

FINAL STATEMENT OF REASONS
May 15, 2018

UPDATE OF INITIAL STATEMENT OF REASONS

Following the receipt of public comments, the Secretary of State has made the following amendments to the proposed regulations:

SECTION 20150 – SUBDIVISION (a) was amended to add to the text “a system containing” to the definition of an “electronic poll book.”

This amendment was made to clarify that the phrase “electronic poll book” is referencing a system as a whole and not a single piece of hardware or software.

SECTION 20158 – SUBDIVISION (f) was amended to add to the text “of Advanced Encryption Standard (AES).”

This amendment was made to provide clarification to the initial reference of “256-bit data encryption” within the subdivision.

SECTION 20158 – SUBDIVISION (m) was amended to clarify that during an interruption in the network connection of an electronic poll book, all voter activity shall be captured and the electronic poll book shall have the capacity to transmit that voter activity upon a restoral of connectivity.

This amendment was made to provide clarification regarding the capture and transmittal of voter activity in the event of an interruption in the network connectivity of an electronic poll book.

SECTION 20158 – SUBDIVISION (r) was added to notify vendors that electronic poll books submitted for certification testing will be reviewed for compliance with applicable accessibility standards.

Subdivision (r) was added to ensure electronic poll books are equipped with accessibility features.

SECTION 20161 – SUBDIVISIONS (c), (d) and (e) were amended to change the text “one or all” to “any” within each respective subdivision.

The amendments were made to ensure that any defect, failure or fault in an electronic poll book is reported to the Secretary of State within 24 hours of discovery.

SECTION 20162 was amended to change the text “one or all” to “any” within the section.

The amendment was made to ensure that jurisdiction utilizing an electronic poll book shall create and have on file an emergency preparedness plan that outlines the processes and procedures to be followed in the event of a failure of any of the electronic poll books.

SECTION 20163 was amended to add the text “or recount” to the section.

The amendment was made to add a recount as a justifiable exception to the requirement to format all equipment within thirty days from the end of a canvass of any election.

SUMMARY AND COMMENT TO COMMENTS RECEIVED DURING THE INITIAL FOURTY-FIVE (45) DAY NOTICE PERIOD ENDING NOVEMBER 1, 2017.

The Secretary of State received one comment to the proposed regulations from Mr. J. Ray Kennedy. Mr. Kennedy’s comment and the Secretary of State’s response are as follows:

Comment No. 1: In Section 20150, “voter age” should be a required element in electronic pollbooks.

Response: The Secretary of State acknowledges the comment but has decided to take no action. "Voters age" is not prohibited in Section 20150(a)(2). However, it is not a required data element in Section 20150(a)(1).

The Secretary of State received one set of comments to the proposed regulations from Mr. Paul R. Spencer of Disability Rights California. Mr. Spencer’s comments and the Secretary of State’s responses are as follows:

Comment No. 1: In Section 20153, the “Technical Data Package” should include a description of the electronic poll book’s accessibility features. Description of system design features to ensure accessibility for poll workers with disabilities and voters with disabilities, and how the system complies with accessibility guidelines should be added.

Response: While the Secretary of State notes this comment, the original language has been retained. Accessible system design features are intended to be included in Section 20153. In addition, the Secretary of State added Subsection 20158(r) to the proposed regulations, setting forth the requirement that electronic poll books shall be evaluated for accessibility. The Secretary of State believes the aforementioned address this comment.

Comment No. 2: In Section 20158, the “System Requirements” should include language requiring the electronic poll book system be accessible for poll workers and voters with disabilities and how the system complies with accessibility guidelines.

Response: Subsection 20158(r) was added to the proposed regulations, setting forth the requirement that electronic poll books shall be evaluated for accessibility.

The Secretary of State received one set of comments to the proposed regulations from Mr. Chris Hays. Mr. Hays' comments and the Secretary of State's comments are as follows:

Comment No. 1: In Section 20158 subsection (c) the requirement for two hours of backup power may not be enough and the rules should require a paper poll book be printed for each precinct as a backup; subsection (n) current electronic signature capture devices do not capture signatures accurately enough and it will be difficult to impossible to match a voter's signature with the signature on file in the Registrar's files; subsection (p) poll books should not under any circumstances use wireless technology; finally, subsection (q) WAN has come to mean the Internet in the minds of many and it is recommended that the internet not be permitted to carry the information.

Response: The Secretary of State will address each comment separately.

