

State of South Dakota
State Board of Elections
Petition for Declaratory Rulings

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Pursuant to the provisions of SDCL [1-26-15](#), I (Rick Weible) of (803 Elk St, Elkton SD 57026), am (a resident of Brookings County, SD), and do hereby petition the South Dakota State Board of Elections for its declaratory ruling in regard to the following:

1. The state statutes or State Board of Elections rules or orders or forms in question are:

-----Start of State Statute-----

[12-17B-2](#). Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications.

Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet. No ballot marking device may save or tabulate votes marked on any system. 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. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.

Source: [SL 1994, ch 110](#), § 6; [SL 2005, ch 92](#), § 3; [SL 2018, ch 81](#), § 2, eff. Feb. 5, 2018.

-----End of State Statute-----

-----Start of State Board of Elections Rule-----

5:02:09:02. Approval of automatic tabulating systems required before distribution. Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the State Board of Elections approves the system, it shall issue a certificate of approval.

Any changes or modifications in an approved automatic tabulating or electronic ballot marking system may be certified by the State Board of Elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2015 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.

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Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994; 25 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

----- End of State Board of Elections Rule -----

2. The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are:

ES&S sold to both Lincoln County, March 18th 2020 (Exhibit A), and Pennington County, March 31st 2020 (Exhibit B) Dell Latitude laptops model 5501 configured with the ES&S Electionware Results software, which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.0.0 or 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to a different laptop was not approved by the South Dakota State Board of Elections.

a. The Help America Vote Act of 2002, defines what a voting system is:

(b) VOTING SYSTEM DEFINED.—In this section, the term “voting system” means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

The laptops that have the ES&S, Electionware Management Software on it to produce combined election night results and reports, allows review of the logs on the thumb drives from the tabulators, and has an audit trail created of it's processes of importing data from each thumb drive to create election reports.

Source - Page 41/65

https://www.eac.gov/sites/default/files/eac_assets/1/6/HAVA41.PDF

b. The ES&S EVS 6.1.0.0 system configuration was approved on October 30th, 2019 by the State Board of Elections for use in the state of South Dakota.

<https://boardsandcommissions.sd.gov/bcuploads/2019EVS6100Report.pdf>

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- c. The ES&S EVS 6.1.0.0 EAC Certificate of Conformance clearly shows that only the Dell Latitude 5580, OptiPlex 5040, 5050, and the 7020 are certified and approved for use in the ES&S voting system.

COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T430, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip 1.2 and 2.0 (optional)	M48YR

https://www.eac.gov/sites/default/files/voting_system/files/EVS6100Cert_Scope_%2528FINAL%2529.pdf

- d. The ES&S EVS 6.1.1.0 EAC Certificate of Conformance clearly shows that the Dell Latitude 5580, OptiPlex 5040, 5050, and the 7020 are certified and approved for use in the ES&S voting system.

COTS Hardware

Manufacturer	Hardware	Model/Version
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https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf

- e. ES&S EVS 6.1.1.0 is the most recent certified system that the State Board of Elections approved of for use in the state of South Dakota in August of 2021.
<https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>

- f. As a side note it is important to note on Dell's web site regarding Wake-on-Lan Capabilities and the default settings. This makes it important to validate the settings during testing and certification to evaluate if these settings have been disabled and remain in the BIOS. Without proper testing, documentation and certification, no claim can be asserted that the systems are secure. -
<https://www.dell.com/support/kbdoc/en-us/000175490/dell-command-powershell-provider-wakeon-lan-wlan>

- g. Both Lincoln and Pennington Counties use the laptop to read the thumb drives from the tabulators, after processing the ballots, which do the following:
- Consolidate and report election results.
 - Produce and maintain a comprehensive audit trail.

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During the Logic and Accuracy testing before an election, the laptop is used to:

- c. Prepare the voting system for use in an election, by confirming that the ballots are read correctly and the reports are correctly reporting results when compared to the expected results workbook.
- h. In walking through the US Election Assistance Commission's (EAC) standards called the Voluntary Voting Guidelines 1.0 Volume I (VVSG 1.0), as required by South Dakota Statute 12-17B-2, "Each system shall fulfill the requirements for election assistance commission standards certification", which ES&S' EVS 6.1.0.0 and 6.1.1.0 was tested to, we see clarifying statements as to when hardware needs to be re-evaluated.
 - a. First on page 4 of the VVSG 1.0 Volume I

Except as noted below, Volume I of the *Guidelines* applies to all system hardware, software, telecommunications, and documentation intended for use to:

- Prepare the voting system for use in an election
- Produce the appropriate ballot formats
- Test that the voting system and ballot materials have been properly prepared and are ready for use
- Record and count votes
- Consolidate and report election results
- Display results on-site or remotely
- Produce and maintain comprehensive audit trail data

Some voting systems use one or more commercial off-the-shelf (COTS) devices (such as card readers, printers, and personal computers) or software products (such as operating systems, programming language compilers, and database management systems). These devices and products are exempt from certain portions of system certification testing, as long as they are not modified for use in the voting system.

When reading the list in this section, it is clear from the previous statement (f) that those three items are listed as part of (g), where hardware changes do matter.

- b. Secondly, on page 7 of the VVSG 1.0 Volume I

After a system has completed initial certification testing, further examination of the system is required if modifications are made to hardware, software, or telecommunications, including the installation of software on different hardware. Vendors request review of modifications by the test lab based on the nature and scope of changes made. The test lab will assess whether the modified system should be resubmitted for certification testing and the extent of testing to be conducted, and then it will provide an appropriate recommendation to the EAC and the vendor.

