

October 15th, 2025

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SD Secretary of State

State Board of Elections
C/O: Secretary of State
Capitol Building
500 East Capitol Avenue Ste 204
Pierre, SD 57501-5070

RE: Response to Office of Attorney General Letter dated September 18th, 2025, regarding Petition for Declaratory Ruling dated August 28th, 2025.

Members of the State Board of Elections, and Office of the Attorney General:

Thank you so much for your questions, and the opportunity to clarify my questions to you regarding the petition:

3(b). When the State Board of Elections approved the EVS 6.1.1.0, which did not have a listing of minimum system requirements, does that mean it is wide open, or did the State Board of Elections approve only the COTS systems listed on the Election Assistance Commission Certificate?

- 1) Another way to ask this question is, when the State Board of Elections approved the ES&S EVS 6.1.1.0 EAC Certified Voting System, which included a detailed listing of the approved test lab reviewed and Election Assistance Commission(EAC) certified commonly off the shelf (COTS) specific Dell OptiPlex 5040, 5050, 7020 Desktop and Dell Latitude 5580 laptops, as per the requirements of the Voluntary Voting System Guidelines 1.0 for certification by the EAC, the Board approved the system as per 12-17B-2, "*Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state*", and it is further determined that the State Board of Elections approval is not a blanket approval for non-listed equipment?

3(c) Does the State Board of Elections consider an Election Assistance Commission approved Engineering Change Order, which includes a change in COTS hardware, automatically approved for use in South Dakota and is not subject to review or approval?

- 1) 12-17B-2 requires, "*Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.*". Further in the administrative rule 5:02:09:02, it states, "*Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.*" Which indicates that if a vendor follows the US Election Assistance Notice of Clarification (NOC) 12-01 dealing with COTS equipment, new laptops and desktops, which is a change, require

VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a de minimis change is a modification and shall be submitted for testing and review consistent with the requirements of the Manual. An approved de minimis change is not a modification and would qualify as being automatically approved for use in the State of South Dakota. Is it determined that all de minimis approvals by the EAC for ES&S EVS 6.1.1.0 are automatically approved with or without notice from ES&S, by the State Board of Elections as per SD Codified law 12-17B2 and administrative rule 5:02:09:02?

Attachment A- US Election Assistance Commission Notice of Clarification 12-01

3(d) *Does the State Board of Elections consider an change to a COTS system without Election Assistance Commission approval of an Engineering Change Order; and without any documentation of review or certification, automatically approved for use in South Dakota and is not subject to review or approval?*

- 1) Another way to ask the question, equipment not listed on the original ES&S EVS 6.1.1.0 EAC Certificate of Conformance, and not subsequently approved by the EAC's de minimis program is not approved for use in South Dakota as part of the Voting System as defined in Federal Law under the Help America Act 301(b)(1-2) Voting System Defined definition, is determined not to be approved for use in the State of South Dakota, by the State Board of Elections as per 12-17B-2?

3(i) *If a security issue is discovered with a COTS system, who is responsible for maintaining it?*

- 1) 12-17B-2 requires, "Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.". Further in the administrative rule 5:02:09:02, it states, "Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification." Which indicates that if a vendor follows the US Election Assistance Notice of Clarification (NOC) 19-01 dealing with a rapidly evolving cybersecurity threat environment to update software with security patches and antivirus updates, requires VSTL review and endorsement as well as EAC approval. An approved de minimis change is not a modification and would qualify as being automatically approved for use in the State of South Dakota. Is it determined that all de minimis approvals for software patches and antivirus updates by the EAC for ES&S EVS 6.1.1.0 are automatically approved with or without notice from ES&S, by the State Board of Elections?
- 2) It is further determined that only ES&S, or its subcontractors, may install an approved EAC de minimis update for any software or antivirus to a voting system in South Dakota as per administrative rule 5:02:09:02?

Attachment B- US Election Assistance Commission Notice of Clarification 12-01

3(j) *If a security issue is discovered with a COTS system, who is responsible to troubleshoot it and resolve the issue?*

- 1) 12-17B-2 requires, "Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.". Further in the administrative rule 5:02:09:02, it states, "Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification." Which indicates that if a vendor follows the US Election Assistance Notice of Clarification (NOC)

19-01 dealing with a rapidly evolving cybersecurity threat environment to update software with security patches and antivirus updates, requires VSTL review and endorsement as well as EAC approval. An approved de minimis change is not a modification and would qualify as being automatically approved for use in the State of South Dakota. Is it determined that all de minimis approvals for software patches and antivirus updates by the EAC for ES&S EVS 6.1.1.0 are automatically approved with or without notice from ES&S, by the State Board of Elections?