The first comment states that the requirement for two hours of backup power may not be enough and the rules should require a paper poll book be printed for each precinct as a backup. While the Secretary of State notes this comment, the original language has been retained. This is something that would be outlined in the jurisdictions Emergency Operations Preparedness Plan in Section 20162. The Secretary of State believes Section 20162 of the regulations addresses this comment.

The second comment states that current electronic signature capture devices do not capture signatures accurately enough and it will be difficult to impossible to match a voter's signature with the signature on file in the Registrar's files. While the Secretary of State notes this comment, the original language has been retained. Signatures on poll books are not captured for verification purposes.

The third comment states that poll books should not under any circumstances use wireless technology. The Secretary of State acknowledges the comment but has decided to take no action. In Section 20158(q) the Secretary of State recommends electronic poll books not be enabled or installed with any technologies delineated in the Institute of Electrical and Electronics Engineers' (IEEE) 802.11 wireless local area network (LAN) standards. However, should a county deploy a wireless technology within a polling location the Secretary of State provides minimum standards that shall be utilized. The Secretary of State believes Section 20158(q) of the regulations addresses this comment and provides wireless local area network and wide area network security standards to ensure that the electronic poll books and the security of the election is not compromised.

The final comment is that WAN has come to mean the Internet in the minds of many and it is recommended that the internet not be permitted to carry the information. Wide

area network (WAN) is commonly utilized term in this industry and is understood to mean, a geographically distributed private telecommunications network that interconnects multiple local area networks. For this reason, the Secretary of State acknowledges the comment but has decided to take no action.

The Secretary of State received one set of comments to the proposed regulations from Mr. T.J. Burns of Election Systems and Software. Mr. Burns' comments and the Secretary of State's comments are as follows:

Comment No. 1: In Section 20158 subsection (i) all electronic poll book transactions and audit logs should be able to be traced back to the specific poll worker(s) through User Name for traceability and security purposes; subsection (n) provide a definition of "industry best standards"; subsection (p)(3) provide the specific section(s) of Payment Card Industry Data Security Standards (PCI DSS) referred to regarding electronic poll books enabled or installed with any technologies delineated in the Institute of Electrical and Electronics Engineers' (IEEE) 802.11 wireless local area network (LAN) standards; finally, subsection (p)(5)(iii) provide the specific section(s) of PCI DSS referred to regarding jurisdictions utilizing a wide area network (WAN) to transmit voter registration data from an electronic poll book to a centralized location.

Response: The Secretary of State will address each comment separately.

The first comment states that all electronic poll book transactions and audit logs should be able to be traced back to the specific poll worker(s) through User Name for traceability and security purposes. The requirement that electronic poll books produce a list of audit records reflecting all actions of the system is intended to include poll worker login information. Generic login accounts for electronic poll book users will not be acceptable. This will be verified in the applicants Security Procedures Document required in Section 20158(a)(6). For this reason, the Secretary of State acknowledges the comment but has decided to take no action.

The second comment requests that a definition of "industry best standards" be provided. "Industry best standards" is a commonly used term and is understood to mean, a method or technique that has consistently shown results and is used as a benchmark. The regulation is written in a way to require minimum best practices be followed but allow flexibility for future changes in the industry. For this reason, the Secretary of State acknowledges the comment but has decided to take no action.

Comments three and four request that specific section(s) of the PCI DSS be provided as they relate to electronic poll books enabled or installed with any technologies delineated in the IEEE 802.11 LAN and jurisdictions utilizing a WAN to transmit voter registration data from an electronic poll book to a centralized location. The Secretary of State acknowledges these comments but has decided to take no action. PCI DSS specifies twelve requirements for compliance. All 12 requirements have application to

electronic poll books. This regulation is written in a way to allow flexibility for future changes in the PCI DSS.

The Secretary of State received one comment to the proposed regulations from Mr. Victor Williams of Election Systems and Software. Mr. Williams' comment and the Secretary of State's response are as follows:

Comment No. 1: In Sections 20158 and 20160, regarding PCI-DSS, narrow the requirements specifically to the PCI-DSS as it relates to cardholder (voter) data security. These two sections in the standard cover the same subjects in the proposed regulations, but in more technical detail. The remaining 10 sections of the PCI-DSS may not apply or may be overkill. Be careful about prescribing all of PCI-DSS as there is a lot there. Perhaps an alternative is National Institute of Standards and Technology (NIST) 800-122 which is specific to protecting personally identifiable information.

