~~by email~~ to the Secretary of State's office; and
- (3) Its RLA tabulation results export to the Secretary of State's election night reporting system.

Commented [17]: No need to enforce email when secure ballot return is available for use, as an alternative to FTP.

Commented [18]: Same reason- to allow a more secure method to be used.

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

Commented [HB19]: Statewide contests are very easy to audit until one of them is very close. Once the narrowest margin contest is audited, other statewide contests will likely take no extra work. The need to audit federal contests (congressional) must be addressed here- they are more difficult but they are very important. Probably all statewide and federal contests should be targeted for audit in November.

Commented [PS20]: It would be nice if this grew with time, so that eventually there's a substantial chance that any particular contest is audited.

Commented [HB21]: Leaving out federal contests makes the primary easier, temporarily, as part of the ramp up of the RLA over time.

- (1) The closeness of the reported tabulation outcome of the contests ~~[CONSIDERING THAT SELECTION OF CLOSER MARGIN CONTESTS WILL RESULT IN SAMPLING THAT ALLOWS MEASUREMENT OF RISK AND LIKELY ACHIEVEMENT OF RISK LIMIT FOR WIDER MARGIN CONTESTS FOR THE SAME DISTRICT];~~
 - (2) The geographical scope of the contests;
 - (3) The number of ballots counted in the contests;
 - (4) Any cause for concern regarding the accuracy of the reported tabulation outcome of the contests;
 - (5) ~~Any benefits that may result from opportunistically auditing MEASURING THE RISK OF~~ certain contests; and
 - (6) ~~The ability of the county clerks to complete the audit before the canvass deadline.~~
- (j) Number of ballot cards to audit. The Secretary of State will determine the number of ballot cards to audit to satisfy the risk limit for the ~~audited~~-TARGET contests based on the ballot manifests submitted by the counties. The number of ballot cards to audit will be determined according to the formulas and protocols published by Mark Lindeman and Philip B. Stark in *A Gentle Introduction to Risk-limiting Audits*, as applied in Philip Stark's *Tools for Comparison Risk-Limiting Election Audits*, and *Tools for Ballot-Polling Risk-Limiting Election Audits*, BUT EACH COUNTY CONDUCTING AN ELECTION MUST AUDIT A MINIMUM OF ~~40 40~~ BALLOTS. ~~These materials~~-THE PUBLICATIONS CITED IN THIS RULE are incorporated by reference in the election rules and do not include later amendments or editions of the incorporated material. The following materials incorporated by reference are posted on the Secretary of State website and available for review by the public during regular business hours at the Colorado Secretary of State's office:
- (1) Mark Lindeman and Philip B. Stark, *A Gentle Introduction to Risk-limiting Audits*, IEEE Security and Privacy, Special Issue on Electronic Voting, (Mar. 16, 2012), at <https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html>.
 - (2) Philip B. Stark, *Tools for Comparison Risk-Limiting Election Audits*, (Feb. 26, 2017), at <https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html>.
 - (3) Philip B. Stark, *Tools for Ballot-Polling Risk-Limiting Election Audits*, (Feb. 16, 2017), at <https://www.sos.state.co.us/pubs/elections/VotingSystems/riskAuditResources.html>.

Commented [HB22]: This is included as an explanatory remark- not needed to be included in the rule. The narrowest margin contest in a district should be the one selected for audit when selection is being designed.

Commented [HB23]: Contests not subject to target are available for risk measurement as long as the data for all contests with opposition are collected from the sampled ballots.

Commented [HB24]: This is a problematic criterion. The contests most needy of audit will be the close contests. The audit isn't replaced by the recount, and contests that miss the recount threshold may be subject to error that affect the outcome and that the RLA can correct. We must be ready to bite the bullet and do the work to take care of narrow victory margin contests even if it means delaying the certification.

Commented [HB25]: The minimum makes sense to be sure each county is prepared to audit and takes it seriously. However, the constant minimum sample must be treated in the sample size calculations for multi county contests.

Commented [PS26]: Might be nice to allow bug-fixes, etc. Same comment applies to the ballot-polling audit software.

25.2.3 Conducting the audit

- (a) The audit board must locate and retrieve, or observe the location and retrieval by county election staff, each randomly selected ballot card or VVPAT record from the appropriate storage container SHORTLY PRIOR TO AND GENERALLY ON THE SAME DAY THE AUDIT BOARD CAPTURES VOTER INTENT FROM THE SAME BALLOTS. The audit board must verify that the seals on the appropriate storage containers are those recorded on the applicable chain-of-custody logs.
- (1) In counties conducting comparison audits, the audit board must examine each randomly selected ballot card and report the voter markings or choices in all contests using the RLA Tool or other means specified by the Secretary of State. ~~If supported by the county's voting system, the~~ THE audit board may refer to the digital image of the audited ballot card captured by the voting system ONLY in order to confirm ~~that the board~~ retrieved the correct ballot card randomly selected for audit AND NOT TO INFLUENCE THE INTERPRETATION OF VOTER INTENT. If the scanned ballot card was duplicated prior to tabulation, the audit board must retrieve, compare, and report the markings on the original ballot card rather than on the duplicated ballot card. The audit board must complete its reports of all ballot cards randomly selected for audit no later than 5:00 p.m. MT one business day before the canvass deadline.

