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Colorado Department of State
Judd Choate
Elections Division
1700 Broadway, Ste 200
Denver, CO 80290

VIA EMAIL

Mr. Choate,

Jefferson County submits the following comments in response to the pre-Notice Rules Concerning Voting System Conditions for Use issued May 29, 2014. We appreciate the opportunity to comment and hope that you find our remarks helpful. Jefferson County is generally supportive of the proposed Rules, but offers amendments on specific items.

As a general matter, it appears that the Rules, both current and proposed, referenced in the section entitled “Conditions for Use – ES&S” are sometimes inaccurate. For example, under Software Conditions (Unity 3.0.1.1), the sentence *This is now addressed by proposed Election Rules 20.4, 20.5 and 20.7* indicates referring to Rules proposed earlier in the document. But there is no Rule 20.7 in the proposal. We noted several other references that appear to be incorrect.

Below are additional comments specific to identified proposed Rules:

1. We recommend changing all references to “election judges” to “election workers” to be consistent with the most recent Rule recodification.
2. Proposed Rule 20.2.2 requires establishment of chain-of-custody after installation of Trusted Build, except for equipment purchased before May 28, 2004, in which case chain-of-custody establishment occurs after Acceptance Testing. Jefferson County’s equipment falls under the exception for systems purchased before May 28, 2004. We see no need for the exception and recommend establishing chain-of-custody after Trusted Build installation, which occurs *before* acceptance testing, to ensure documentation establishing security is available at the earliest possible date.

3. Proposed Rule 20.11.2 states in part:
(c) At no time may an election official simultaneously access a VVPAT and the list of voters. ~~Examination of AT LEAST TWO ELECTION JUDGES MUST EXAMINE the VVPAT record must be performed by at least two election 3 officials.~~

The second sentence is ambiguous. Please clarify what the election judges are charged with examining.

4. Proposed Rule 20.17.3 addresses access logs. Because EMS systems have internal audit logs to capture the specified activities, on its face the proposed Rule appears duplicative and overly burdensome, bringing little or no additional integrity to the process.
5. Rule 20.17.4 requires counties to create a backup copy of election setup records “immediately after downloading the final removable card or cartridge.” During election database creation, it is not always clear when the “final” card is created; corrections are often required after ballot proofing. Therefore, we recommend modifying the proposed Rule to require a setup record backup immediately after successfully completing Logic and Accuracy testing.

This proposed Rule also requires two election judges to sign and date chain-of-custody logs. We propose this could be accomplished by election judges *or* county staff.

6. Proposed Rule 20.17.5 (b) requires counties to connect DREs to very expensive uninterruptible power supplies (UPS) capable of maintaining operations for a minimum of two hours. This proposed Rule is unnecessary if the DRE is capable of operating on an internal battery backup for the minimum length of time. We recommend the Secretary not adopt this Rule or, modify the Rule to state UPSs are not required if the equipment has an acceptable internal battery supply.
7. Proposed Rule 20.17.5 (b) requires the county to log administrator use. Because administrator activities are captured on the VVPAT, this requirement is unnecessary.
8. Proposed Rule 20.17.6 (c) similarly requires that optical scan machines be connected to UPS devices. We recommend the Secretary not adopt this Rule. UPSs are expensive and given that optical scan machines are counting paper ballots, there is little risk that results would be corrupted or lost due to a power outage. The ballots would simply be counted again after power was restored.

If the Secretary wishes to adopt such a rule, we recommend adding an exception to the Rule if the building housing the scanner is equipped with a backup generator to ensure continual operation.

9. Proposed Rule 20.17.6 (e) requires the county to program an override “key” for ballots rejected by optical scanners. We recommend striking the word “key” due to its system-specific nature.

10. Rule 20.18.1 precludes the use of the ES&S system by counties required to provide minority language assistance. We recommend providing ES&S the opportunity to recertify for alternative language requirements, rather than arbitrarily prohibiting equipment use.

Again, thank you for the opportunity to comment on the Proposed Rules. If you have questions, please feel free to contact me directly.

Warm regards,

/s/

Christi Coburn