Response: While the Secretary of State notes this comment, the original language has been retained. All 12 sections of the PCI-DSS are applicable to the security of voter data and should be exercised. NIST 800-122 is only a guide utilized to provide recommendations to protecting the confidentiality of personally identifiable information while PCI-DSS are a set of security standards designed to ensure that all companies that accept, process, store or transmit personally identifiable information maintain a secure environment.

The Secretary of State received one set of comments to the proposed regulations from Mr. John Gardner of Solano County. Mr. Gardner's comments and the Secretary of State's responses are as follows:

Comment No. 1: In Sections 20151 and 20158(m), the requirement for electronic poll books and counties utilizing extensions of their local election management system at polling locations to be able to capture all activity during an interruption in network connectivity and have the capacity to transmit that voter activity upon connectivity being restored should be removed or changed.

Response: The Secretary of State has amended Section 20158 to allow latitude in the capture and transmittal of voter activity during an interruption in the network connection of an electronic poll book or extension of the counties local election management system.

Comment No. 2: In Section 20158, a requirement should be written designating what method of backup counties can utilize during a loss of connectivity of an electronic poll book or extension of the counties local election management system.

Response: While the Secretary of State notes this comment, the original language has been retained. The method of backup a county utilizes during a loss of connectivity

would be a county procedural process and shall be addressed in the emergency operations preparedness plan of Section 20162.

The Secretary of State received one set of comments to the proposed regulations from Ms. Pamela Smith of Verified Voting. Ms. Smith's comments and the Secretary of State's responses are as follows:

Comment No. 1: While the document uses the terms "shall" for mandatory requirements, in some cases within a requirement there are options, which may or may not be preferable. There is no discussion in this definitions section or any preamble about the desirability of these options.

Response: The Secretary of State acknowledges this comment but has decided to take no action. The Secretary of State worked closely with the California counties that will use this technology and the respective vendors of these systems to identify appropriate security requirements. The regulations set requirements vendors must meet in order to obtain certification. Vendors are provided options in the way they can meet the requirement, but are required to meet the requirement. In large part, the requirements and provided options are based on industry best practices for security and are common knowledge for those that will be regulated.

Comment No. 2: In Section 20150, the language is sparse and should be made clearer. For example, there's no distinction made between an individual EPB unit, and an EPB system.

Response: The Secretary of State has added the text "a system containing" to Section 20150(b) to clarify that "electronic poll book" is intended to mean the combination of hardware and software that create the system as a whole.

Comment No. 3: In sections 20150 through 20165, there should be clarification that these requirements in Title 2 do not refer to an "election management system" that connects to voting systems through preparation of ballots and systems for the casting and counting of votes; it is of paramount importance that electronic poll book systems NOT be connected to voting systems in any way; if "voter ballot information" is not elsewhere defined in statute, the meaning of the term should be clarified here.

Response: The Secretary of State will address each comment separately.

The first comment states that the regulations should clarify that they do not refer to an "election management system" that connects to voting systems through preparation of ballots and systems for the casting and counting of votes. The term "Election management system," as used in the regulations is common to the industry and is understood to mean a "jurisdictional voter registration management system." These regulations are specific to electronic poll books and an electronic poll book is defined in

Section 20150. For these reasons, the Secretary of State acknowledges the comment but has decided to take no action.

The second comment states that electronic poll book systems should not be connected to a voting system in any way. Section 20158(a) mandates that and electronic poll book shall not connect to a voting system. For this reason, the Secretary of State acknowledges the comment but has decided to take no action.

The third comments states that “voter ballot Information” should be defined. The Secretary of State has decided to take no action on this comment as the term "voter ballot information" is not present in these regulations.

Comment No. 4: In Section 20152 subsection (c) the Secretary of State should write any confidentiality agreement and vendors wishing to apply should all sign and accept the same agreement; and it would be best if the source code were made available as disclosed source, publicly available for inspection and testing by anyone.

Response: The Secretary of State will address each comment separately.

The first comment states the Secretary of State should write any confidentiality agreement and all vendors should sign and accept the same agreement. The "confidentiality agreement" referred to in this section is supplied by the Secretary of State and an identical agreement is obtained from all vendors as part of the application process. For these reasons, the Secretary of State has decided to take no action.

The second comment states that it would be best if the source code were made publicly available. The Secretary of State acknowledges this comment but has decided to take no action. The source code of an electronic poll book vendor is considered proprietary unless stated otherwise.