- 2) It is further determined that only ES&S, or its subcontractors, may install an approved EAC de minimis update for any software or antivirus to a voting system in South Dakota as per administrative rule 5:02:09:02?
- 3) It is further determined that only ES&S, or its subcontractors, may troubleshoot and resolve any security issues with a voting system as per administrative rule 5:02:09:02?

Sincerely,

Dated at (Elkton, SD), this 15th day of October, 2025.

SWORN TO BEFORE ME


Notary Public

Commission expires: 10/6/28


Rick Weible

803 Elk St., Elkton, SD 57026

Signature of petitioner





U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1201 New York Avenue, NW, Suite 300
Washington, DC. 20005

Notice of Clarification

NOC 12-01: Clarification of COTS Product Equivalency for De Minimis Change

Issue by Program Director, 2/08/12

Section of Manual to Be Clarified:

De Minimis Changes. As outlined in Section 3.5 of the *EAC Testing and Certification Program Manual (Manual)* a de minimis change is a change to voting system hardware that is so minor in nature and effect that it requires no additional testing. Such changes, however, require VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a de minimis change is a modification and shall be submitted for testing and review consistent with the requirements of the *Manual*. An approved de minimis change is not a modification.

3.5.1. De Minimis Change—Defined. A de minimis change is a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Software and firmware modifications are not de minimis changes. In order for a hardware change to qualify as a de minimis change, it must not only maintain, unaltered, the reliability, functionality, capability and operability of a system, it shall also ensure that when hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. Under no circumstance shall a change be considered a de minimis change if it has identifiable potential to impact the system's operation and compliance with applicable voting system standards.

Purpose:

This notice of clarification is a logical extension of NOC 11-01 and is intended to identify additional items that are potentially eligible for being declared as a de minimis change under the above referenced sections. As part of ongoing discussions regarding voting system sustainability and the use of COTS products in voting systems, the EAC has received input from both voting system manufacturers and election officials regarding the difficulties of replacing COTS desktops, laptops, servers and other peripheral devices from major COTS manufacturers. Given the realities of voting system developmental testing, Federal and state certification as well as other time-to-market issues, these COTS products are often obsolete by the time they are introduced into the marketplace.

Under the current process, EAC certified voting systems are accompanied by a Certificate of Conformance that not only lists the specifications for desktops, laptops, servers and other devices associated with the voting system, but also identifies the specific manufacturer and model of the devices tested and certified with the particular voting system. Because commercial computer product manufacturers often have product lifecycles that last only an average of 8 months to one year, voting system manufacturers and election officials are often unable to purchase certified COTS products with the exact same commercial product.

Clarification:

Section 3.5.1 of the Manual should be read to permit the replacement of **equivalent** laptops, desktops, servers, printers, keyboards (dumb), mice (dumb), monitors (defined as a display device attached to a PC for election management use), power cables, Ethernet cables, speakers and microphones supporting the election management system of EAC certified voting systems using the following process:

1. Notification to the EAC and an accredited VSTL by a registered voting system manufacturer that a model of laptop, desktop, server or other component listed above certified with a particular voting system is no longer manufactured and/or offered for sale by the COTS vendor (e.g., Dell, HP, etc.).
2. Submission to the EAC and an accredited VSTL of official communication from the COTS vendor or its third party agent regarding the recommended replacement component.
3. Manufacturers are permitted to install updated drivers (sound, network, etc.) necessary to integrate the equivalent hardware devices. **Manufacturers shall not install drivers that could potentially integrate new uncertified functionality.**
4. Voting system manufacturers shall perform and document testing to verify that the voting system functions correctly with the new hardware after any driver updates are installed. Thorough manufacturer testing shall support and confirm the declaration of equivalency of the new desktop, laptop, server or other component listed above to those originally certified with the voting system.
5. All test documentation shall be submitted to the VSTL and EAC along with the manufacturers de minimis change submission according to the requirements of Section 3.5.2 of the *Manual*.

Conclusion:

The replacement of certain obsolete or end-of-life COTS components in an EAC certified voting system with equivalent components is permitted. Using the process outlined above, the equivalence of the replacement components can be demonstrated and be considered for a de minimis classification provided the change meets the requirements of section 3.5 of the EAC's *Program Manual* and this clarification. The EAC will continue to monitor the use of COTS products in voting systems and make appropriate changes to its procedures in instances in which it sees minimal risk to voting system integrity and potential cost savings.



