



# Office of the Clerk & Recorder

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Molly Fitzpatrick, Boulder County Clerk & Recorder

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Please find below proposed edits from Boulder County for consideration to SOS Rules relating to election rules. These comments address the proposed rules as published by the SOS on October 31, 2025.

## **General Comments**

Boulder supports the idea that for a cross-county ranked voting election, additional responsibilities will fall to the controlling county. Boulder finds this logical as it needs to fall to a single party and this aligns with other cross-county scenarios.

Boulder also supports the idea of utilizing a to be determined third party software that receives certification from the Secretary's office for tabulation in these cross-county ranked voting scenarios.

Boulder would like to see the rules substantially amended to remove the requirement that this third party software is installed on the Voting System. Boulder offers that this software should be hosted on a cloud-based platform by the Secretary's Office, similar to how Election Night Reporting is hosted.

Boulder believes this is the right approach for several reasons:

- (a) The Secretary's Office already performs this function for all cross-county and statewide races plurality races when they are loaded into Election Night Reporting. This is simply an extension of that service.
- (b) It does not add software to the Voting System eco-system
- (c) It does not require that the controlling county upload a results file from another county into their Voting System eco-system
- (d) Based on our understanding of how our Risk Limiting Audit platform works, controls exist to provide confidence around the integrity of the files uploaded that could be leveraged for this use case (i.e. automated hash checking, secure file transfers)
- (e) It would allow all counties to upload their results each time they are available, reduce manual steps, and reduce the coordination as currently proposed
- (f) It would create infrastructure that could be leveraged should any statewide ranked voting be considered in the future.

Should the Secretary's Office oppose this approach, Boulder would prefer to have the controlling county host the third party software (still cloud-based) which would still achieve many of the above noted benefits.

Notwithstanding the above, Boulder has suggested edits to the rules as proposed as many of these rules should be adopted regardless of the resolution relating to the third party software.

## Proposed Edits

Current SOS rules are in black standard font, SOS proposed rule changes are in **black (or ~~black strikethrough~~)**, proposed changes from Boulder are in **red (or ~~red-strikethrough~~)**:

### **Rule 10.6.1**

(e) For instant runoff voting contests conducted by a county clerk which are within a single county **and the runoff tabulation entity**, the round-by-round tabulation results of each race; and

(f) For instant runoff voting contests conducted by a county clerk which are contained in more than one county **and that is not the runoff tabulation entity**, a report detailing the **first** ranking each candidate received in the county.

#### Reasons for proposed change

We believe that the run-off tabulation entity always needs to include the round-by-round results in their abstract and our edits are intended to make that rule. In a cross-county scenario, these are the only results that are relevant since they require the round-by-round logic applied.

We do agree that a non-controlling county participating in a cross-county instant runoff voting election also needs to report something to their canvass board and we believe (f) is intended to mean only the first ranking. We have added that word for clarity and to align to what is later described in Rule 26 around results reporting.

### **Rule 10.6.2**

(c) For instant runoff voting contests conducted by a county clerk which are contained in more than one county, final, tabulated results of that race **by the controlling county-to be used by the combined canvass board appointed in Rule 10.9.**

#### Reasons for proposed change

Please see suggestions relating to 10.9. This change mirrors Boulder's proposal for the controlling counties Canvass Board to certify the results, and as such, is the only Canvass Board that would need to submit the combined results.

## Rule 10.9 strike entirely and amend 10.3.2 Duties of the Canvass Board

10.3.2 The canvass board's only duties are to:

...

(b) Observe the post-election audit in accordance with section 1-7514(4), C.R.S., and Election Rule 25.2 or 25.3; ~~and~~

(c) Conduct any recount in accordance with section 1-10.5-107, C.R.S., and this Rule-; ~~and~~

**(d) For a Canvass Board of a controlling county that has an instant runoff voting contest contained in more than their own county, review the combined tabulated instant runoff race results to certify a winner of the instant runoff voting contest.**

### Add New Rule (10.5?)

**The Canvass Board of the controlling county that has an instant runoff voting contest contained in more than their own county must meet after the conclusion of all non-controlling counties canvass boards.**

#### Reasons for proposed change

Boulder does not see the need to inject an additional canvass board (of any make-up). The runoff tabulation entity is the entity that, during LAT, will certify that the third party software is tabulating properly. As such, it seems only logical that the Canvass Board for that entity is the Board that is eligible to certify the combined results produced by that software.

While we appreciate this could squeeze a controlling county, however as a county that might be the controlling county in this scenario, this seems to be the most accurate way to complete certification.

We have reviewed 1-7-118(4) and (5) and think that there is basis for rule to clarify this process in this way.

Alternatively, the idea put forth in Jefferson County's comments regarding an acknowledgement or certification process is an idea we could also support for the reasons they outlined.

If considering Jefferson's proposal, we would propose simplifying their proposed amendments to 10.9.2 to only reviewing the compiled results as we don't agree the other points are necessary.