Comment No. 5: In Section 20153 subsection (a)(3) the election administration use procedures must include what to do when failures occur; subsection (a)(6) “optimum security and functionality of the system” should be defined; and, subsection (c) legitimate reasons should be provided when a vendor designates something as confidential.

Response: The Secretary of State will address each comment separately.

The first comment states that the election administration use procedures must include what to do when failures occur. The Secretary of State acknowledges the comment but has decided to take no action. Resolutions to a failure are intended to be covered in Section 20158 (System Requirements) or in Section 20162 (Emergency Preparedness Plan).

The second comment states “optimum security and functionality of the system” should be defined. The Secretary of State acknowledges the comment but has decided to take no action as Section 20158 outlines security requirements of the system.

The third comment states that legitimate reasons should be provided when a vendor designates something as confidential. The regulations allow the vendor to designate what application information contains proprietary information. Therefore, the Secretary of State has decided to take no action.

Comment No. 6: In Section 20157 subsection (a)(1) there should be a copy of the source code in the hands of the office of the Secretary of State at all times, from application through testing and certification, and during use within the State; subsection (a)(1)(ii) code should be provided on a compact disk recordable (CD-R) or digital video disk recordable (DVD-R), because USB drives are active devices and can be used to transmit malware and CD-R and DVD-R are passive memory devices that cannot inject malware in the way that USB drives can; subsection (a)(2) the vendor should be asked to provide at least as many units as will be needed by the largest polling place, for performance and consistency testing; and, voting system standards mandate volume testing and the same principle should apply for EPB systems..

Response: The Secretary of State will address each comment separately.

The first comment states that there should be a copy of the source code in the hands of the office of the Secretary of State at all times. The Secretary of State utilizes a four step approach for review and testing of a voting technology. The four phases are; Application, Pre-Testing Activities, Testing, and Report Issuance & Post-Test Activities. The Secretary of State not obtain source code prior to the testing phase as sometimes software changes are made, at the request of the Secretary of State, during the application and pre-testing phases. For this reason, the Secretary of State has decided to take no action.

The second comment states that code should be provided on CD-R or DVD-R as neither of the devices can inject malware. The Secretary of State has decided to take no action on this comment as CD-R and DVD-R can inject malware.

The third and fourth comments state the vendor should be asked to provide at least as many units as will be needed by the largest polling place for performance and consistency testing, and volume testing should be performed. The Secretary of State has decided to take no action on this comment as volume and stress testing will be performed on electronic poll books during the testing process and the Secretary of State requests as many units as deemed necessary to successfully complete testing.

Comment No. 7: In Section 20158 subsection (a) the term “voting system” should include any component that deals with the voting system; subsection (b) define accuracy and the requirements the vendor must meet to ensure accuracy; subsection

(c) the term “backup power” should be changed to “battery power”; subsection (c) it should be required that there be enough external battery capacity to maintain the electronic poll book operational for the duration of the Election Day; subsection (c) this section should indicate what should happen when backup power is exhausted; subsection (c) the system should be able to print out the roster of voters in the event of a loss in power; subsection (d)(1) there should be a test of correctness for the list obtained from the voter registration system; subsection (f) the regulation should clarify that 256-bit encryption is referencing the Advanced Encryption Standard (AES) 256-bit encryption standard; subsection (g) define “reliable transmission” and explain how it will be tested; subsection (h) it should be required that the electronic poll book have the ability to operate offline; subsection (i) audit records should be available in text files, easily sortable, filterable and searchable files using standard text tools, or a common data format; subsection (j)(3) should include “at most once” after “that a voter has voted”; subsection (k) “near real-time” should be defined; subsection (m) in the event of a network outage the electronic poll book should resend all of its day’s activity once communication is restored; subsection (n)(2) should clarify what an electronic signature will be verified against and how it will be tested for certification; subsection (p) if a recommendation is to not enable nor install wireless in the electronic poll book there should be included the reasons for such recommendation, and what the security tradeoffs will be if ignored; subsection (p) this subsection should also reference Institute of Electrical and Electronics Engineers’ (IEEE) 802.16; subsection (p)(3) it is not clear what PCI-DSS has to do with wireless security and the requirement should spell out what is mandated; subsection (p)(5) should be a separate point, as it is unrelated to the use of wireless; subsection (p)(5)(i) the use of biometrics is not a full factor, and should be scrapped especially since it can be impractical when poll workers are changed last minute; subsection (p)(5)(i) electronic poll books should not have a default password; subsection (p)(5)(i) the remote wipe threshold should be higher than eight failed logins; subsection (q)(2) VPNs are implemented in software and this section should say “VPN” not “hardware VPN”; subsection (q)(3) incoming and outgoing calls should be blocked on the electronic poll book;

Response: The Secretary of State will address each comment separately.