The very statement "further examination of the system is required if modifications are made to the hardware....including the installation of the software on different hardware." The hardware between what was tested for the Election Management System (EMS) software changed between the certification and to what was sold, thus requiring an assessment and

recommendation to the EAC and the vendor (ES&S). SD Secretary of State

c. Thirdly, on page 67 of the VVSG 1.0 Volume I

4 Hardware Requirement

This section contains the requirements for the machines and manufactured devices that are part of a voting system. It specifies minimum values for certain performance characteristics; physical characteristics; and design, construction, and maintenance characteristics for the hardware and selected related components of all voting systems, such as:

- Ballot printers
- Ballot cards and sheets
- Ballot displays
- Voting devices, including ballot marking devices and DRE recording devices
- Voting booths and enclosures
- Ballot boxes and ballot transfer boxes
- Ballot readers
- Computers used to prepare ballots, program elections, consolidate and report votes, and perform other elections management activities
- Electronic ballot recorders
- Electronic precinct vote control units
- Removable electronic data storage media
- Servers
- Printers

This section applies to the combination of software and hardware to accomplish specific performance and system control requirements. Standards that are specific to software alone are provided in Section 5.

The requirements of this section apply generally to all hardware used in voting systems, including:

- Hardware provided by the voting system vendor and its suppliers
- Hardware furnished by an external provider (for example, providers of commercial-off-the-shelf equipment) where the hardware may be used in any way during voting system operation
- Hardware provided by the voting jurisdiction

Here we can see that under hardware requirements that “Computers used to....consolidate and report votes, and perform other election management activities”, is listed. This is exactly what the Dell laptops running ES&S Electionware Management System (EMS) is, the software that provides the consolidated reports of the vote totals and performs other election management activities for the counties.

d. Fourthly, accuracy requirements come into play on pages 68-69 of the VVSG 1.0 Volume I, for this section, we will focus on the central-count voting systems, since neither county uses tabulators at the precinct, and the precincts send in all of the ballots into the county seat for processing.

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4.1.1 Accuracy Requirements

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Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a

specified volume of data. This rate is set at a sufficiently stringent level that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

d. For central-count voting systems (paper-based and DRE):

- i. Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data

Here in (d.) we can see that when using multiple tabulators, we are able to consolidate the election results with the laptop and use the laptop to report results.

Source – US Election Assistance Commission Voluntary Voting Systems Guidelines 1.0 (VVSG 1.0) Volume I -

https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.0_Volume_1.PDF

- i. Now in walking through the second volume of the US Election Assistance Commission's (EAC) standards called the Voluntary Voting Guidelines 1.0 Volume II (VVSG 1.0), as required by South Dakota Statute 12-17B-2, "Each system shall fulfill the requirements for election assistance commission standards certification", which ES&S' EVS 6.1.0.0 and 6.1.1.0 was tested to, we see clarifying statements as to when hardware needs to be re-evaluated.
 - a. First on page 10 of the VVSG 1.0 Volume II, in looking at the exceptions, we can see that in (c.) there is a list of exceptions to the exceptions, which means that these devices need to be examined and certified for use. So, in short, the laptops that produce an official output report need to be tested.

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1.7.1.1 Hardware

Specifically, the hardware test requirements shall apply in full to all equipment used in a voting system with the exception of the following:

- a. Commercially available models of general purpose information technology equipment that have been designed to an ANSI or IEEE standard, have a documented history of successful performance for relevant requirements of the standards, and have demonstrated compatibility with the voting system components with which they interface
- b. Production models of special purpose information technology equipment that have a documented history of successful performance under conditions equivalent to election use for relevant requirements of the standards and that have demonstrated compatibility with the voting system components with which they interface
- c. Any ancillary devices that do not perform ballot definition, election database maintenance, ballot reading, ballot data processing, or the production of an official output report; and that do not interact with these system functions (e.g. modems used to broadcast results to the press, printers used to generate unofficial reports, or CRTs used to monitor the vote counting process)

This equipment shall be subject to functional and operating tests performed during software evaluation and system level testing. However, it need not undergo hardware non-operating tests. If the system is composed entirely of off-the-shelf hardware, then the system also shall not be subject to the 48-hour environmental chamber segment of the hardware operating tests.

- b. On page 11 of the VVSG 1.0 Volume II, we can see the accredited test lab would be reviewing configuration management records and may determine the next steps, if just documentation updates are needed, minor retest, or a complete retest is warranted.

1.7.2.1 General Requirements for Modifications

The accredited test lab will determine tests necessary to certify the modified system based on a review of the nature and scope of changes, and other submitted information including the system documentation, vendor test documentation, configuration management records, and quality assurance information. Based on this review, the accredited test lab may:

- a. Determine that a review of all change documentation against the baseline materials is sufficient for recommendation for certification
- b. Determine that all changes must be retested against the previously certified version. This will include review of changes to source code, review of all updates to the TDP, and performance of system level and functional tests
- c. Determine that the scope of the changes is substantial and will require a complete retest of the hardware, software, and/or telecommunications

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- c. On pages 23-24 of the VVSG 1.0 Volume II, we can see that ES&S would be required to provide full system descriptions, in essence a full inventory of software and hardware used in COTS (Commonly Off The Shelf).

2.2.1 System Description

The system description shall include written descriptions, drawings and diagrams that present:

A description of the functional components (or subsystems) as defined by the vendor (e.g., environment, election management and control, vote recording, vote conversion, reporting, and their logical relationships)

A description of the operational environment of the system that provides an overview of the hardware, software, and communications structure

Identification of all COTS hardware and software products and communications services used in the development and/or operation of the voting system, identifying the name, vendor, and version used for each such component, including:

Operating systems

Database software

Communications routers

Modem drivers

Dial-up networking software

The section where identification of all COTS hardware used in the operation of the voting system is a shall, and it is not optional. This leads one to believe that if you are switching versions within a vendor space, you would need to identify that, since once a model is declared, and if a vendor changes to a different model, the test lab must be able to validate it and certify it for use in an election.

- d. On page 25 of the VVSG 1.0 Volume II, we can see the detailed specifications required for the hardware components.

2.4 System Hardware Specification

The vendor shall expand on the system overview by providing detailed specifications of the hardware components of the system, including specifications of hardware used to support the telecommunications capabilities of the system, if applicable.

- e. On pages 28-29 of the VVSG 1.0 Volume II, the COTS laptop with the ES&S Electionware Management System (EMS) would fall into this category since there is an operator interface, logic and arithmetic for combining totals, and

data report outputs.