Commented [HB27]: This language is intended to prevent preparation for audit interpretation based on previous access to the ballots to be sampled. The opening of the containers and the actual interpretation of ballots ought to be done without a long period in between.

Commented [HB28]: This language should be self-explanatory- the audit is ineffective if it allows an incorrect earlier interpretation to be accepted by the auditors.

- (2) In counties conducting ballot polling audits, the audit board must examine and report the voter markings or choices in ~~only~~ ALL the ~~audited TARGET~~ contests on each randomly selected ballot card in a form approved by the Secretary of State. ~~If supported by the county's voting system, the TIA audit board may refer to the digital image of the audited ballot card captured by the voting system in order to confirm it retrieved the correct ballot card.~~ If a randomly selected ballot card was duplicated prior to tabulation, the audit board must retrieve, ~~compare,~~ and report the voter markings ~~in the audited TARGET contest~~ from the original ballot card rather than the duplicated ballot card. The audit board must complete its reports of all ballot cards randomly selected for audit no later than 5:00 p.m. MT one business day before the canvass deadline.
- (b) The audit board must interpret voter markings on ballot cards selected for audit in accordance with the Secretary of State's Voter Intent Guide. If the audit board members cannot unanimously agree on the voter's intent, they must indicate that in the appropriate contest in the RLA tool's audit board user interface, OR ~~OTHER~~ THE BALLOT POLLING AUDIT FORM APPROVED BY THE SECRETARY OF STATE.

Commented [29]: This makes "opportunistic auditing" (risk measurement) possible with ballot polling and it prepares the ballot polling counties for the comparison RLA procedure.

Commented [30]: This is likely to produce a leak of original voter intent to influence the capture of voter intent for the audit- and the remaining ballot polling counties may have access to ballot pictures/images.

Commented [31]: No comparison is involved in ballot polling

Commented [32]: Gives freedom to capture voter intent by other means than the RLA Tool, including for ballot polling audit and comparison audit.

(c) To the extent applicable, the Secretary of State will compare the audit board's reports of the audited ballot cards to the corresponding CVRs and post the results of the comparison on the Audit Center. The RLA will continue until the risk limit for the ~~audited~~ TARGET contests is met ~~including or until~~ a full hand count. ~~IF APPLICABLE, IS COMPLETED results.~~ If the county audit reports reflect that the risk limit has not been MET ~~satisfied~~ in an ~~audited~~ A TARGET contest, the Secretary of State will ~~will~~ **INDICATE THE NEED FOR ADDITIONAL** randomly select ~~additional~~ ballots ~~for~~ **TO BE** audit**ED**.

Commented [33]: Completion of the hand count is a form of meeting the risk limit, not an alternative.

Commented [HB34]: The original language isn't ideal. Ideally the SOS will have used the PRNG to create a long list of samples that the county will have access to such that it can audit ahead of what is required. It is not necessarily the case that additional random selection is needed from the SOS – and instead perhaps only a requirement to audit further down the list.

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

(E) THE SECRETARY OF STATE WILL REVIEW THE AUDIT BOARD'S REPORT AND MAY DIRECT THE COUNTY CLERK TO CONDUCT ADDITIONAL AUDIT ROUNDS ~~—A RANDOM AUDIT, INCLUDING A FULL HAND COUNT, OR ADDITIONAL AUDITING~~ ~~OTHER ACTION~~. THE SECRETARY OF STATE MAY INSTRUCT THE COUNTY TO DELAY CANVASS UNTIL IT COMPLETES ANY ADDITIONAL AUDIT OR OTHER ACTION.

Commented [HB35]: I think there is too much flexibility here to throw out the RLA and substitute something different. The full hand count is part of the RLA and can be considered one of the rounds.

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

Commented [HB36]: This language is confusing or conflating Colorado Open Records Law with election requirements for transparency. There is a replacement paragraph proposed below. For purposes of election integrity and public verification of the RLA, the transparency of the CVR record is needed prior to certification.

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

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

~~25.2.5~~ 25.2.6 The Secretary of State may, by order, alter any of the requirements outlined in Rule 25.2 UNTIL NOVEMBER 5, 2018.

Commented [HB37]: This is transparency language that the rule ought to include as soon as it is practical to implement.

Commented [HB38]: The blanket permission to change everything without rulemaking should sunset.