The first comment states that the term “voting system” should include any component that deals with the voting system. The Secretary of State acknowledges the comment but has decided to take no action as the term “system” means a set of connected things or parts forming a complex whole and is intended to include any component of the voting system.

The second comment requests to have the term “accurately” defined and to outline the requirements the vendor must meet to ensure accuracy. The term “accurately” is a common term and is intended to mean “in a way that is correct in all details.” The application requirements a vendor must meet to ensure such accuracy are outlined in Section 20152 of the regulations. For these reasons, the Secretary of State has decided to take no action on this comment.

The third comment request that term “backup power” is changed to “battery power.” The Secretary of State acknowledges the comment but has decided to take no action. The term “backup power” allows flexibility in the way power is supplied to the electronic poll book in the event of a loss in power.

The fourth comment request that a requirement be made that there be enough external battery capacity to maintain the electronic poll book operational for the duration of the Election Day. The Secretary of State acknowledges the comment but has decided to take no action. A loss in power is something that would be addressed in the county’s emergency preparedness plan of Section 20162.

The fifth comment states that this section should indicate what should happen when backup power is exhausted. The Secretary of State acknowledges the comment but has decided to take no action. As stated above, a loss in power is something that would be addressed in the county’s emergency preparedness plan of Section 20162.

The sixth comment states that the electronic poll book should be able to print out the roster of voters in the event of a loss in power. The Secretary of State acknowledges the comment but has decided to take no action. A loss in power is something that would be addressed in the county’s emergency preparedness plan of Section 20162.

The seventh comment states that there should be a test of correctness for the list obtained from the voter registration system. The Secretary of State acknowledges the comment but has decided to take no action. The electronic poll book systems will be tested to ensure the requirements outlined in the regulations are met. The electronic poll book will be checked to ensure compatibility with the election management system. Insurance of the correctness of the list of voters is a county function, independent of the electronic poll book.

The eighth comment states the regulation should clarify that 256-bit encryption is referencing the Advanced Encryption Standard (AES) 256-bit encryption standard. The Secretary of State has amended Section 20158 Subsection (f) to add "Advanced Encryption Standard (AES)" to the text.

The ninth comment requests that “reliable transmission” defined and an explanation how it will be tested be given. The Secretary of State acknowledges the comment but has decided to take no action. "Reliable transmission" is in reference to the electronic poll books ability to import and export data. Sections 20158(p) and 20158(q) address the method of transfer for electronic poll book data.

The tenth comment states that it should be required that electronic poll books have the ability to operate offline. The Secretary of State acknowledges the comment but has decided to take no action. Section 20158(m) addresses electronic poll book functionality requirements in the event of a loss in network connectivity.

The eleventh comment requests that audit records should be available in text files, easily sortable, filterable and searchable using standard text tools, or a common data format. The Secretary of State acknowledges the comment but has decided to take no action. Section 20158(i) of the regulations states that such audit records shall be able to be exported in non-proprietary, human readable format.

The twelfth comment states that Sub-section (j)(3) should include “at most once” after “that a voter has voted.” The Secretary of State acknowledges the comment but has decided to take no action. Voters are only allowed one vote. Either they have voted or they have not voted.

The thirteenth comment states that “near real-time” should be defined. The Secretary of State acknowledges the comment but has decided to take no action. "Near real time" is intended to imply that there is no significant delay in the transmission of voter history to every other electronic poll book in the county.

The fourteenth comment states that in the event of a network outage the EPB should resend all of its day's activity once communication is restored. The Secretary of State has amended Section 20158(m) to read “During an interruption in network connectivity of an electronic poll book, all voter activity shall be captured and the electronic poll book shall have the capacity to transmit that voter activity upon connectivity being restored.”

The fifteenth comment states the regulations should clarify what an electronic signature will be verified against and how it will be tested for certification. The Secretary of State acknowledges the comment but has decided to take no action. The signature needs to be clear and capable of verification should any need to verify the signature present itself in the future. Verification that the electronic poll book produces a clear image of the signature will be required during the functional test of the electronic poll book.

