

COMMENTS ON APRIL 15, 2022
PROPOSED RULES
8 CCR 1505-1
Submitted by Maurice Emmer, Aspen, Colorado
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GENERAL COMMENT ON PROPOSED RULES:

The proposed rules ignore the statutory requirement in CRS 1-5-601.5 to comply with the Federal Election Commission's 2002 Voting System Standards (VSS). In fact, many aspects of the proposed rules conflict with the VSS. Nowhere is the VSS even mentioned in the rules' basis and purpose. Insofar as the proposed rules relate to electronic voting systems, they should be scrapped and rewritten with a principal objective of complying with the VSS.

COMMENTS ON SPECIFIC PROPOSED RULES

Rule 1.1.29 Defines "Election Project Backup" to exclude "a full or partial hard drive image or clone." The definition proposed includes only the files necessary to "restore the voting system to a previous state." Election officials are under a duty to preserve election records for specified periods under Colorado and federal law. Restoring an election system to a previous state at one point in time is not equivalent to preserving election records. Election records include the records necessary to reconstruct how an election was conducted, including how ballots were counted. That occurs over a period of at least weeks in Colorado, not one point in time.

Moreover, there is no legitimate purpose to exclude a hard drive image or clone. In fact, only by preserving a complete hard drive image can election officials ensure that all election records have been preserved as the law requires.

Accordingly, the rule and its definition restrict election officials in performing their statutory duties.

Rule 11.2.4 Requires a county to notify the Secretary of State if a license with a voting system vendor is terminated. This rule has no legitimate purpose. The Secretary of State has the duty to certify electronic voting systems if they have passed testing by a federal accredited voting system testing laboratory and if they otherwise comply with state law. Once so certified, counties may use any such certified system. It is the responsibility of the counties to use the system or not, as long as the system complies with state law. If such a system appears to be malfunctioning, the Secretary of State already required the county to notify her. Otherwise, the Secretary of State has no legitimate interest in being notified whether a license is terminated by a county,

The Secretary of State's past conduct, however, has indicated that she might abuse the power she seeks under this rule. In particular, when the Rio Blanco County Commissioners terminated their county's contract with its voting system vendor, the Secretary of State's employees made unfounded and false representations to the County Commissioners with the apparent intent of bullying them into reversing their decision. Moreover, written threats later were received from other sources making similar unfounded and untrue claims. It is reasonable to suspect, based solely on the coincidence of time, that the Secretary's personnel prompted such other threats.

Accordingly, based on experience, it appears that the Secretary's purpose in promulgating this rule is to enable her staff to harass county personnel.

Rule 11.4.2 Requires that backups of election projects include log files from the election management system (EMS). The EMS is the main software package running the electronic voting system. This requirement is inadequate to satisfy the Federal Election Commission's 2002 Voting System Standards (VSS), which are incorporated into Colorado law under CRS 1-5-601.5. The VSS require that all log files relevant to a potential audit of the processes, not merely the outcome, of an election held within the relevant record retention period be preserved.

Further, the rule easily could give counties the impression that their record preservation duties would be satisfied if they were to comply with this rule. That would be incorrect. The counties have independent record retention duties, including duties under the Colorado Open Records Act.

As it is well documented that the periodic "trusted builds" of Dominion Voting Systems destroys election records within the statutory retention periods, this rule is misdirected and dangerous. Rather, the rule should require complete imaging of all hard drives in a voting system.

Rule 20.5.3 Requires that wifi capability be disabled before use in an election. The rule is acceptable but does not go far enough. Wifi and other communications capabilities in electronic voting systems violate the FEC's 2002 VSS. The rule should echo the VSS and prohibit wifi, Bluetooth, and any other type of communications capability in any component of a voting system. [ADD DISCUSSION RE VSS]

Rule 20.5.6 Requires hard drives in electronic voting systems to be reformatted after a voting system license has been terminated. This rule is acceptable as far as it goes. Reformatting hard drives destroys the ability to read and use election records, which the law requires be

maintained for statutory periods. Adherence to the rule would violate those statutory requirements. Moreover, the hard drives contain public records that are subject to disclosure under the Colorado Open Records Act. Instead, the Secretary should be requiring counties to create and preserve images of voting system hard drives.

Rule 20.10.2 Requires counties to maintain certain electronic records, but does not require retention of the log files of the electronic voting system operating system. Such log files should be required to be maintained, as they are necessary to reconstruct how an election was conducted and voted counted.

Rule 20.10.3 Prohibits the creation or disclosure of an image of hard drives of any election system component without the Secretary's written permission. This violated the Colorado Open Records Act. Many records on those hard drives are public and open to disclosure under CORA. The counties are the records' custodians, with independent duties to respond to and fulfill CORA requests. The Secretary has not authority to interfere with the performance of duties under CORA.

Moreover, the Secretary has no legitimate rationale to interfere with the creation or disclosure of images of voting system hard drives. The drives do not enable anyone to learn how any voter voted in any election. If the drives contain only the information they are supposed to contain, their only use could be to enable the public to confirm that elections were conducted legally. The Secretary has claimed that disclosure of the contents of the hard drives could enable "hackers" to interfere with elections. This is a disingenuous and preposterous excuse. First, images of the Dominion system hard drives already are widely available on the internet. Second, while claiming such images could enable hackers to interfere, the Secretary has claimed on

numerous occasions that Colorado's voting systems are impervious to interference.

Regardless of the foregoing, the hard drives contain public records that must by law be preserved and disclosed if requested under CORA. The Secretary has not authority to override those laws, and thus has no authority to grant or withhold permission.

Respectfully submitted,

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