

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

RECEIVED
AUG 07 2025
SD Secretary of State

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 statute or State Board of Elections rule or order or form in question is:

-----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-----

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

ES&S did not abide by our state statute when they sold Minnehaha County a new Dell laptop Model E5540 configured with the ES&S Electionware Results software in 2024 (Exhibit A), which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to the new laptop was not approved by the South Dakota State Board of Elections.

- a. The certificate clearly shows what approved hardware is allowed and certified to run with the voting system, the only laptop certified is the Dell Latitude 5580, and the three desktops are the OptiPlex 5040, 5050, and the 7020:

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

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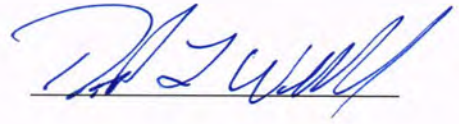
https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf

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- b. 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>
- c. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 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 system.
- d. On page 2 of all ES&S administration manuals it is clear they understand the requirements, and have 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.”
- e. I have asked the US Election Assistance Commission about the laptop, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit A)
- f. There are no meeting minutes since Aug 2021 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.
- g. ES&S failed to abide by our state law, which clearly requires approval of a change or modification of 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.
- h. The requirement and process is further expanded in the second paragraph of rule **5:02:09:02. Approval of automatic tabulating systems required before distribution.** Where it states; “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.”

3. The precise issue to be answered by the board's declaratory ruling is: Is the Dell E5540 laptop in Minnehaha, that was purchased from ES&S in 2024 with HAVA funds, considered part of the equipment certified for use by the US Election Assistance Commission 6.1.1.0 Certificate of Conformance dated July 27th, 2020 and certified by the South Dakota State Board of Elections per the state board of Election meeting minutes dated August 23, 2021?

Dated at (Elkton, SD), this 1st day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

Exhibit A



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

EVS 6.1.1.0 Reporting Standard Standalone System Purchase Order

February 05, 2024

Minnehaha County, South Dakota

415 N Dakota Ave
 Sioux Falls, SD 57104

Quantity	Part #	Description	Price	Ext. Price
EMS WORKSTATION				
1	96141	DELL LATITUDE 5540 EMS LAPTOP	\$2,074.00	\$2,074.00
		<ul style="list-style-type: none"> • Dell Latitude E5540 • 12th Generation Intel® Core™ i5-1345U (10 Core, 12MB cache) • TPM Enabled • Dell Power Manager • Dell Data Protection Security Tools Digital Delivery/NB • Dell Backup and Recovery Basic • Dell Data Protection Protected Workspace • Dell Digital Delivery Cirrus Client • Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), Optiplex • Waves Maxx Audio Royalty • 15.6" FHD (1920x1080) Non-Touch Anti-Glare LCD with Camera and Mic • 16GB (2x8GB) DDR4 Memory • M.2 512GB PCIe Class 35 Solid State Drive • Intel Wi-Fi 6 AX211 2x2 AX+ Bluetooth 5.1 • Internal Dual Pointing Keyboard (US-English) • 65 Watt AC Adaptor, US Power Cord • Primary 3-cell 54Whr Battery • 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 		
1	96002	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
1	96008	*SYMANTEC ENDPOINT PROTECTION 14.2	\$61.00	\$61.00
1	96032	MICROSOFT WIN10 IOT ENT 2019 LTSC VALUE	\$128.00	\$128.00

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2	10005	BITLOCKER KEY	\$36.00	\$72.00
		MISCELLANEOUS COMPONENTS		
1	B6400	EMS REPORT PRINTER - BROTHER HL-L6400 B&W DUPLEX LASER PRINTER	\$570.00	\$570.00
1	96016	LD 6' USB 2.0 A-B CABLE, T.IVOTR, RTAL 6' USB CABLE	\$8.00	\$8.00
		SERVICES		
1	510210	STANDALONE EMS INSTALL	\$1,540.00	\$1,540.00
		<ul style="list-style-type: none"> • Staging of EMS workstations at ES&S Technical Services lab. o Includes the installation, configuration, and testing of EMS workstation. • Equipment is shipped to customer location. o Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. • EMS installation summary documentation provided to customer upon completion of installation. 		
		SHIPPING AND HANDLING		
1	FREIGHT	SHIPPING & HANDLING - EMS EQUIPMENT	\$195.00	\$195.00
		Order Total		\$4,718.00

Invoicing and 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 included in the Order Total.

Note 5: Network Cabling is not included.

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 of 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.


 Customer Signature

3-4-2024
 Date

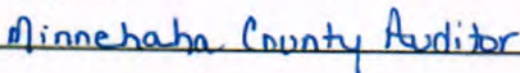

 Title

Exhibit B

Outlook

RE: EAC Contact Form Submission

From: Paul Aumayr <paumayr@eac.gov>
Date: Wed 3/27/2024 10:42 AM
To: Rick Weible <rick@rvvisions.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 2nd 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@rvvisions.com

Concerning: Voting System Testing And Certification

b/c

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 statute or State Board of Elections rule or order or form in question is:

-----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.

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; 22 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:

Tech Solutions leased Davison County a Dell Latitude laptop Model 5500 configured with the ES&S Electionware Results software in 2018 (Exhibit A), which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 5.2.2.0, 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. TechSolutions is not a registered vendor with the United States Elections Assistance Commission, and therefore is not authorized to submit an election system or modification for testing or certification.

<https://www.eac.gov/voting-equipment/registered-manufacturers>

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- b. The ES&S EVS 5.2.2.0 EAC Certificate of Conformance clearly shows that only the Dell Latitude model E6410 is certified and approved for use in the ES&S voting system.

EMS Standalone Workstation		Dell Latitude E6410		
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https://www.eac.gov/sites/default/files/voting_system/files/EVS5220-Cert_Scope%28FINAL%29.pdf

- 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
Dell	EMS Server	PowerEdge T430, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, OptiPlex 5040, 5050, 7020
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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. 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.