## Rule 10.10.6

Recounts for instant runoff voting contests. If the smallest margin between two candidates in an instant runoff voting contest is less than or equal to one-half of one percent of the votes cast in the contest, then a recount must be held in accordance with section 1-10.5-103, C.R.S. The smallest margin will be determined by calculating the minimum number of votes that would have to be different to change the elimination order. ~~such that the winner in the final round of tabulation would be different.~~

~~(a) The county clerk or designated election official appointed by the municipality holding the ranked voting election must order a recount of an instant runoff voting contest within a single county, following the canvass of results by the county canvass board or designated election official, as applicable.~~

~~(b) Each county clerk must order a recount of an instant runoff voting contest contained in more than one county following canvass of results by the combined canvass board under Rule 10.9, as applicable.~~

### Reasons for proposed change

Boulder does not understand how we would calculate or run scenarios to know if the final round would be different. We think simply performing the margin around “does it change the elimination order in any way” meets the intended purpose of a recount.

(a) and (b) seem superfluous to us as, this is the same rules/logic used in single or cross-county races already, is it not? Also, since we are proposing to drop the additional canvass board, that clarification isn’t needed.

### Additional Consideration

The definition of an interested party in an instant runoff voting contest. We believe, when we read 1-10.5-106 and attempt to apply it to an instant runoff, we would consider the second-place candidate after the final round (regardless of number of rounds) the losing candidate. This could be worth clarifying in rule.

## Amend Rule 11.3.2(c)(2) and Re-write 11.3.3

### (c) Preparing for the Logic and Accuracy Test

(2) **For instant runoff voting contests conducted by a county clerk which are within a single county, the county** ~~A county that is conducting an election with at least one instant runoff voting contest~~ must, for each voting contest:

*No edits to (A) - (C)*

(3) **For instant runoff voting contests conducted by county clerks which are contained in more than one county, all county clerks must meet the requirements of 11.3.2(c)(2)(A) and (B) in their respective test decks.**

### 11.3.3 Logic and accuracy test for multi-jurisdictional ranked voting elections

- (a) **In addition to the requirements in Rule 11.3.2, the runoff tabulation entity must ensure that the compiled tabulated results progress to Round 2.**
- (b) **The runoff tabulation entity must use the cast vote records received from each county clerk during their logic and accuracy test to tabulate the instant runoff voting contest or contests using the certified third party software which are subject to this Rule.**
- (c) **The runoff tabulation entity must confirm that the round-by-round tabulation corresponds to the known results.**
- (d) **The runoff tabulation entity can only complete their Logic and Accuracy Test after all other county clerks involved in the contest have successfully completed their respective Logic and Accuracy Tests.**

### Reasons for proposed change

Boulder believes this is the outcome we should be drafting to:

- In single county, preserve current rule expectations
- In cross-county:
  - Counties that are not the runoff tabulation entity, only need to do (A) and (B) from current rule
  - The runoff tabulation entity needs to be responsible for the lack of a tie in Round 1. They are the only ones that can be responsible for this since they are doing the aggregation.
  - The runoff tabulation entities LAT Board is the signing entity since they are the county responsible for the compiled tabulation. This is relevant to us since this also suggests this is the only county that can certify these results in our canvass board edits proposal.

- The other clerks only need to ensure that their CVRs record the votes properly, there is no tabulation responsibility for them and therefore they have no need to be concerned regarding a tie or the rounds.

As currently drafted, Boulder finds it confusing as to how counties would provide other counties with a test deck as they cannot scan our ballots. It could be intended to be a vote pattern, however still, we think we can achieve the same outcome without adding that complication or adding any “additional decks.” It would not be difficult as the runoff tabulation entity to ensure there is no tie in Round 1 given that we can receive the known results from the other counties in advance and design our test deck to ensure this.

#### **Rule 21.12 Strike in its entirety**

As stated above, Boulder is opposed to this being integrated into the Voting System and therefore supports striking Rule 21.12 in its entirety.

Boulder does support the idea still around an approved (or certified) third party software to do the tabulation.

#### **Rule 26.5.5**

Boulder supports this rule proposal but does have a question. 1-11-102 as well as 1-7-1003 refer to ties (both for winning and elimination) as being broken by lot. Is the interpretation that by randomly determining the elimination order, it is still, in effect, by lot?

#### **Rule 26.8**

Generally, 26.8.1 can stand as proposed. Given our prior comments, if adopted, 26.8.2 and 26.8.3 would not be necessary as this could be achieved within the third party software directly.

#### **Rule 26.9.1**

Boulder supports this rule proposal as we find it would be misleading for any round-by-round results to be posted that are not compiled.

#### **Rule 26.9.4**

**The schedule to post results on election night for a ranked voting election are exempt from the requirements of Rule 11.9. Instead, the runoff tabulation entity shall set the schedule and must report results at least once on election night and at least once each day when ballots are tabulated thereafter.**

We would like to see there be a statement that the runoff tabulation entity sets the results reporting schedule and other clerks must comply.