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2.5.5.1 Hardware Environment and Constraints

The vendor shall identify and describe the hardware characteristics that influence the design of the software, such as:

The logic and arithmetic capability of the processor

Memory read-write characteristics

External memory device characteristics

Peripheral device interface hardware

Data input/output device protocols

Operator controls, indicators, and displays

- f. On pages 61-62 of the VVSG 1.0 Volume II, section 4.2.1, it is clear that the vendor has a responsibility to communicate with the test lab all COTS manufacture specifications and evidence that the equipment has been tested to the equivalent of the EAC requirements, by using the word “shall”. And there is no bypass around, since testing by the vendor is not a substitute for the accredited test lab.

All hardware components that are custom-designed for election use shall be tested in accordance with the applicable procedures contained in this section. Unmodified COTS hardware will not be subject to all tests. Generally such equipment has been designed to rigorous industrial standards and has been in wide use, permitting an evaluation of its performance history. To enable reduced testing of such equipment, vendors shall provide the manufacturer specifications and evidence that the equipment has been tested to the equivalent of these Guidelines.

The specific testing procedures to be used shall be identified in the National Certification Test Plan prepared by the accredited test lab. These procedures may replicate testing performed by the vendor and documented in the vendor’s TDP, but shall not rely on vendor testing as a substitute for hardware testing performed by the accredited test lab.

- g. On page 62 - of the VVSG 1.0 Volume II, it is clear that performance and construction matter, and that the testing equipment shall be equivalent to what is used in the real world.

4.2.2 Hardware Provided by Vendor

The hardware submitted for national certification testing shall be equivalent, in form and function, to the actual production versions of the hardware units. Engineering or developmental prototypes are not acceptable unless the vendor can show that the equipment to be tested is equivalent to standard production units in both performance and construction.

Source – US Election Assistance Commission Voluntary Voting Systems Guidelines 1.0 (VVSG 1.0) Volume II -

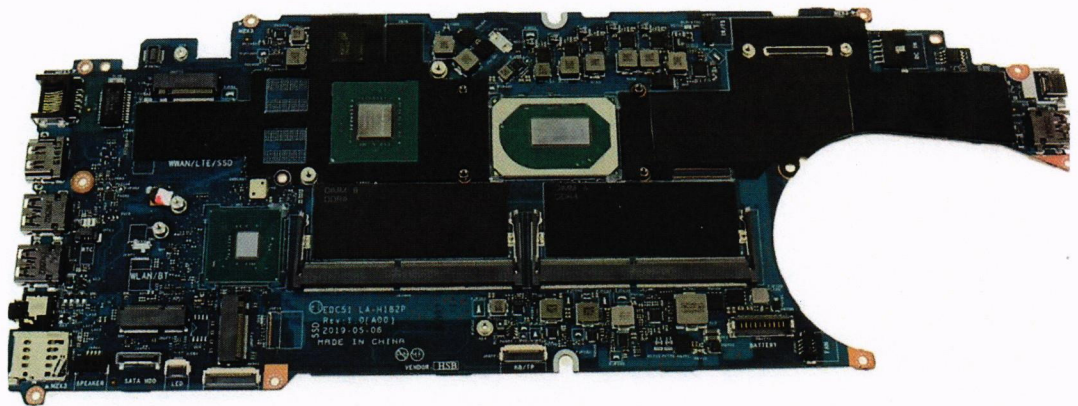
https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG1.0Vol.2.PDF

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- j. The Dell Latitude 5580 has the following components:
- a. Supported Processors – Intel 6th and 7th Generation processors.
 - b. Supported WLANs - This laptop supports the Intel 8265 with and without Bluetooth or Qualcomm 1820 with Bluetooth card.
 - c. Three USB 3.0 ports, with one PowerShare.
 - d. Memory is Two-SODIMM slots DDR4 at 2133 and 2400 Mhz.
 - e. Contactless smart card specifications - BTO with USH.
https://www.dell.com/support/manuals/en-us/latitude-15-5580-laptop/late5580_om_pub/technical-specifications?guid=guid-8be0e657-f5fa-4ebb-bf14-3ee91e1a5775&lang=en-us
 - f. The mother board looks like this, and is made in China



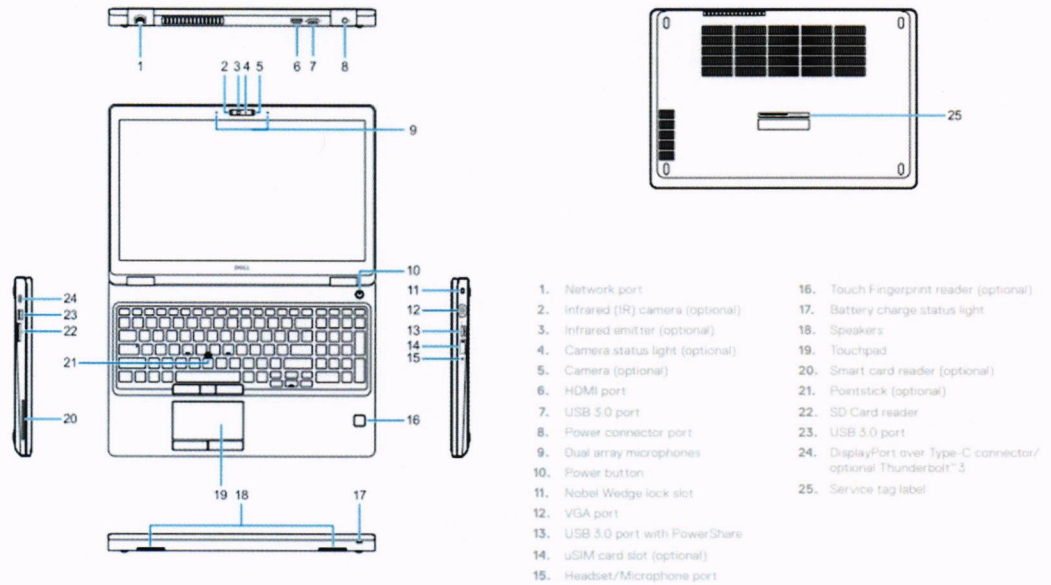
https://www.parts-people.com/index.php?action=item&id=32139&utm_source=google&utm_medium=cpc&adpos=&scid=scplp32139&sc_intid=32139&gad_source=1&gclid=Cj0KCQjwqqDFBhDhARIsAIHTlkvvQr5vuLh_LR5tHEt1OGQwR8ab88GkDdwbXA93VYqbYse_euGe5sIaApdrEALw_wcB