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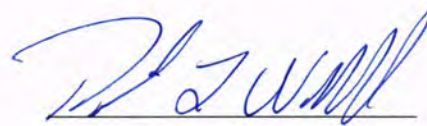
AUG 08 2025

SD Secretary of State

- g. 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."
- h. I have asked the U.S. Election Assistance Commission about changes in approved laptops, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit B)
- i. There are no meeting minutes since August of 2021 by the South Dakota State Board of Elections indicating an application by ES&S or TechSolutions seeking approval of any changes or modifications to any prior approved voting system.
- j. Davison County, ES&S and TechSolutions 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 either ES&S or TechSolutions, 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 5500 laptop?
- b. Did Davison County comply with SDCL 12-17B-2 by using the Dell Latitude 5500 laptop in state and federal elections from 2018 to current date, specifically in regard to the following: "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."?

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Dated at (Elkton, SD), this 2nd day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

Exhibit A

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SD Secretary of State



To whom it may concern:

In response to the device inquiry for the laptop that is running your ES&S EMS system for the election I wanted to get all the specifics in one place.

Tech Solutions ASSET4101

Dell Latitude 5500 Laptop

Service Tag(serial number) 65X80R2

That laptop is part of the Managed Service Agreement and current Statement of Work in place between Tech Solutions and Davison County. We don't list each device on that agreement as it changes throughout the year as devices are replaced, returned or added.

Specifically, that laptop is on our HaaS (hardware as a service) plan that the county utilizes for a majority of the devices. This would fall under the monthly fee on your monthly invoice labeled **MANAGED WORKSTATION HARDWARE - LAPTOP** at \$33 per month. That fee covers the use of the device for as long as the county needs it, with replacement included at end-of-life of the device or sooner if different needs arise. Also included is any hardware repairs or upgrades needed during the life of the device, damage excluded.

This device was put into service in 2018 and is set for replacement this year to get updated to Windows 11 that is required by end of October.

Additionally, this specific device had to go through some additional steps and costs on the county's end to have it sent in to be 'hardened' or secured for it's specific use. That information was conveyed between myself and Susan Kiepke, the then Auditor. I searched my email but it only goes back a few years and I was unable to find that. I do personally remember providing a shipping box and the laptop for her to send it in. Then once the hardening process was complete we finished the setup.

Regards,

A handwritten signature in blue ink, appearing to read "J. Thuringer".

Jordan Thuringer
Tech Solutions
IT Operations Manager
605-990-TECH(8324)



Tech Solutions
1408 N. Main St.
Mitchell, SD 57301

605-990-8324
Fax: 605-990-4334
www.990tech.com

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Exhibit B

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:

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- 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?
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Phone Number: 6123064555

Email: rick@rgvisions.com

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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-----

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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; 22 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 Penington 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 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>

- b. 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

- c. 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
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

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SD Secretary of State

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

- d. 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>
 - e. 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.
 - f. 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.”
 - g. I have asked the U.S. Election Assistance Commission about changes in approved laptops, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit C)
 - h. 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.
 - i. Lincoln and Pennington Counties and ES&S and 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?

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- b. Did Lincoln County comply with SDCL 12-17B-2 by using the Dell Latitude 5501 laptop in state and federal elections from 2020 to current date, specifically in regard to the following: "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."?
- c. Did Pennington County comply with SDCL 12-17B-2 by using the Dell Latitude 5501 laptop in state and federal elections from 2020 to current date, specifically in regard to the following: "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."?

Dated at (Elkton, SD), this 4th day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

Exhibit A

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AUG 08 2025
SD Secretary of State



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
	<ul style="list-style-type: none"> 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 		

Exhibit B



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

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 AUG 08 2025

SD Secretary

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**

RECEIVED
 APR 03 2020

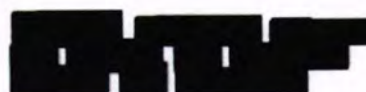
PENNINGTON CO., AUDITOR

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.



RECEIVED
AUG 08 2025
SD Secretary of State

Exhibit C

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 <eo-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

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

RECEIVED
AUG 08 2025
SD Secretary of State

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 statute or State Board of Elections rule or order or form in question is:

-----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-----

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

ES&S did not abide by our state statute when they sold Minnehaha County a new Dell laptop Model E5540 configured with the ES&S Electionware Results software in 2024 (Exhibit A), which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to the new laptop was not approved by the South Dakota State Board of Elections.

- a. The certificate clearly shows what approved hardware is allowed and certified to run with the voting system, the only laptop certified is the Dell Latitude 5580, and the three desktops are the OptiPlex 5040, 5050, and the 7020:

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

7 | Page

https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%2

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[0Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf](https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf)

- b. 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.

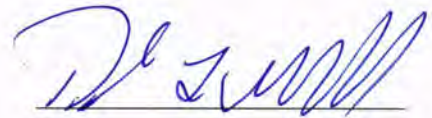
<https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>

- c. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 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 system.
- d. On page 2 of all ES&S administration manuals it is clear they understand the requirements, and have 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.”
- e. I have asked the US Election Assistance Commission about the laptop, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit B)
- f. There are no meeting minutes since Aug 2021 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.
- g. ES&S failed to abide by our state law, which clearly requires approval of a change or modification of 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.
- h. The requirement and process is further expanded in the second paragraph of rule **5:02:09:02. Approval of automatic tabulating systems required before distribution.** Where it states; “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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SD Secretary of State

3. Did Minnehaha County comply with SDCL 12-17B-2 by using the Dell Latitude E5540 laptop in state and federal elections in the 2024 Elections, specifically in regard to the following: "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."?

