



COLORADO COUNTY CLERKS ASSOCIATION

Colorado County Clerks Association Comments on January 31, 2023 Proposed Election Rules

These comments are presented in order of the proposed rules and combine the observations and concerns from multiple counties in the CCCA.

Proposed Rule 10.5.1(i) – CCCA suggests amending the proposed new rule to specify that only the ranked voting results reports required in subsections (I) and (III) of C.R.S. 1-7-1003(7)(a) must be provided to the canvass board. Three different reports are listed in 1003(7)(a):

- (7)(a) For an election conducted using a ranked voting method, the designated election official shall issue the following reports:
 - I. A summary report listing the total number of votes for each candidate in each round;
 - II. A ballot image report listing for each ballot the order in which the elector ranked the candidates; and
 - III. A comprehensive report listing the results in the summary report by precinct or ballot style, as required or permitted by section 1-7.5.208 (3)(a)

The report listed in subsection (II) we understand to be the cast vote record per Rule 21.11.1(b). Due state requirements this report is required to be redacted to protect voter anonymity (Rule 26.8.1) and the deadline for publishing that redacted report is after canvass for plurality voting contests (Rule 25.2.4). As rule allows for ranked choice voting contests to be on the same ballot card as plurality voting contests, we are concerned that setting a different timeline and standard for redacting the CVR for ranked choice contests might not be possible to meet. The summary reports in subsections (I) and (III) do not raise these concerns and can be produced at canvass.

Proposed Changes to Rule 11.3.2(c) – CCCA has a number of concerns and suggestions regarding the proposed adjustments to test deck rules for the Logic and Accuracy Testing when instant runoff voting contests appear on a ballot (with or without plurality voting contests).

- *Proposed 11.3.2(c)(1)(C) & (D)* – Currently Automatic test deck tool in the voting system does not support write-in candidates and leaving contests unvoted on the same ballot. If these changes remain, programming would be required and updates installed to allow compliance.
- *Proposed 11.3.2(c)(2) – requirement of separate test decks* – CCCA recommends amendments to these proposed sections to make the separation of test decks for instant runoff voting from the plurality voting contests **optional** for counties if they choose to do so for operational reasons. As written, these proposed requirements have a large potential impact on the size of test decks and the scope, length and costs of logic and accuracy testing. As rule allows for combining instant runoff contests with plurality voting contests on the same ballot card, the requirement for separate test decks and extra ballots hand marked by testing boards would not be reflective of the actual voting or tabulation conditions in the election. In addition, it is extra burdensome to require separate test decks for each instant runoff voting contest. A county could have 6 IRV contests and this proposed rule would add 60 ballots to each testing board member’s deck to hand mark. If there is indeed some benefits to be gained in operations by separating all these test decks, a county could choose to do so. However, imposing the burdens and costs of this proposed extended testing without any concrete benefit is overly proscriptive.

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- *Proposed 11.3.2(c)(6) – Testing Board marking instructions* – CCCA suggests amending this proposed rule to remove the particular directions to the Testing Board. Prior proposed rule 11.3.2(c)(2)(C) already requires the test deck to be marked so no candidate receives a majority in first round. If this proposed requirement were to remain, it removes the randomness of the testing board member’s ballots. Instead of just letting the testing board member randomly choose how to fill out each ballot, the county will have to dictate how each testing board member fills out each ballot to ensure that the test election goes to an instant runoff. This is contrary to the purpose of testing board hand-marked ballots. This instead would be a situation where the county would be seen as dictating the outcome of testing upon penalty of dismissing a testing board member.

Below are some proposed edits to this proposed Rule 11.3.2(c) which would make the separate test deck decision optional but also ensure that all contests in the county test deck are properly tested. Current Rules are in black standard font, proposed rule changes are in **BLACK CAPITAL LETTERS**, proposed changes from CCCA are in **RED CAPITAL LETTERS**:

(1) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE PLURALITY VOTING CONTEST MUST PREPARE A TEST DECK OF BALLOTS THAT:

(A) INCLUDES EVERY BALLOT STYLE AND, WHERE APPLICABLE, PRECINCT;

(B) INCLUDES A SUFFICIENT NUMBER OF BALLOTS TO MARK EVERY VOTE POSITION FOR EVERY CONTEST, INCLUDING WRITE-IN CANDIDATES, CONTESTS THAT PERMIT AN ELECTOR TO VOTE FOR TWO OR MORE POSITIONS, AND OVERVOTES AND UNDERVOTES FOR EACH CONTEST;

(C) INCLUDES AT LEAST ONE WRITE-IN VOTE FOR EACH QUALIFIED WRITE-IN CANDIDATE SO THAT ALL QUALIFIED WRITE-IN CANDIDATE NAMES WILL APPEAR IN THE LAT RESULT UPLOADED TO ENR AS REQUIRED BY RULE 11.9.3; AND

(D) LEAVES UNMARKED THE INSTANT RUNOFF VOTING CONTESTS IN THE PLURALITY VOTING COUNTY TEST DECK, IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS **ONLY IF THE COUNTY IS ELECTING TO UTILIZE A SEPARATE TEST DECK PURSUANT TO 11.3.2(C)(2)**.