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g. The laptop ports are arranged in this order.



https://dl.dell.com/Manuals/all-products/esuprt_laptop/esuprt_latitude_laptop/latitude-15-5580-laptop_Setup%20Guide_en-us.pdf

k. The Dell Latitude 5501 has the following different components:

- a. Supported Processors – Intel 9th Generation processors.
- b. Supported WLANS – This laptop supports; Intel Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0, Qualcomm QCA61x4A (DW1820) 802.11ac Dual Band (2x2) Wireless Adapter + Bluetooth 4.2, and Intel AX200 + Bluetooth 5.0.
- c. Supported Mobile broadband is - Intel XMM 7360 Global LTE-Advanced.
- d. Two USB 3.1 Gen 1 port , One USB 3.1 Gen 1 with PowerShare, One USB 3.1 Gen 2 (Type-C) with Thunderbolt.
- e. Memory is Two-SODIMM slots DDR4 at 2666 Mhz.
- f. Dell ControlVault 3 Contactless Smartcard reader with NFC.

https://www.dell.com/support/manuals/en-us/latitude-15-5501-laptop/latitiude_5501_setupspecs/system-specifications?guid=guid-ab67ed37-0818-4592-a25c-f04b3a73c18d&lang=en-us

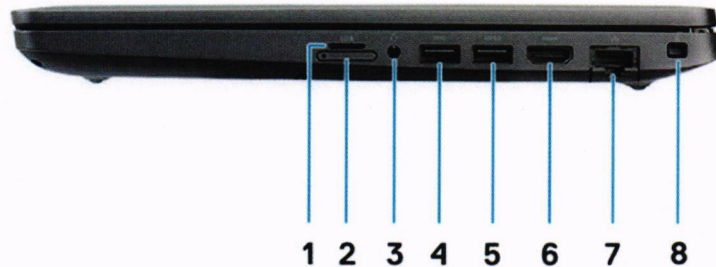
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g. The laptop ports are configured in this manner:



1. Power connector port
2. USB 3.1 Gen 2(USB Type-C) port with Thunderbolt
3. USB 3.1 Gen 1 port
4. Smart card reader (optional)



1. microSD card reader
2. micro-SIM card slot (optional)
3. Headset/ Microphone port
4. USB 3.1 Gen 1 port
5. USB 3.1 Gen 1 port with PowerShare
6. HDMI port
7. Network port
8. Wedge-shaped lock slot

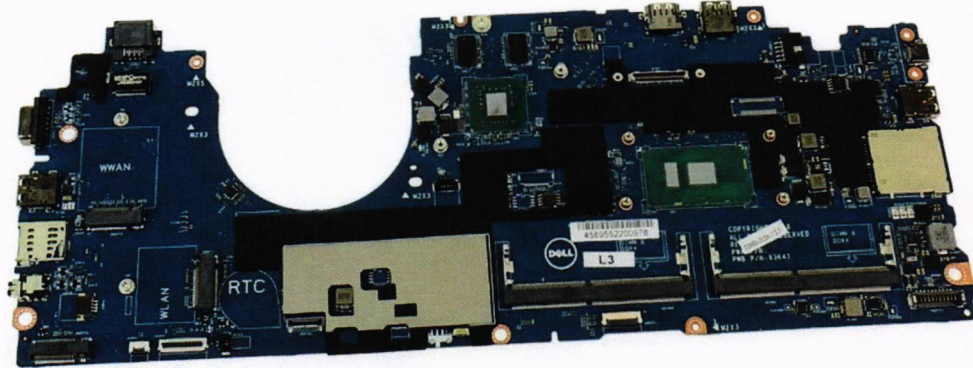
https://www.dell.com/support/manuals/en-us/latitude-15-5501-laptop/Latititude_5501_SetupSpecs/right-view?guid=guid-baae19b3-ea97-46a6-8033-9d1da79cbf78&lang=en-us

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- h. The mother board looks like this, and is made in China



https://www.parts-people.com/index.php?action=item&id=27412&utm_source=google&utm_medium=cpc&adpos=&scid=scplp27412&sc_intid=27412&gad_source=1&gdc_campaignid=21205085926&gbraid=0AAAAAD6HM6zgDkeefaNB-i-eIN3Uh1I9R&gclid=Cj0KCQjwqqDFBhDhARIsAIHTlktolJvFIji99vQmYg6QZJEeZ2ZwthtL5bbK5joH0psqcqiW7RTNdLYaAuoyEALw_wcB

- i. As we can see through the itemized list as well as the pictures of the layout of the ports, of the two laptop models above, they are not the same in function and form, the motherboards, memory, network cards, and processors are different, even the USB ports and cases are different, thus requiring a review through the engineering change order submittal by the vendor. Allowing the test lab to review and the EAC to certify the changes to the voting system.
- m. Hardware components matter, just to brush off COTS to be broadly inclusive can lead to issues of compatibility, unknown security gaps and even performance failures when proper vetting and testing is not happening. Imagine if an untested COTS computer crashed during the accumulation of the gathering of the data from the thumb drives, producing reports, or during a backup. As an example, there are known issues with Intel Processors, and it takes time to research discover, solve and mitigate issues. Just recently Intel and Dell notified the user community of the Intel Core 13th and 14th generation i5, i7, and i9 processors in their Dell and Alienware branded desktop, tower, and workstation computers. In July of 2024 reports of instability and blue screens were reported, but it wasn't until July of 2025 that a software patch at the BIOS level to regulate the power to the processor fixed the issue. (Exhibit C) <https://www.dell.com/support/kbdoc/en-us/article/lkbprint?ArticleNumber=000227933&AccessLevel=10&Lang=en>
- n. In this case the newer Dell laptop model includes an Intel 9th Generation processor that has a recently discovered security issue, which has not been addressed by the EAC nor ES&S, this vulnerability does not exist in the 6th and 7th Intel generation processors. CVE-2024-45332 deals with the exposure of sensitive information caused by shared microarchitectural predictor state that influences transient execution in the