Dated at (Elkton, SD), this 4th day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

Exhibit A

RECEIVED
AUG 08 2023



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

EVS 6.1.1.0 Reporting Standard Standalone System Purchase Order

February 05, 2024

Minnehaha County, South Dakota
415 N Dakota Ave
Sioux Falls, SD 57104

Quantity	Part #	Description	Price	Ext. Price
EMS WORKSTATION				
1	96141	DELL LATITUDE 5540 EMS LAPTOP	\$2,074.00	\$2,074.00
		<ul style="list-style-type: none"> • Dell Latitude E5540 • 12th Generation Intel® Core™ i5-1345U (10 Core, 12MB cache) • TPM Enabled • Dell Power Manager • Dell Data Protection Security Tools Digital Delivery/NB • Dell Backup and Recovery Basic • Dell Data Protection Protected Workspace • Dell Digital Delivery Cirrus Client • Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), Optiplex • Waves Maxx Audio Royalty • 15.6" FHD (1920x1080) Non-Touch Anti-Glare LCD with Camera and Mic • 16GB (2x8GB) DDR4 Memory • M.2 512GB PCIe Class 35 Solid State Drive • Intel Wi-Fi 6 AX211 2x2 AX+ Bluetooth 5.1 • Internal Dual Pointing Keyboard (US-English) • 65 Watt AC Adaptor, US Power Cord • Primary 3-cell 54Whr Battery • 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 		
1	96002	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
1	96008	*SYMANTEC ENDPOINT PROTECTION 14.2	\$61.00	\$61.00
1	96032	MICROSOFT WIN10 IOT ENT 2019 LTSC VALUE	\$128.00	\$128.00

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2	10005	BITLOCKER KEY		\$72.00
		MISCELLANEOUS COMPONENTS		
1	B6400	EMS REPORT PRINTER - BROTHER HL-L6400 B/W DUPLEX LASER PRINTER	\$570.00	\$570.00
1	96016	LD 6' USB 2.0 A-B CABLE, T.IVOTR, RTAL 6' USB CABLE	\$8.00	\$8.00
		SERVICES		
1	510210	STANDALONE EMS INSTALL	\$1,540.00	\$1,540.00
		<ul style="list-style-type: none"> • Staging of EMS workstations at ES&S Technical Services lab. <ul style="list-style-type: none"> o Includes the installation, configuration, and testing of EMS workstation. • Equipment is shipped to customer location. <ul style="list-style-type: none"> o Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. • EMS installation summary documentation provided to customer upon completion of installation. 		
		SHIPPING AND HANDLING		
1	FREIGHT	SHIPPING & HANDLING - EMS EQUIPMENT	\$195.00	\$195.00
		Order Total		\$4,718.00

Invoicing and 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 included in the Order Total.

Note 5: Network Cabling is not included.

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 of 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.

Keith H. Anderson 3-4-2024
Customer Signature Date

Minnehaha County Auditor
Title

Exhibit B

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AUG 08 2025
SD Secretary of State

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
paumayr@eac.gov
paumayr@eac.gov

From: U.S. Election Assistance Commission <eo-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

RECEIVED
AUG 11 2025
SD Secretary of State

Corrected
Version

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

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 statute or State Board of Elections rule or order or form in question is:

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

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

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

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

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

ES&S did not abide by our state statute when they sold Minnehaha County a new Dell laptop Model E5540 configured with the ES&S Electionware Results software in 2024 (Exhibit A), which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to the new laptop was not approved by the South Dakota State Board of Elections.

- a. The certificate clearly shows what approved hardware is allowed and certified to run with the voting system, the only laptop certified is the Dell Latitude 5580, and the three desktops are the OptiPlex 5040, 5050, and the 7020:

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

7 | Page

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

1/6

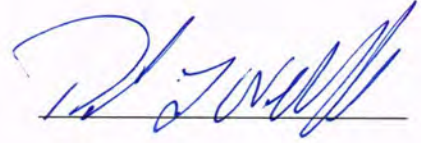
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SD Secretary of State

- b. 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>
- c. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 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 system.
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- e. I have asked the US Election Assistance Commission about the laptop, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit B)
- f. There are no meeting minutes since Aug 2021 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.
- g. ES&S failed to abide by our state law, which clearly requires approval of a change or modification of 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.
- h. The requirement and process is further expanded in the second paragraph of rule **5:02:09:02. Approval of automatic tabulating systems required before distribution.** Where it states; “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.”

3. The precise issue to be answered by the board's declaratory ruling is: Is the Dell E5540 laptop in Minnehaha, that was purchased from ES&S in 2024 with HAVA funds, considered part of the equipment certified for use by the US Election Assistance Commission 6.1.1.0 Certificate of Conformance dated July 27th, 2020 and certified by the South Dakota State Board of Elections per the state board of Election meeting minutes dated August 23, 2021?

RECEIVED
AUG 11 2025
SD Secretary of State

Dated at (Elkton, SD), this 1st day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

316

Exhibit A

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AUG 11 2024



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

EVS 6.1.1.0 Reporting Standard Standalone System Purchase Order

February 05, 2024

Minnehaha County, South Dakota
415 N Dakota Ave
Sioux Falls, SD 57104

Quantity	Part #	Description	Price	Ext. Price
EMS WORKSTATION				
1	96141	DELL LATITUDE 5540 EMS LAPTOP	\$2,074.00	\$2,074.00
		<ul style="list-style-type: none"> • Dell Latitude E5540 • 12th Generation Intel® Core™ i5-1345U (10 Core, 12MB cache) • TPM Enabled • Dell Power Manager • Dell Data Protection Security Tools Digital Delivery/NB • Dell Backup and Recovery Basic • Dell Data Protection Protected Workspace • Dell Digital Delivery Cirrus Client • Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), Optiplex • Waves Maxx Audio Royalty • 15.6" FHD (1920x1080) Non-Touch Anti-Glare LCD with Camera and Mic • 16GB (2x8GB) DDR4 Memory • M.2 512GB PCIe Class 35 Solid State Drive • Intel Wi-Fi 6 AX211 2x2 AX+ Bluetooth 5.1 • Internal Dual Pointing Keyboard (US-English) • 65 Watt AC Adaptor, US Power Cord • Primary 3-cell 54Whr Battery • 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 		
1	96002	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
1	96008	*SYMANTEC ENDPOINT PROTECTION 14.2	\$61.00	\$61.00
1	96032	MICROSOFT WIN10 IOT ENT 2019 LTSC VALUE	\$128.00	\$128.00

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2	10005	BITLOCKER KEY	\$35.00	\$35.00
		MISCELLANEOUS COMPONENTS		
1	B6400	EMS REPORT PRINTER - BROTHER HL-L6400 B&W DUPLEX LASER PRINTER	\$570.00	\$570.00
1	96016	LD 6' USB 2.0 A-B CABLE, T.IVOTR, RTAL 6' USB CABLE	\$8.00	\$8.00
		SERVICES		
1	510210	STANDALONE EMS INSTALL	\$1,540.00	\$1,540.00
		<ul style="list-style-type: none"> • Staging of EMS workstations at ES&S Technical Services lab. o Includes the installation, configuration, and testing of EMS workstation. • Equipment is shipped to customer location. o Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. • EMS installation summary documentation provided to customer upon completion of installation. 		
		SHIPPING AND HANDLING		
1	FREIGHT	SHIPPING & HANDLING - EMS EQUIPMENT	\$195.00	\$195.00
		Order Total		\$4,718.00

Invoicing and 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 included in the Order Total.