(2) A COUNTY THAT IS CONDUCTING AN ELECTION WITH AT LEAST ONE INSTANT RUNOFF VOTING CONTEST ~~MUST PREPARE A SEPARATE COUNTY TEST DECK OF BALLOTS FOR EACH INSTANT RUNOFF VOTING CONTEST THAT IS BEING CONDUCTED. EACH TEST DECK MUST-~~ MAY, AT THEIR DISCRETION, ELECT TO UTILIZE A SEPARATE TEST DECK FOR INSTANT RUN OFF VOTING CONTESTS.

(A) IF A SINGULAR TEST DESK IS UTILIZED FOR INSTANT RUNOFF VOTING CONTESTS, IN ADDITION TO THE REQUIREMENTS IN 11.3.2(C)(1), THE COUNTY TEST DECK MUST ALSO:

(AI) INCLUDE A SUFFICIENT NUMBER OF BALLOTS TO MARK A VOTE POSITION FOR EVERY CANDIDATE IN THE CONTEST IN THE FIRST ROUND OF TABULATION, INCLUDING WRITE-IN CANDIDATES;

(BII) INCLUDE AT LEAST ONE OVERVOTE, AT LEAST ONE SKIPPED RANKING, AND AT LEAST ONE DUPLICATE RANKING;

(CIII) BE MARKED IN SUCH A MANNER SO THAT NO CANDIDATE RECEIVES A MAJORITY OF THE FIRST RANKING VOTES IN THE FIRST ROUND; AND

(DIV) NOT BE MARKED IN A WAY THAT WILL REQUIRE A WINNING CANDIDATE OR LOSING CANDIDATE TO BE DETERMINED BY LOT. ;AND



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(B) IF A SEPARATE TEST DECK IS UTILIZED FOR INSTANT RUNOFF VOTING CONTESTS, IN ADDITION TO THE REQUIREMENTS IN 11.3.2(C)(1) AND (2), THE COUNTY TEST DECK MUST ALSO:

(E) LEAVE UNMARKED THE PLURALITY CONTESTS ~~AND ANY ADDITIONAL INSTANT RUNOFF VOTING CONTESTS IN EACH INSTANT RUNOFF VOTING COUNTY TEST DECK,~~ IF THE BALLOTS COMPRISING THE COUNTY TEST DECK INCLUDE BOTH PLURALITY AND INSTANT RUNOFF VOTING CONTESTS.

(5) The county must provide at least 25 ballots that are clearly marked as test ballots to each Testing Board member. ~~A COUNTY CONDUCTING AN INSTANT RUNOFF VOTING ELECTION MUST ENSURE THAT INSTANT RUNOFF VOTING CONTESTS ARE INCLUDED ON THE TEST BALLOTS.~~ A COUNTY CONDUCTING AN INSTANT RUNOFF VOTING ELECTION ~~AND UTILIZING A SEPARATE TEST DECK FOR INSTANT RUNOFF VOTING CONTESTS~~ MUST PROVIDE AT LEAST 10 ADDITIONAL BALLOTS ~~PER~~ CONTAINING AT LEAST ONE INSTANT RUNOFF VOTING CONTEST TO EACH TESTING BOARD MEMBER TO MARK FOR ~~EACH THE~~ INSTANT RUNOFF VOTING CONTESTS.

(6) Testing Board members must mark their test ballots following the instructions printed on the ballots and retain a record of the tally. ~~TESTING BOARD MEMBERS MUST MARK INSTANT RUNOFF VOTING CONTESTS IN SUCH A MANNER SO THAT NO CANDIDATE WILL RECEIVE A MAJORITY OF VOTES IN THE FIRST ROUND OF TABULATION.~~ A COUNTY CLERK MAY REMOVE A MEMBER OF THE TESTING BOARD FROM THEIR DUTIES IF THAT MEMBER REFUSES TO MARK THEIR BALLOT ACCORDING TO THE INSTRUCTIONS PRINTED ON THE BALLOT ~~OR AS REQUIRED BY THIS RULE.~~

Proposed Changes to Rule 11.3.2(d)(4) – CCCA requests conforming amendments to the proposed rules in subsections (4)(A) and (4)(B) of this rule to the above suggestion of making the separate instant runoff voting test deck optional. Therefore, these proposed rules can similarly add the limiting phrase “if utilizing a separate test deck” to proposed requirements in subsections (4)(A)(iii) and (4)(B)(iii). CCCA also recommends the State look at reviewing and updating the Hardware Diagnostics parameters to account for having to separate instant runoff contests from plurality contests if test decks are going to be required to be tabulated separately when live ballots in the election will be tabulated together.

Proposed Changes to Rule 26.9 – County offices had mixed reactions to the proposed amendments striking most of Rule 26.9 regarding audits for a ranked voting election. Some counties supported the removal of these provisions as duplicative of audit provisions in Rule 25 and providing flexibility for developing tools and methodology for the audit. Other counties would prefer to see more details in a rule for comment and guidance before implementation.