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indirect branch predictors for some Intel® Processors may allow an authenticated user to potentially enable information disclosure via local access. Now coupled with an unreviewed network card, wireless card, and potentially cellular card, imagine the possibilities. (Exhibit D) Intel's 5/13/2025 notice can be found here - <https://www.intel.com/content/www/us/en/security-center/advisory/intel-sa-01247.html>

- o. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 6.1.0.0 or 6.1.1.0, as required by the US Election Assistance Commission Voluntary Voting System Guidelines 1.0, for any new hardware to be considered as part of an approved voting system.
 - p. On page 2 of all ES&S administration manuals it is clear ES&S understands the requirements, by placing this notice in the manual:
 - a. **“United States Election Assistance Commission Notification for Approved Voting Systems**
In accordance with the United States Election Assistance Commission (EAC) Testing and Certification Program Manual, Version 2.0, ES&S hereby notifies the purchaser that any changes or modifications to an EAC approved voting system which have not been tested and certified by the EAC will void the EAC certification for such EAC approved voting system.”
 - q. I have asked the U.S. Election Assistance Commission about changes in approved laptops; they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequent reason for submissions. (Exhibit E)
 - r. There are no meeting minutes since October of 2019 by the South Dakota State Board of Elections indicating an application by ES&S seeking approval of any changes or modifications to any prior approved voting system seeking to add new models of laptops.
 - s. Lincoln and Pennington Counties and ES&S failed to abide by our state laws and rules, which clearly requires approval of a change or modification to an already approved configuration by the South Dakota State Board of Elections before a new a new laptop model is used prior to distribution and use in South Dakota.
3. The precise issue to be answered by the board's declaratory ruling is:
- a. Did ES&S comply with the rules which require “a company or corporation dealing in automatic tabulating or electronic ballot marking systems...give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission”, to include a Dell Latitude 5501 laptop?
 - b. When the State Board of Elections approved EVS 6.1.1.0, which did not have a listing of minimum system requirements, does that mean it is wide open, or

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- did the State Board of Elections approve only the COTS systems listed on the Election Assistance Commission Certificate?
- 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?
 - d. Does the State Board of Elections consider a 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?
 - e. Does the State Board of Elections have guidance from ES&S as to what is allowed from a minimum standard as "COTS"?
 - f. Does the State Board of Elections have guidance from Election Assistance Commission as to what is allowed from a minimum standard as "COTS"?
 - g. Has the State Board of Elections provided guidance to the counties as to what is allowed from a minimum standard as "COTS"?
 - h. Does the State Board of Elections allow counties to purchase "COTS" systems from any vendor, other than ES&S?
 - i. If a security issue is discovered with a COTS system, who is responsible for maintaining it?
 - j. If a security issue is discovered with a COTS system, who is responsible for troubleshooting it and resolve the issue?
 - k. Do counties have the authority to purchase systems not listed in the COTS portion of the certificate without having the vendor first notify the State Board of Elections and potentially obtain approval?
 - l. Does ES&S have an obligation to notify the State Board of Elections of "any" changes or "modifications" from a documented COTS hardware, before sale and use in the state?

Dated at (Elkton, SD), this 28th day of August, 2025.

SWORN TO BEFORE ME


Notary Public

Commission expires: 10/6/28


Rick Weible

803 Elk St., Elkton, SD 57026

Signature of petitioner.



Exhibit A

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Election Systems & Software, LLC
11208 John Galt Blvd
Omaha, NE 68137

Reordered

EVS 6.1.0.0 Reporting Standard - Standalone EMS

System Purchase Order

March 18, 2020

Lincoln County, South Dakota
104 N Main Ste 110
Canton, SD 57013

Qty Ord.	Description	Price	Ext. Price
	EMS WORKSTATION		
1	DELL LATITUDE E5501 (LAPTOP)	\$1,267.00	\$1,267.00
	- Dell Latitude 5501 XCTO 9th Generation Intel Core i5-9400H Processor (4 Core, 8MB Cache, 2.5 GHz, 4.3GHz Turbo, 35W vPro) - TPM Enabled - Intel UHD Graphics 630 with Thunderbolt 3 for Intel 9th GenCore i5-9400H - Intel vPro Technology Enabled 8GB, 1x8GB, DDR4 Non-ECC 2.5" 500GB 7200 RPM SATA Hard Drive 15.6" HD Anti-Glare Non-Touch, RGB Camera & Mic, WLAN Capable, Privacy Shutter - US English Keyboard Backlit with 10 Key Numeric Keypad Dual Pointing - No Mouse - Intel Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0 - No Mobile Broadband Card 4 Cell 68Whr ExpressCharge Capable Battery 90W AC Power Adapter - 3-pin 7.4mm Barrel - DP Palmrest w/ FIPS Contacted Smart Card Only, TBT - OS-Windows Media Not Included - US Power Cord - No Removable CD/DVD Drive - No Carrying Case - ENERGY STAR Qualified - No Docking Station - Intel Core i5 Label for Vpro - Dell Limited Hardware Warranty Extended Year(s) - Dell Limited Hardware Warranty - ProSupport: 7x24 Technical Support, 5 Years - ProSupport: Next Business Day Onsite, 1 Year - ProSupport: Next Business Day Onsite, 4 Year Extended		

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1		\$61.00	\$61.00
1		\$128.00	\$128.00
1	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
	MISCELLANEOUS COMPONENTS		
1	OKI B432DN MONO LASER DUPLEX PRINTER - <i>Optional</i>	\$416.00	\$416.00
1	LD 6' USB 2.0 A-B CABLE,T,I,VOTR,RTAL 6' USB CABLE	\$4.00	\$4.00
	SERVICES		
1	STANDALONE EMS INSTALLATION	\$1,300.00	\$1,300.00
	- Staging of EMS workstations at ES&S Technical Services lab. - Includes the installation, configuration, and testing of EMS workstation. - Equipment is shipped to customer location. - Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. - EMS installation summary documentation provided to customer upon completion of off-site installation.		
	Order Total		\$3,246.00

Termination of Prior Purchase Order

ES&S and Customer are parties to those certain EVS 6.1.0.0 Reporting Standard – Standalone EMS System Purchase Order dated January 14, 2020 and January 22, 2020 (collectively, the "Prior Agreements"). Upon the execution of this EVS 6.1.0.0 Reporting Standard – Standalone EMS System Purchase Order, the parties agree to terminate the Prior Agreements after which such Prior Agreements shall be of no further force and effect."