Note 5: Network Cabling is not included.

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 of 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.

Dean H Anderson 3-4-2024
 Customer Signature Date
Minnehaha County Auditor
 Title

Exhibit B

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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
paumayr@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

6/6

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 statute or State Board of Elections rule or order or form in question is:

-----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.

-----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.

-----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:

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Under the Help America Vote Act of 2002, it is clear that voting systems under section 301(b)(1) (D) are able "to maintain and produce any audit trail information;" and the requirement is further developed under the Voluntary Voting Systems Guidelines 1.0, Chapter 7 section 8 (7.8 Independent Verification System). This audit trail information, considered records under 52 USC 20701, must be preserved and maintained after any Federal Election for 22 months.

ES&S has supplied, programmed and maintained all of the DS200, DS450 and DS850 tabulators used in the state of South Dakota in the 2024 Primary and General Elections.

- a. ES&S EVS 6.1.1.0 is the most recently certified system that the State Board of Elections approved for use in the state of South Dakota, approved in August of 2021, and it was the standard used in the South Dakota 2024 Primary and General Elections.
<https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>
- b. The ES&S EVS 6.1.1.0 EAC Certificate of Conformance clearly shows that the DS200, DS450, and DS850 (page 2) produce cast vote records.

DS200* is a polling place paper-based voting system, specifically a digital scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic cast vote records (CVR).

DS450* is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic CVRs.

DS850* is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic CVRs.

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

- c. The default settings for the ballot handling after a ballot is cast is to save all images. The default settings was tested and certified by the EAC and then certified by the South Dakota State Board of Elections. There was no testing with the settings off to determine if the system would remain certifiable.
- d. During a meeting held on June 16th, 2023 with a delegation from the South Dakota Secretary of State's Office, Mr. Tucker Omel, Senior Sales Engineer with ES&S, stated "The setting, the default setting is to capture images. We have to go through extra effort to turn it off..." (page 60)
https://www.sdcanvassing.com/_files/ugd/944eb0_9daad6d7ac76443fb04f2586523b5a96.pdf

- e. In an April 29th, 2024 email from Jared Schwab, Representative of ES&S to Minnehaha County Auditor, Leah Anderson, Mr. Schwab confirmed to Mrs. Anderson that the State had directed ES&S to program all media in the state with the setting to not save the ballot images.

From: Schwab, Jared <jared.schwab@essvote.com>
Sent: Monday, April 29, 2024 12:42 PM
To: Anderson, Leah <landerson@minnehahacounty.gov>
Subject: Re: Ballot Images Email

Hey Leah,

Yeah I don't recall us ever sending out communication on that specifically outside of that best practice document. We did get confirmation from the state that they're having us program everyone's media with that setting set to not save any ballot images.

Thanks,
Jared

Get [Outlook for iOS](#)

- f. Here is a copy of a manual from ES&S showing the default settings when they program the flash drives for the DS200's to use in elections.

2.3.3 DS200 Settings

Use DS200 Settings to set up poll place options, configure ballot images and handling, and select report options for the DS200 tabulator. From the **Manage** menu, select **DS200 Settings**.

The screenshot shows the 'DS200 Settings' window with the following sections:

- Status:** DS200 Settings
- Election day / Absentee/Early**
- DS200 Settings**
- Poll Place Options**
 - ☒ Allow Re-opening of Polls
 - ☐ Require Security Code on Poll Close
- Ballot Handling Options Before Ballot Is Cast**

Conditions	Paper Ballot Options
Undervoted Ballot	Query Voter Preference
Blank Ballot	Query Voter Preference
Cross Over Voted Ballot	Query Voter Preference
Overvoted Ballot	Query Voter Preference
Unreadable Marks on Ballot	Always Reject

 - ☒ Allow Display of Affected Contests
 - ☐ Allow Ballot Handling Options Override
- Express/Vote Card Handling Options**
 - ☒ Always Accept Express/Vote Cards
 - ☐ Always Follow Paper Ballot Options
- Ballot Handling Options After Ballot Is Cast**
 - Images to Save:** All Images
 - ☐ Diverted Installed
 - ☐ Identify Write-ins
 - ☐ Evaluate Unmarked Write-ins
 - ☐ Identify Blank Ballots
 - ☐ Identify Write-in Overvotes
- Note:** Ballots checked for identification will be stamped and diverted, when "Diverted Installed" is checked.
- Note:** Ballots checked for identification will be stamped, but NOT diverted, when "Diverted Installed" is unchecked.
- Reporting Options**

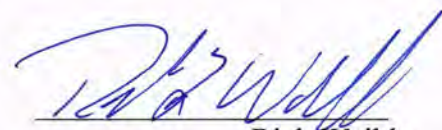
Level	Format	Zero Report Quantity	Result Report Quantity	Candidate Print Order
Precinct	Public	1	1	Home Rotation Order

 - ☐ Count Overvotes as 1 (multi vote for)
 - ☐ Combine Overs and Unders as Blank
 - ☐ Include Machine Event Log
 - ☒ Automatically Print Ballot Status Accounting Report
 - ☐ Include Write-in Review Report
- Buttons:** Save, Refresh, Close

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- g. On page 2 of all ES&S administration manuals it is clear that ES&S understands the requirements by placing this notice in the manual:
- “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.”
Example - <https://votingsystems.cdn.sos.ca.gov/vendors/ess/evs6302/evs6302-use-proc.pdf>
- h. ES&S programed all the DS200s, DS450s, and DS850s for use in South Dakota’s Elections in 2020, 2022, and in 2024.
- i. There are no meeting minutes since August of 2021 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 change any part of the configuration of the voting systems.
- j. Both the Secretary of State and ES&S failed to abide by the state laws and rules, which clearly require approval of a change or modification to an already approved configuration by the South Dakota State Board of Elections 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 obtain a determination before making, specifically in regard to the following: “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.”?
 - b. If so, when did the state receive that determination from ES&S?
 - c. Is the Secretary of State of South Dakota authorized to change or modify a voting system including directing ES&S to turn off the save ballot images, without the approval of the State Board of Elections?