The sixteenth comment state that if it is recommended to not enable nor install wireless in an electronic poll book there should be a reason for such a recommendation and what the security tradeoffs will be if ignored. The Secretary of State acknowledges this comment but has decided to take no action. The Secretary of State feels Sections 20158(p) provides appropriate guidelines to provide adequate security should a jurisdiction decide to go against the Secretary of State's recommendation and deploy a wireless technology within a polling location.

The seventeenth comment states that this subsection should reference Institute of Electrical and Electronics Engineers' (IEEE) 802.16 standards as well. The Secretary of State acknowledges the comment but has decided to take no action. IEEE 802.11 is specific to Wireless Local Area Network (WLAN) technology while 802.16 defines Wireless Metropolitan Area Networks (WiMAN) technology providing standards for broadband for wireless metropolitan area networks. Section 20158(p) of the regulations is specific to local area networks.

The eighteenth comment states that it is not clear what PCI-DSS has to do with wireless security and the requirement should spell out what is mandated. The Secretary of State acknowledges the comment but has decided to take no action. The Payment Card Industry Data Security Standards are currently comprised of 12 requirements that businesses are required to implement to protect data. Two of the requirements are specific to the protection and transmission of data.

The nineteenth comment states that subsection 20158(p)(5) should be a separate point as it is unrelated to the use of wireless. The Secretary of State acknowledges the comment but has decided to take no action. The intent of the subsection is to mean if a county deploys or utilizes a wireless technology with their electronic poll book, the device(s) must be equipped with one or more of the requirements listed.

The twentieth comment states that the use of biometrics is not a full factor, and should be scrapped especially since it can be impractical when poll workers are changed last minute. The Secretary of State acknowledges the comment but has decided to take no action. Biometric authentication is commonly used in information technology as a form of identification and access control.

The twenty-first comment states that electronic poll books should not have a default password. The Secretary of State acknowledges the comment but has decided to take no action as the phrase "default password" is not utilized in these regulations.

The twenty-second comment states that the remote wipe threshold should be higher than eight failed logins. The Secretary of State acknowledges the comment but has decided to take no action. The Secretary of State believes that remote wipe technology set to automatically clear a device upon 8 eight failed login attempts is adequate to allow for user error at login but also provide ample security in cases of device hijacking or unauthorized access.

The twenty-third comment states that VPNs are implemented in software and this section should say "VPN" not "hardware VPN." The Secretary of State acknowledges the comment but has decided to take no action as hardware VPN's exist.

The twenty-fourth comment states that incoming and outgoing calls should be blocked on the electronic poll book. The Secretary of State acknowledges the comment but has decided to take no action as electronic poll book devices will not be installed with any application and or software other than that which is required for the device to function in its intended capacity as an electronic poll book. In addition, the term "dedicated cellular connection" is intended to mean a wireless router device connected to a cellular network utilized as a mobile wireless hotspot.

Comment No. 8: In Section 20161, the terms “failure” and “fault” should be clarified.

Response: While the Secretary of State notes this comment, the original language has been retained. The Secretary of State believe the terms “failure” and “fault” are meant to encompass the multitude of ways an electronic poll book can fail or fault.

Comment No. 9: If one or more check-in devices fail, what should happen?

Response: The Secretary of State acknowledges the inquiry but has decided to take no action as this is something that should be outlined in the jurisdictions Emergency Operations Preparedness Plan of Section 20162.

Comment No. 10: If lines are long, can additional devices be introduced without disruption? Will consistency be guaranteed? Will this be part of the testing for certification?

Response: The Secretary of State acknowledges these inquiries but has decided to take no action as these are something that will be reviewed against the system requirement outlined in Section 20158(b) of the regulations.

Comment No. 11: Are voter lists partitioned among check-in devices (e.g. by name or address)? Is this capability a requirement? Can any voter be checked in at any device?

Response: The Secretary of State acknowledges these inquiries but has decided to take no action. Per Section 20158(h), each electronic poll book must be capable of storing a complete version of the electronic list of registered voters.

Comment No. 12: If the system fails, will the final snapshot of the data be available (not just retained internally)? Can voter lists with the stats (voted or not) be printable in case of system failure? How?

Response: The Secretary of State acknowledges these inquiries but has decided to take no action as these are things that will be reviewed against the system requirement outlined in Section 20158(b) of the regulations.