Payment Terms:

100% of Order Total Due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of corresponding ES&S Invoice.

Note 1: Pricing of purchase order is valid for 30 days due to fluctuating pricing in 3rd party hardware and software. Agreements will need to be updated if not executed within 30 days.

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Note 3: Any applicable (City & State) sales taxes have not been included in pricing and are the responsibility of the customer.

Note 4: Shipping and Handling is not included in the Order Total and will be invoiced separately.

Customer acknowledges that ES&S is purchasing the third-party items set forth herein ("Third Party Items") for resale to Customer, and that the proprietary and intellectual property rights to the Third-Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third-Party Items, all its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the Third-Party Items which are provided to ES&S.

Mallene Switzer
Customer Signature

3-18-2020
Date

Auditor
Title

Exhibit B

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Election Systems & Software, LLC
6055 Paysphere Circle
Chicago, IL 60674
(877) 377-8683



INVOICE NO.	PAGE
1128754	1
INVOICE DATE	
03/31/20	

BILL TO: PENNINGTON COUNTY, SOUTH DAKOTA
PENNINGTON COUNTY AUDITOR'S OFFICE
130 KANSAS CITY ST STE 230
RAPID CITY SD 57701-2818

SHIP TO: Pennington County, South Dakota
Pennington County Auditor's Office
130 Kansas City St - Ste 230

Rapid City, SD 57701-2818

ACCOUNT NO.	CUSTOMER P.O. NUMBER	TERMS	ORDER NO.	SALES REP.	SHIP VIA
	SO#36714 THIRD PARTY	NET 30 DAY	1206135	2861	STANDARD
QTY. ORDERED	DESCRIPTION		UNIT PRICE	UOM DISC. %	EXTENDED PRICE

Coverage Date
Election Ref: NA
1.00 Payment Terms are as Follows: 3246.000000 EA 3,246.00
100% of Order Total Due Thirty (30)
Calendar Days after the later of (a)
Equipment Delivery, or (b) Receipt of
corresponding ES&S Invoice.

(1) DELL 5501 (LAPTOP)
(1) Symantec Endpoint Protection
(1) Windows 10 Enterprise
(1) Dell External USB Slim DVD+/-RW
Optical Drive
(1) OKI B432DN Mono Laser Duplex Printer
(1) LD 6' USB A-B Cable
(1) STANDALONE EMS INSTALLATION

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APR 03 2020

PENNINGTON CO., AUDITOR

0 USD .00
.00
.00
FREIGHT DISCOUNT .00
SHIPPING & HANDLING .00
TOTAL 3,246.00
USD

INVOICE NO.	ACCOUNT NO.	AMOUNT
1128754		3,246.00 USD

SD

PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT. THANK YOU.



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Exhibit C

sgg-rmt

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Industry-wide Issue with Intel Core 13th and 14th Generation i5, i7, and i9 Processors

Summary: Intel has announced an industry-wide issue with Core 13th and 14th generation i5, i7, and i9 processors.

Detailed Article

Symptoms

This issue affects Dell and Alienware desktop, tower, and workstation computers.

The identified Intel processors can encounter unstable applications, Windows blue screen errors, or it can stop responding.

The Intel processors involved include:

13th Generation Intel Core

- i5-13600K
- i5-13600KF
- i7-13700
- i7-13700F
- i7-13700K
- i7-13700KF
- i9-13900
- i9-13900F
- i9-13900K
- i9-13900KF

14th Generation Intel Core

- i5-14600K
- i7-14700
- i7-14700F
- i7-14700K
- i7-14700KF
- i9-14900
- i9-14900F
- i9-14900K
- i9-14900KF

Dell models with affected processors:

- ChengMing 3910/3911
- Inspiron 3020 Desktop
- Inspiron 3020 Small Desktop
- Inspiron 3030 Desktop
- Inspiron 3030 Small Desktop
- OptiPlex All-in-One 7410
- OptiPlex All-in-One Plus 7410
- OptiPlex All-in-One 7420
- OptiPlex All-in-One Plus 7420
- OptiPlex Micro 7010
- OptiPlex Micro Plus 7010
- OptiPlex Micro 7020
- OptiPlex Micro Plus 7020
- OptiPlex Small Form Factor 7010
- OptiPlex Small Form Factor Plus 7010
- OptiPlex Small Form Factor 7020
- OptiPlex Small Form Factor Plus 7020
- OptiPlex Tower 7010

Article Properties

Article Number: 000227933

Article Type: Solution

Last Modified: 02 May 2025

Version: 7

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- OptiPlex Tower Plus 7010
- OptiPlex Tower 7020
- OptiPlex Tower Plus 7020
- Precision 3260 Compact
- Precision 3260 XE Compact
- Precision 3280 Compact
- Precision 3280 XE Compact
- Precision 3460 Small Form Factor
- Precision 3460 XE Small Form Factor
- Precision 3660 Tower
- Precision 3660 XE Tower
- Precision 3680 Tower
- Precision 3680 XE Tower
- Vostro 3020 Small Desktop
- Vostro 3020 Tower Desktop
- Vostro 3030 Desktop
- Vostro 3030 Small Desktop

Alienware and XPS with affected processors:

- Alienware Aurora R15
- Alienware Aurora R16
- XPS 8960

Cause

Intel states that the elevated operating voltage stemming from a microcode algorithm results in incorrect voltage requests to the processor which causes the issue. For Intel's statement, see: [July 2024 Update on Instability Reports on Intel Core 13th and 14th Gen Desktop Processors](#) ©

Resolution

Dell Engineering incorporated a microcode update from Intel into the computer BIOS updates for all identifiable models. These BIOS updates are available on the [Dell Support Website](#) from May 02, 2025 to maintain stability of the processors. Dell highly recommends updating your computer to the latest BIOS revision available. (It contains the updated Intel microcode.)