Dated at (Elkton, SD), this 8th day of August, 2025.


Rick Weible
803 Elk St., Elkton, SD 57026
Signature of petitioner

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 statute or State Board of Elections rule or order or form in question is:

-----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.

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; 22 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 -----

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

"No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet." SDCL12-17B-2 makes it clear that we must safe guard our election systems from internet connections, including cellular modems in the tabulators that could connect to the internet, intranet, or a cellular network.

- a. ES&S submitted marketing materials (Exhibit A) indicating that modems were EAC approved to the State Board of Elections for approval of its EVS 6.0.4.0 in its meeting held August 13th, 2019.

<https://boardsandcommissions.sd.gov/bcuploads/BallotMarkingDevice&Tabulators.pdf> (Pages 3-4)

- b. During the testing overview conducted July 22-24, 2019 with Stefen Pluta, Department of Homeland Security, and Jim Edman, South Dakota Bureau of Information and Telecommunications present, there was no physical examination of the DS200 tabulator reported in an effort to ensure adherence to the law that the tabulators did not have any capability to connect to the internet. (Exhibit B)

<https://boardsandcommissions.sd.gov/bcuploads/2019EVS6040Report.pdf>

- c. The ES&S EVS 6.0.4.0 Voting System was approved by the State Board of Elections on Aug 13th, 2019 without any discussion of the modems.

<https://boardsandcommissions.sd.gov/bcuploads/DraftBOEMinutes8.13.19.pdf>

- d. On Jan 7th, 2020, US Election Assistance Commission received a complaint regarding ES&S misrepresentations regarding EAC certification of voting machines with modems:

We write to you to request that the Election Assistance Commission (EAC) initiate an inquiry and investigation into Elections Systems & Software (ES&S). ES&S may have violated, and likely continues to violate, Sections 5.14 and 5.15.1 of the EAC Testing and Certification Program Manual Version 2.0 (May 31, 2015) (TCPM)¹ by representing or implying that the DS200 with modem configuration is EAC certified when in fact only the DS200 *without* modem is EAC certified.² ES&S also may have violated Section 5.16 by failing to warn purchasers that adding an uncertified modem to the DS200 will void the EAC certification of the voting system in its entirety. The EAC should investigate this misconduct, require corrective action, and determine whether to suspend ES&S's manufacturer registration.

<https://freespeechforpeople.org/wp-content/uploads/2020/01/EAC.ESS-Letter-re-modems-with-Attachments-01.07.20.pdf>

- e. On March 20, 2020, the US Election Assistance Commission wrote ES&S and directed the following actions: (Exhibit C)
- Provide a plan to remove all misrepresented marketing material from circulation.
 - Notify current and potential customers who received the misrepresented information that previous information was inaccurate.
 - Distribute the revised information to those same customers.
- f. On April 3rd, 2020, ES&S issued a generic letter to customers, that advises the removal of EAC stickers where tabulators include modeming capabilities. (Exhibit D)

In addition, your jurisdiction may have received DS200 units which include a sticker on the back of the unit stating that the DS200 has been certified by the EAC. In order to ensure compliance with the EAC Testing and Certification Program, ES&S requests that you remove all such stickers from those DS200s which include modem capability. If you would like ES&S to remove these stickers, please contact your Account Manager and arrangements will be made for ES&S to come on-site and remove such stickers.

- g. On April 3rd, 2020, ES&S issued a generic letter to other customers that does not have the removal of EAC stickers notification. (Exhibit E)
- h. On Aug 13th, 2020, Politico wrote an article about the EAC ordering ES&S to correct their misleading claims, the EAC corrective actions, and the article also indicated that 11 states were shipped DS200 tabulators equipped with modems, and has never identified the states that received them.

What's next: ES&S will play a major role in the November election. The company has previously said that more than 33,000 DS200 optical scan machines with modems are in use in 11 states and the District of Columbia but has never identified which jurisdictions this includes beyond D.C.

<https://www.politico.com/news/2020/08/13/election-voting-machine-misleading-claims-394891>

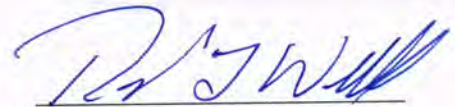
- i. On page 2 of all ES&S administration manuals it is clear ES&S understands the requirements, by placing this notice in the manual:
- “United States Election Assistance Commission Notification for Approved Voting Systems**
- In accordance with the United States Election Assistance Commission (EAC) 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.”
- Example - <https://votingsystems.cdn.sos.ca.gov/vendors/ess/evs6302/evs6302-use-proc.pdf>

j. Many of the DS200's currently in use in South Dakota were purchased and received around the time the 33,000 mislabeled DS200's were shipped across the country.

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3. The precise issue to be answered by the board's declaratory ruling is:
- a. Did ES&S comply with the US Elections Assistance letter dated March 20, 2020 by:
 - i. Notifying current and potential customers who received the misrepresented information that previous information was inaccurate.
 - ii. Distributing the revised information to those same customers.
 - b. Is the State Board of Elections in receipt of either letter from ES&S? (Exhibit D or E)
 - c. Did the State of South Dakota conduct an audit or ask for an audit to ensure that there are no modems in South Dakota's DS200 tabulators?
 - d. Is the State Board of Elections aware that the EAC has the authority to conduct reviews of fielded voting systems to ensure compliance with their Testing and Certification Program?
 - e. What assurances and evidence, independently of any statements from ES&S, can the State Board of Elections make to the public, to ensure them, that there are no modems in any of the voting systems in South Dakota?