U.S. Election Assistance Commission

Voting System Testing and Certification Program

1335 East West Highway, Suite 4300

Silver Spring, MD. 20910

Notice of Clarification

NOC 19-01: Software De Minimis Changes

Issued by Program Director, November 15, 2019

Section of Certification Manual to Be Clarified:

Testing & Certification Program (Cert) Manual, Version 2.0

- 3.4.2 De Minimis Change - Defined. A de minimis change is a change to a certified voting system's hardware, software, TDP, or data, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Under no circumstances shall a change be considered de minimis if it has reasonable and identifiable potential to impact the system's performance and compliance with the applicable voting Standard.
- 3.4.3 De Minimis Change – Procedure. Manufacturers who wish to implement a proposed de minimis change must submit it for VSTL review and endorsement and EAC approval. A proposed de minimis change may not be implemented as such until it has been approved in writing by the EAC.
- 3.4.3.1 VSTL Review. Manufacturers must submit any proposed de minimis change to a VSTL and the EAC for review and endorsement. The Manufacturer will provide the VSTL: (1) a detailed description of the change; (2) a description of the facts giving rise to or necessitating the change; (3) the basis for its determination that the change will not alter the system's reliability, functionality, or operation; (4) upon request of the VSTL, a sample voting system at issue or any relevant technical information needed to make the determination; (5) document any potential impact to election officials currently using the system and any required notifications to those officials; (6) a description of how this change will impact any relevant system documentation; and (7) any other information the EAC or VSTL needs to make a determination. The VSTL will review the proposed de minimis change and make an independent determination as to whether the change meets the definition of de minimis change or requires the voting system to undergo additional testing as a system modification. If the VSTL determines that a de minimis change is appropriate, it shall endorse the proposed change as a de minimis change. If the VSTL determines that modification testing and certification should be performed, it shall reclassify the proposed change as a modification. Endorsed de minimis changes shall be forwarded to the Voting System's Project Manager for final approval. Rejected changes shall be returned to the Manufacturer for resubmission as

system modifications.

3.4.3.2 VSTL Endorsed Changes. The VSTL shall forward to the EAC any change it has endorsed as de minimis. The VSTL shall forward its endorsement in a package that includes:

3.4.3.2.1 The manufacturer's initial description of the de minimis change, a narrative of facts giving rise to, or necessitating, the change, and the determination that the change will not alter the system's reliability, functionality, or operation.

3.4.3.2.2 The written determination of the VSTL's endorsement of the de minimis change. The endorsement document must explain why the VSTL, in its engineering judgment, determined that the proposed de minimis change met the definition in this section and otherwise does not require additional testing and certification.

3.4.3.3 EAC Action. The EAC will review all proposed de minimis changes endorsed by a VSTL. The EAC has sole authority to determine whether any VSTL endorsed change constitutes a de minimis change under this section. The EAC will inform the Manufacturer and VSTL of its determination in writing.

3.4.3.3.1 If the EAC approves the change as a de minimis change, it shall provide written notice to the Manufacturer and VSTL. The EAC will maintain copies of all approved de minimis changes and otherwise track such changes.

3.4.3.3.2 If the EAC determines that a proposed de minimis change cannot be approved, it will inform the VSTL and Manufacturer of its decision. The proposed change will be considered a modification and require testing and certification consistent with this Manual. De minimis changes cannot be made to voting systems currently undergoing testing; these changes are merely changes to an uncertified system and may require an Application update.

Purpose:

The de minimis change process is used by the EAC to allow minor modifications to a certified voting system. In the past, this has been applied primarily to hardware changes as software changes often require a new version and build. Additionally, past practice has been that if a de minimis change required VSTL testing, it was classified as a system modification.

Clarification:

The EAC has determined that allowing software de minimis changes is necessary to confront a rapidly evolving cybersecurity threat environment as well as allowing Manufacturers to quickly respond to changing jurisdictional requirements, where those requirements can be addressed with minor changes.

Software de minimis changes should have the following general characteristics:

1. Update a discrete component of the system and do not impact overall system functionality;
2. Do not modify the counting or tally logic of a component or the system (formatting changes to reports are allowable);
3. Do not affect the accuracy of the component or system;
4. Do not negatively impact the functionality, performance, accessibility, usability, safety, or security of a component or system;
5. Do not alter the overall configuration of the certified system (e.g. adding ballot marking device functionality to a previously certified DRE component);
6. Can be reviewed and/or tested by VSTL personnel in a short amount of time (approximately less than 100 hours).

Conclusion:

As of the date of this Clarification, the EAC will consider software de minimis changes submitted in accordance with the Testing and Certification Program Manual, Version 2.0 with the following clarifications:

Section 3.4.3.2.2 will be interpreted as allowing minimal VSTL testing as deemed necessary to confirm the change (approximately less than 100 hours).

Section 3.4.3.2.3 will be **added**:

- 3.4.3.2.3 The validated hashes, trusted builds, and version listing for all software modules changed.