For more information about how to update the BIOS of your computer, reference: [Dell BIOS and UEFI Updates](#)

[Contact Dell Technical Support](#) for assistance in troubleshooting and diagnosing your computer if your computer experiences blue screens or application crashes after updating the BIOS.

Affected Products

Alienware Aurora R15, Alienware Aurora R16, Inspiron 3020 Desktop, Inspiron 3020 Small Desktop, Inspiron 3030 Desktop, Inspiron 3030 Small Desktop, OptiPlex Tower 7010, OptiPlex Micro 7010, OptiPlex Tower Plus 7010, OptiPlex Micro Plus 7010, OptiPlex Small Form Factor Plus 7010, OptiPlex Small Form Factor 7010, OptiPlex Micro 7020, OptiPlex Micro Plus 7020, OptiPlex Small Form Factor Plus 7020, OptiPlex Small Form Factor 7020, OptiPlex Tower 7020, OptiPlex Tower Plus 7020, OptiPlex All-in-One 7410, OptiPlex All-in-One Plus 7410, OptiPlex All-in-One 7420, OptiPlex All-in-One Plus 7420, Precision 3260 XE Compact, Precision 3280 XE Compact, Precision 3460 XE Small Form Factor, Precision 3660 XE Tower, Precision 3680 XE Tower, Precision 3260 Compact, Precision 3280 Compact, Precision 3460 Small Form Factor, Precision 3660 Tower, Precision 3680 Tower, Vostro 3020 Tower Desktop, Vostro 3020 Small Desktop, Vostro 3030 Desktop, Vostro 3030 Small Desktop, XPS 8960

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Exhibit D

The latest security information on Intel® products.



[Report a Vulnerability](#) [Product Support](#)

2025.2 IPU - Intel® Processor Indirect Branch Predictor Advisory

Intel ID:	INTEL-SA-01247
Advisory Category:	Hardware
Impact of vulnerability:	Information Disclosure
Severity rating:	MEDIUM
Original release:	05/13/2025
Last revised:	05/27/2025

Summary:

Potential security vulnerabilities in some Intel® Processor indirect branch predictors may allow information disclosure. Intel is releasing microcode updates to mitigate these potential vulnerabilities.

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Vulnerability Details:

CVEID: [CVE-2024-43420](#)

Description: Exposure of sensitive information caused by shared microarchitectural predictor state that influences transient execution for some Intel Atom® processors may allow an authenticated user to potentially enable information disclosure via local access.

CVSS Base Score 3.1: 5.6 Medium

CVSS Vector 3.1: [CVSS:3.1/AV:L/AC:H/PR:L/UI:N/S:C/C:H/I:N/A:N](#)

CVSS Base Score 4.0: 5.7 Medium

CVSS Vector 4.0: [CVSS:4.0/AV:L/AC:H/AT:P/PR:L/UI:N/VC:H/VI:N/VA:N/SC:N/SI:N/SA:N](#)

CVEID: [CVE-2025-20623](#)

Description: Exposure of sensitive information caused by shared microarchitectural predictor state that influences transient execution for some Intel® Core™ processors (10th Generation) may allow an authenticated user to potentially enable information disclosure via local access.

CVSS Base Score 3.1: 5.6 Medium

CVSS Vector 3.1: [CVSS:3.1/AV:L/AC:H/PR:L/UI:N/S:C/C:H/I:N/A:N](#)

CVSS Base Score 4.0: 5.7 Medium

CVSS Vector 4.0: [CVSS:4.0/AV:L/AC:H/AT:P/PR:L/UI:N/VC:H/VI:N/VA:N/SC:N/SI:N/SA:N](#)

CVEID: [CVE-2024-45332](#)

Description: Exposure of sensitive information caused by shared microarchitectural predictor state that influences transient execution in the indirect branch predictors for some Intel® Processors may allow an authenticated user to potentially enable information disclosure via local access.

CVSS Base Score 3.1: 5.6 Medium

CVSS Vector 3.1: [CVSS:3.1/AV:L/AC:H/PR:L/UI:N/S:C/C:H/I:N/A:N](#)

CVSS Base Score 4.0: 5.7 Medium

CVSS Vector 4.0: [CVSS:4.0/AV:L/AC:H/AT:P/PR:L/UI:N/VC:H/VI:N/VA:N/SC:N/SI:N/SA:N](#)

Affected Products:

Product family	Vertical Segment	CVE ID	CPU ID	Platform ID		
12th Generation Intel® Core™ Processor Family	Desktop	CVE-2024-45332	906A4	0x80		
			906A3			
Intel® Pentium® Gold Processor Family	Mobile		90675		0x07	
Intel® Celeron® Processor Family	Embedded		90672		0x11	
			B06E0		0x40	
2nd Generation Intel® Xeon® Scalable Processors	Server	CVE-2024-45332	50657	0xBF		
	Workstation		50656			
9th Generation Intel® Core™ Processor Family	Mobile	CVE-2024-45332	906ED	0x22		
	Desktop					
Intel® Xeon® E Processors	Embedded					
	Server					