Dated at (Elkton, SD), this 8th day of August, 2025.



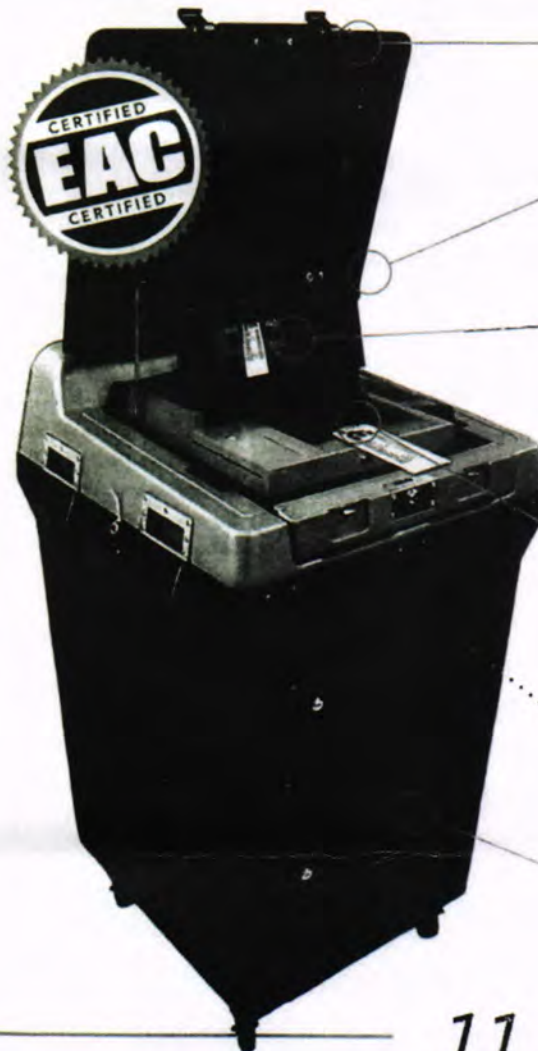
Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

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DS200[®]

Precinct Scanner & Tabulator



Protective Cover

Cover has heavy-duty rubber seal to shelter DS200 from elements during transport.

Easy to Set Up

Lid-up, power-on approach allows poll workers to easily open polls.

Touch Screen and Display

Provides voters with instructions and immediate feedback. Tension bearings hold screen in place for custom positioning.

Ballot/Card Slot

Voters cast both ballots and vote summary cards here; accommodates up to 19-inch ballots.

Auxiliary Ballot Compartment

Main Ballot Compartment

Easy, hassle-free storage of up to 2,500 ballots.

11

The number of 14-inch flat ballots processed per minute

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DS200 Key Features

The DS200 is a precinct-based scanner and vote tabulator equipped with the latest in ES&S' patented technology. Fully certified and compliant with EAC guidelines, the DS200 enhances the voting experience for voters and election officials alike. Our patented IMR™ and PTRAC® technology ensures even the most poorly marked ballots are read accurately and consistently — protecting voter intent. All of this is designed to make everyone's job easier.

ACCURATE



The DS200 combines the ES&S-patented Intelligent Mark Recognition (IMR™) and patented Positive Target Recognition & Alignment Compensation (PTRAC®) systems to accurately track and pinpoint target locations. This technology accommodates ballots inserted at angles or with erroneous marks to uphold voter intent. This precision improves the reliability of elections.

SECURE



Like all ES&S tabulation equipment, the DS200 includes physical security features such as locking panels and security seals to secure sensitive components and election files, and a key-locked case for transport and shipping. The DS200 operating system controls, limits and detects unauthorized access to all critical data. The system also includes safeguards, such as data encryption and digital signatures, that help protect sensitive data and verify authenticity, including certification of all firmware.

RELIABLE



Having both battery backup and thermal paper means you never have to worry about power outages or printer ink.

COMPATIBLE



Works in conjunction with:

- ExpressVote® Universal Voting System
- DS450® High-Throughput Scanner & Tabulator
- DS850® High-Speed Scanner & Tabulator
- Electionware® Election Management Software
- AutoMARK® Ballot Marking Device
- Election Reporting Manager®

COMPREHENSIVE



- Optional wireless modem results transfer with encryption
- Primary data storage device
- Backup data storage
- Data sent via Secure File Transfer Protocol (SFTP) server

For more information visit www.essvote.com

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South Dakota State Board of Elections
ES&S Voting System (EVS) 6.0.4.0 State Certification

Pursuant to South Dakota Codified Law (SDCL) § 12-17B-2, please accept this report as official application for certification of Election Systems and Software (ES&S) EVS 6.0.4.0. The testing of all equipment was conducted on July 22-24, 2019 in Pierre, SD.

The following individuals were present:

ES&S

State Certification Manager: Mark Manganaro

South Dakota Secretary of State's office

Secretary of State: Steve Barnett

Deputy Secretary of State: Jason Lutz

Director, Division of Elections: Kea Warne

State Election Coordinator: Christine Lehrkamp

HAVA Coordinator: Rachel Soulek

Elections & Federal Project Coordinator: Rory Mennenger

Election Assistant: Bailey Tibbs

Other Participants

Jackie Sieverding, Union County Auditor

Jane Naylor, Aurora County Auditor

Jennifer Deyo, Hughes County Auditor Staff

Kylie Stoddard, Hughes County Auditor Staff

Philena (Phil) Burtch, Stanley County Auditor

Susan Lamb, Sully County Auditor

Shawna Shaw, Potter County Auditor

Stefen Pluta, Department of Homeland Security

Jim Edman, Bureau of Information and Telecommunications

System Testing Overview

The components and versions of EVS 6.0.4.0 are as follows:

Software

ElectionWare, v. 5.0.4.0

- ElectionWare integrates the election administration functionality into a unified application. Its intended use is to define an election and create the resultant media files used by the ExpressVote, DS200 tabulator, DS450 tabulator, the DS850 Central Ballot Scanner, and Election Reporting Manager (ERM).

Event Log Service, v. 1.6.0.0

- ES&S Event Log Service is a Windows Service that runs in the background of any active ES&S Election Management software application to monitor the proper functioning of the Windows Event Viewer. The ES&S Event Log Service closes any active ES&S software application if the system detects the improper deactivation of the Windows Event Viewer.

