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Clerk & Recorder

**Analysis of Proposed Secretary of State Rules 35 and 45  
Regarding Voting System Standards and Testing**

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**Submitted by**

**Arapahoe County Clerk and Recorder  
Nancy A. Doty**

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After review of the proposed changes made following the first public meeting concerning these proposals, Arapahoe County has some comments on specific portions of the second version of the proposed rules. We thank you for the opportunity to provide comments and we are appreciative of the several changes we suggested which have been made in this draft.

Rule 35:

1. Since this rule was pulled from Rule 45 in the earlier draft, we commented on it previously, however we still have the same question. Does this refer to equipment already in service or only to new equipment being certified? We believe a number of counties will have difficulty meeting these requirements particularly the series of requirement options in 35.2.4.

Rule 45:

Section 45.5 Voting System Standards

2. Comment: Subsection 45.5.2.2 (c) as proposed previously, set the performance standard for Central Count Optical Scan Ballots at 100 ballots per hour. We commented that this was too low. The current version of the rule sets no standards other than what is contained in the vendor's "test plan." We are seriously disturbed that systems could be certified for use in Colorado that have not met any state sanctioned minimums for ballot throughput, and which may be available, but inadequate for actual Election use. Given the way the rule is written, if the vendor's test plan specified 10 ballots per hour, and the test met or exceeded that amount, the State would necessarily have to consider the vendor to have met the requirement. We believe this should have further work done prior to adoption.

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3. Repeat Comment: Subsection 45.5.2.6.1(d) (i) states that systems submitted must have all operating systems "...hardened to specifications developed by the voting system provider." This appears to leave no opportunity for the Secretary of State to object if the hardening specifications developed by the provider are inadequate. The assumption here may be that such specifications will have been evaluated at the Federal level, but it might be clearer if there were some reference to a standard other than that set by the vendor. The public hearing on October 2, 2009 indicated that the vendor would be required to use an existing standard and identify it or demonstrate how they exceed it. The rule as written does not specifically require that. Additional work is needed to accomplish the stated goal here.
  
4. Comment: Subsection 45.6.2.3.9 we previously commented that the number of ballots required to be prepared for testing was inadequate. In this version there is no number set at all. We believe this should be reconsidered and specific numbers of test ballots required, and in sufficient quantities to thoroughly test these systems.