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10th Generation Intel® Core™ Processor Family Intel® Xeon® E Processor	Desktop	CVE-2024-45332	A0652	
	Mobile		A0655	0x22
	Embedded		A0653	0x20
	Server		A0660	0x80
			806EC	0x94
3rd Generation Intel® Xeon® Scalable Processor Family	Server	CVE-2024-45332	A0661	
10th Generation Intel® Core™ Processor Family	Mobile	CVE-2024-45332 CVE-2025-20623	5065B	0xBF
3rd Generation Intel® Xeon® Scalable Processor Family	Server	CVE-2024-45332	706E5	0x80
	Embedded		606A6	0x87
Intel® Core™ Ultra Family	Mobile	CVE-2024-45332	606C1	0x10
	Desktop		A06A4	0x7
13th Generation Intel® Core™ Processor Family	Mobile Desktop	CVE-2024-45332	B06A2	
14th Generation Intel® Core™ Processor Family			B06A3	0xe0
Intel® Pentium® Gold Processor Family			B0671	0x32
Intel® Celeron® Processor Family			B06F2	0x07
13th Generation Intel® Core™ i7 processors			B06F5	
Intel® Xeon® E processor family	Server	CVE-2024-45332	B0671	0x1
Intel Pentium® Processor G7400/G7400T	Server	CVE-2024-45332	90675	07
11th Gen Intel Core	Desktop Embedded Server	CVE-2024-45332		
Intel® Core® i7-11700T Processor				
Intel® Core® i7-11700 Processor				
Intel® Core® i5-11400T Processor				
Intel® Core® i5-11400 Processor			A0671	0x02
Intel® Core® i5-11500T Processor				
Intel® Core® i5-11500 Processor				
Intel® Xeon® E Processor				

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4th Generation Intel® Xeon® Scalable processors	Server Workstation	CVE-2024-45332	806F7 806F8	0x87-0x10
5th Generation Intel® Xeon® Scalable processors	Server Workstation	CVE-2024-45332	C06F2	0x87
11th Generation Intel® Core Processor Family	Mobile Embedded	CVE-2024-45332	806C1 806C2 806D1	0x80 0xC2
8th Generation Intel® Core™ Processors	Mobile Embedded	CVE-2024-45332	806EC	0x94
Intel® Pentium® Processor Silver Series Intel® Celeron® Processor J Series Intel® Celeron® Processor N Series	Desktop Mobile	CVE-2024-43420	706A8	0x01
Intel® Core™ Ultra 5, 7, 9	Mobile Desktop	CVE-2024-45332	B0650 C0652 C0662 C0664	01
Intel® Core™ Ultra 5, 7, 9	Mobile Embedded	CVE-2024-45332	B06D1	01
Intel® Xeon® 6 processor family	Server	CVE-2024-45332	A06F2	01
Intel® Atom® Processors P6000	Networking Server	CVE-2024-45332	B0664	01

Recommendation:

Intel recommends that users of affected Intel® Processors update to the latest version of firmware provided by the system manufacturer that addresses these issues.

Acknowledgements:

For CVE-2024-45332, Intel would like to thank Sandro Rügge, Johannes Wikner and Kaveh Razavi from COMSEC at ETH Zurich for reporting the original issue and Intel employees Alyssa Milburn, Ke Sun, Joe Nuzman and Alexandr Sukhman for reporting additional related findings.

The following issues were found internally by Intel, CVE-2024-43420 and CVE-2025-20623. Intel would like to thank Alyssa Milburn, Ke Sun and Jason Kilman Intel, and nearly the entire technology industry, follows a disclosure practice called Coordinated Disclosure, under which a cybersecurity vulnerability is generally publicly disclosed only after mitigations are available.

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Revision History

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Revision	Date	Description
1.0	05/13/2025	Initial Release
1.1	05/27/2025	Updated recommendation. Updated the CPUID for LNL.

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Encrypt sensitive information using our [PGP public key](#).

Please provide as much information as possible, including:

- The products and versions affected
- Detailed description of the vulnerability
- Information on known exploits

A member of the Intel Product Security Team will review your e-mail and contact you to collaborate on resolving the issue. For more information on how Intel works to resolve security issues, see:

- [Vulnerability handling guidelines](#)

For issues related to Intel's external web presence (Intel.com and related subdomains), please contact [Intel's External Security Research](#) team.

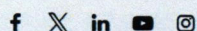
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If you...

- Have questions about the security features of an Intel product
- Require technical support
- Want product updates or patches

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Exhibit E

Outlook

RE: EAC Contact Form Submission

From: Paul Aumayr <paumayr@eac.gov>
Date: Wed 3/27/2024 10:42 AM
To: Rick Weible <rick@rgvisions.com>

Good morning

In response to your questions submitted yesterday:

1. If the laptop is being used as part of an EAC certified voting system, then yes, the county should look to have the vendor submit an engineering change order. Adding new models of laptop to an already certified system with an ECO is very common, and is one of the most frequently used reasons for ECO submissions.
2. The ECO process can be used to update antivirus definition files and other security updates to voting systems. This was the subject of a Notification of Clarification (NOC) issued in 2019, which can be found on our website: <https://www.eac.gov/noc-19-01>

Sincerely,

Paul Aumayr | Sr. Election Technology Specialist
Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov
| PAumayr@EAC.gov

From: U.S. Election Assistance Commission <no-reply@eac.gov>
Sent: Tuesday, March 26, 2024 10:35 AM
Subject: EAC Contact Form Submission

Caution: This email is from an external source. Please take care when clicking links or opening attachments. If the message looks suspicious, please use the Phish Alert Report button for the security team to review.

Submitted on Tuesday, March 26, 2024
Submitted by: Anonymous

Submitted values are:
First Name: Rick
Last Name: Weible
Address:
Elkton, South Dakota. 57026

Message:

I have a few questions regarding Engineering Change Orders:

- 1) If a model of a laptop being used for election results is not the same manufacturer or model listed in the certificate, should the county ask the vendor to submit an engineering change order to be in compliance?
- 2) With the VVSG 1.0 7.4.2 Protection Against Malicious Software, where it specifically states "Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status." Should counties/states ask for Engineering Change Orders to be able to update the Antivirus definition files of the system before an election, to ensure the security of their systems? I see that many jurisdictions are using ES&S 6.1.1.0, and the antivirus of the laptop and desktops are stuck at March 29th, 2019...

Phone Number: 6123064555
Email: rick@rgvisions.com
Concerning: Voting System Testing And Certification