Removable Media Service, v. 1.5.1.0

- Removable Media Service (RMS) is an application that runs in the background of the EMS client workstation and supports the installation and removal of election and results media.

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Hardware

DS200 Central Digital Tabulator, v. 2.17.4.0

- Used in Aurora, Bon Homme, Haakon, Harding, Jerauld, Kingsbury, Sanborn, Perkins, Mellette, Corson, Campbell, Walworth & Ziebach counties
- DS200 digital tabulator is a paper ballot tabulator that is designed for use as a polling place tabulator or a central count tabulator, South Dakota counties will use as a central count tabulator. Both sides of the ballot are scanned at the same time using a high-resolution image-scanning device.

DS450 Central Count Tabulator, v. 3.1.1.0

- Used in Clay, Lyman, Turner & Tripp counties
- The DS450 is a mid-range tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card. TruGrip™ technology insures that multiple sets of rollers are controlling the ballot in the transport at all times. This provides for reliable handling of ballots; even folded ballots. It can also read ballots in any of four orientations. It sorts tabulated ballots into discrete output bins without interrupting scanning.

DS850 Central Count Tabulator, v. 3.1.1.0

- Used in Beadle, Brookings, Brown, Codington, Davison, Lincoln, Meade, Minnehaha and Pennington counties.
- The DS850 is a high-speed, digital scan central ballot tabulator that uses cameras and imaging algorithms to capture voter selections on the front and back of a ballot, evaluate results and then sort ballots into discrete bins without interrupting scanning. A dedicated audit printer generates a continuous event log. Machine level reports are produced from a second, laser printer. The scanner saves voter selections to an internal hard disk and exports results to a USB Memory stick for processing with ElectionWare Reporting Software.

ExpressVote Universal Voting System, v. 2.4.5.0

- The ExpressVote is a universal voting device designed for all voters, with a printed voter-verifiable paper record. This system combines paper-based voting with touch screen technology. The ExpressVote includes a mandatory vote summary screen that requires voters to confirm or revise selections prior to printing the summary of ballot selections using the internal thermal printer.
- The ExpressVote enables voters who are visually or physically impaired and voters more comfortable reading or hearing instructions to privately make their selections. The ExpressVote supports navigation through touchscreen, physical keypad or ADA support peripheral such as a sip and puff device.

Testing Overview

During the test, the 500 ballots were split between five precincts including a split precinct in Precinct One. The SOS staff tested primary election and general election ballots. Tabulated ballots contained 10 choices and contained choices on both the front and back, except for the ExpressVote which prints all selections on one side. The ballots for testing were at least 90% fully voted with the remainder containing overvoted and undervoted ballots. An additional 15 ballots were also processed as absentee ballots in which each ballot was folded in the same manner as absentee ballots.

250 optical scan ballots were hand marked by staff which were then tabulated on a DS200, DS450 and DS850.

Description of ExpressVote Universal Voting Device Testing

Pursuant to ARSD § 5:02:09:02.03, 250 ExpressVote pre-printed ballot cards were marked using three ExpressVote machines. Each card was accurately marked and displayed each race that was marked. Each card was then accurately tabulated pursuant to ARSD § 5:02:09:02.01 on a DS200, DS450 and DS850. The ExpressVote machine was unplugged and the battery back-up system was successfully tested to allow voting to continue uninterrupted for two hours without external power. One error message was displayed when a staff person tried to insert a primary election ballot, which the error message indicated that the machine was not programmed for that election. The ballot was ejected without opening the machine.

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Description of Automatic Tabulating System Testing

Pursuant to ARSD § 5:02:09:02.01, the 250 ExpressVote cards that were marked using the ExpressVote were then tabulated by a DS200, DS450 and a DS850. During the testing, the DS850 successfully detected the blank ballots and tabulated the optical scan ballots and the ExpressVote cards at a rate well over the required 15 ballots a

ACCURATE



The DS200 combines the ES&S-patented Intelligent Mark Recognition (IMR™) and patented Positive Target Recognition & Alignment Compensation (PTRAC®) systems to accurately track and pinpoint target locations. This technology accommodates ballots inserted at angles or with erroneous marks to uphold voter intent. This precision improves the reliability of elections.

SECURE



Like all ES&S tabulation equipment, the DS200 includes physical security features such as locking panels and security seals to secure sensitive components and election files, and a key-locked case for transport and shipping. The DS200 operating system controls, limits and detects unauthorized access to all critical data. The system also includes safeguards, such as data encryption and digital signatures, that help protect sensitive data and verify authenticity, including certification of all firmware.

RELIABLE



Having both battery backup and thermal paper means you never have to worry about power outages or printer ink.

COMPATIBLE



Works in conjunction with:

- ExpressVote® Universal Voting System
- DS450® High-Throughput Scanner & Tabulator
- DS850® High-Speed Scanner & Tabulator
- Electionware® Election Management Software
- AutoMARK® Ballot Marking Device
- Election Reporting Manager®

COMPREHENSIVE



- Optional wireless modem results transfer with encryption
- Primary data storage device
- Backup data storage
- Data sent via Secure File Transfer Protocol (SFTP) server

For more information visit www.essvote.com



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

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March 20, 2020

Sent via e-mail

Steve Pearson, Senior Vice President of Certification
Election Systems & Software
11208 John Galt Blvd.
Omaha, NE 69137

Re: DS200 Misrepresentation

Dear Mr. Pearson,

On January 7, 2020, the U.S. Election Assistance Commission (EAC) received a complaint from two organizations, Free Speech for People and National Election Defense Coalition, stating that:

1. ES&S may have violated Sections 5.14 and 5.15.1 of the EAC Testing and Certification Program Manual Version 2.0 by representing or implying that the DS200 with modem configuration is EAC certified when in fact only the DS200 without modem is EAC certified.
2. ES&S also may have violated Section 5.16 by failing to warn purchasers that adding a modem to the DS200 will void the EAC certification of the voting system in its entirety.

The complaint requested that the EAC conduct an investigation, require corrective action, and determine whether to suspend ES&S's manufacturer registration.

On the same day, I requested that ES&S submit all marketing material for all ES&S EAC-certified voting systems by COB on January 10, 2020. ES&S requested to extend the deadline to January 17th due to unavailability of ES&S's marketing manager. ES&S submitted the marketing material, including their response to the complaint, on January 17th. In their response, ES&S stated they have remedied the issue by removing all references in its current corporate marketing materials related to the "optional use" of modems.

I have reviewed the marketing material submitted by ES&S and confirm that ES&S has several documents that state that the DS200 is "fully certified and compliant with EAC guidelines" while also listing a modem as optional. This misrepresentation is in violation of the EAC's Testing and Certification Program. I am pleased that ES&S has taken prompt action to revise their marketing material. In order to be in compliance with our Program, ES&S must take the following corrective actions:

- Provide a plan to remove all misrepresented marketing material from circulation.
- Notify current and potential customers who received the misrepresented information that previous information was inaccurate.
- Distribute the revised information to those same customers.

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In several other documents, ES&S states, "All ES&S tabulation systems are submitted to rigorous and extensive independent test campaigns as part of the Election Assistance Commission's (EAC) Voting System Certification Program." I find this statement to be a misrepresentation since ES&S has state-certified voting systems that have not been tested or certified under the EAC's Program. In order to be in compliance with our Program, ES&S must take the following corrective actions:

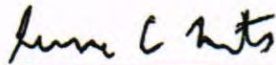
- Revise the marketing material to properly represent voting systems that have been certified by the EAC.
- Provide a plan to remove all misrepresented marketing material from circulation.
- Notify current and potential customers who received the misrepresented information that previous information was inaccurate.
- Distribute the revised information to those same customers.

As you are aware, the EAC has the authority to conduct reviews of fielded voting systems to ensure compliance with our Testing and Certification Program. We will conduct reviews of EAC-certified DS200s to ensure that they comply with our Program.

Finally, according to Section 5.15.4 of the Testing and Certification Program Manual, you have 15 days from receipt of this letter to comply with the recommended corrective actions. Failure to comply will result in the EAC publicly announcing that the voting system no longer complies with its original certification, and could include initiating decertification actions and/or suspension of manufacturer registration.

You are a valued stakeholder and I appreciate your proactive and prompt response.

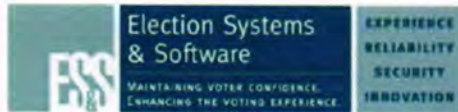
Sincerely,



Jerome Lovato
Director, Voting System Testing and Certification

cc: Mona Harrington, Acting Executive Director
Amanda Joiner, Associate Counsel

Exhibit D



11208 John Galt Boulevard • Omaha, NE 68137 USA
Phone: 402.593.0101 • Toll-Free: 1.800.247.8683 • Fax: 402.593.8107
www.essvote.com

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April 3, 2020

VIA ELECTRONIC MAIL

CONTACT NAME
STATE/CUSTOMER NAME
ADDRESS
ADDRESS

RE: Election Systems & Software, LLC ("ES&S") DS200® Marketing Materials

Dear CONTACT NAME:

It has recently been brought to our attention that certain ES&S DS200 precinct scanner and tabulator (DS200) marketing materials may contain potential inaccuracies. In prior DS200 marketing materials you may have received from ES&S, ES&S states that the DS200 has been certified by the United States Election Assistance Commission (EAC), while also listing the use of modems as an option for the DS200. Please be advised that the DS200 has been fully certified by the EAC, however the certification does not include modem capability.

Please be advised that it was never the intent of ES&S to state or imply that DS200 modemming capability was EAC certified. Further, ES&S made known to states which allow modemming that the modemming configuration has not been approved by the EAC. As you know, the DS200 has been fully certified and approved by your state for use in your jurisdiction with the use of modems. Your jurisdiction may continue to use the DS200 with modem capability as certified by your state.

In order to avoid any confusion with respect to ES&S' EAC certified voting systems and ES&S' voting systems which allow for the modemming of unofficial results, ES&S has removed all references in its current corporate marketing materials related to the "optional use" of modems. To view updated corporate marketing materials for the DS200, please visit www.essvote.com/products/ds200/.

In addition, your jurisdiction may have received DS200 units which include a sticker on the back of the unit stating that the DS200 has been certified by the EAC. In order to ensure compliance with the EAC Testing and Certification Program, ES&S requests that you remove all such stickers from those DS200s which include modem capability. If you would like ES&S to remove these stickers, please contact your Account Manager and arrangements will be made for ES&S to come on-site and remove such stickers.

We thank you for being a customer of ES&S. If you have any questions or need additional information, please contact your Account Manager and they will respond accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Pearson'.

Steve Pearson
Senior Vice President of Certification

Exhibit E



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AUG 18 2025
SD Secretary of State

April 3, 2020

VIA ELECTRONIC MAIL

CONTACT NAME
STATE/CUSTOMER NAME
ADDRESS
ADDRESS

RE: Election Systems & Software, LLC ("ES&S") DS200® Marketing Materials

Dear CONTACT NAME:

It has recently been brought to our attention that certain ES&S DS200 precinct scanner and tabulator (DS200) marketing materials may contain potential inaccuracies. In prior DS200 marketing materials you may have received from ES&S, ES&S states that the DS200 has been certified by the United States Election Assistance Commission (EAC), while also listing the use of modems as an option for the DS200. Please be advised that the DS200 has been fully certified by the EAC, however the certification does not include modem capability.

Please be advised that it was never the intent of ES&S to state or imply that DS200 modem capability was EAC certified. Further, ES&S made known to states which allow modemming that the modemming configuration has not been approved by the EAC.

In order to avoid any confusion with respect to ES&S' EAC certified voting systems and ES&S' voting systems which allow for the modemming of unofficial results, ES&S has removed all references in its current corporate marketing materials related to the "optional use" of modems. To view updated corporate marketing materials for the DS200, please visit www.essvote.com/products/ds200/.

We thank you for being a customer of ES&S. If you have any questions or need additional information, please contact your Account Manager and they will respond accordingly.

Sincerely,

Steve Pearson
Senior Vice President of Certification