Comment No. 13: Usability is a key component of both accessibility and security, and should be included as part of the requirements for testing and certification.

Response: The following sub-section 20158(r) was added, “The electronic poll book shall be reviewed for accessibility against applicable standards.”

The Secretary of State received one set of comments to the proposed regulations from Mr. Sanford Brill of VR Systems, Incorporated. Mr. Brill's comments and the Secretary of State's responses are as follows:

Comment No. 1: In Section 20150 subsection (a)(1) add the text "for the entire election jurisdiction"; subsection (a)(1) add the requirements of "(ix) Whether or not the voter has been issued an in-person ballot", "(x) State voter registration number" and "(xi) Gender". Subsection (a)(2) add the text "except as necessary to support the processing of a new or updated voter registration"; subsection (b) remove the text "in whole or in part, is not an electronic poll book" and replace with "to verify voter eligibility, issue voter passes and record voter history shall conform to the requirements of this rule."

Response: The Secretary of State will address each comment separately.

The first comment states that the text "for the entire election jurisdiction" should be added. The Secretary of State acknowledges the comment but has decided to take no action as the electronic poll book will be reviewed against the system requirement outlined in Section 20158(b) of the regulations.

The second comment states that "Whether or not the voter has been issued an in-person ballot", "State voter registration number" and "Gender" should be added to the mandatory list of collected voter data. The Secretary of State acknowledges the comment but has decided to take no action as the collection of voter registration data is mandated by Elections Code Section 2550.

The third comment states that the text "except as necessary to support the processing of a new or updated voter registration" should be added. The Secretary of State acknowledges the comment but has decided to take no action as it is against the law in California to ask for a driver's license number at a poll place or vote center.

The fourth comment states to remove the text "in whole or in part, is not an electronic poll book" and replace with "to verify voter eligibility, issue voter passes and record voter history shall conform to the requirements of this rule." The Secretary of State acknowledges the comment but has decided to take no action as election management systems are a technology that have been in use in California for many years, they have already undergone their own set of testing and are not an electronic poll book.

Comment No. 2: Add 20152, 20153, 20154, 20155, 20156 and 20157 to the text.

Response: The Secretary of State acknowledges the comment but has decided to take no action as election management systems are a technology that have been in use in California for many years, they have already undergone their own set of testing and are not an electronic poll book.

Comment No. 3: In Section 20157, source code should be deferred until after certification testing is completed in the event that the certification testing process necessitates modification or updates for certification approval.

Response: The Secretary of State acknowledges the comment but has decided to take no action. The Secretary of State utilizes a four step approach for review and testing of a voting technology. The four phases are; Application, Pre-Testing Activities, Testing, and Report Issuance & Post-Test Activities. Source code must be submitted prior to the testing phase.

Comment No. 4: In Section 20157, firmware associated with commercial (COTS) hardware should not be required.

Response: The Secretary of State acknowledges the comment but has decided to take no action. If the firmware, commercial-off-the-shelf or proprietary, is required to run the electronic poll book system it must be submitted for review as outlined in Section 20157(2)(i).

Comment No. 5: Will the certification examination include source code review?

Response: The certification examination will include source code review. As delineated in Section 20157(a), "For the purposes of testing, the applicant shall provide: (1) A copy of the electronic poll book software and firmware source code, including the directory structure of the source code and a map to show how the source code was built into the final install files."

Comment No. 6: Will the State accept access of material called for in (a)(1)(i) and (ii) through a third party escrow agent instead of deposited with the Secretary of State?

Response: Source code is not physically deposited with the Secretary of State. Escrow is deposited with a State certified third party escrow company.

Comment No. 7: In Section 20158(c), add the text "together with all peripheral devices".

Response: The Secretary of State acknowledges the comment but has decided to take no action. The intent of the original language is to include all peripheral devices.

Comment No. 8: In Section 20158(d), remove the text "All voter registration election management systems used in the State of California, including any software system (middle ware) used to prepare the list of voters for the equipment" and add the text "Specifications promulgated by the Secretary of State's office for the exchange of information between election management systems and electronic poll books. Such specification shall provide for; (i) File formats including layout (delimited, fixed length,

etc.), (ii) Column and field formats of each data element, (iii) Method for encrypting and securing files in transit.”

Response: The Secretary of State acknowledges the comment but has decided to take no action. The current text is intended to include the multitude of variations vendors may use to meet the requirement of compatibility with voter registration election management systems used in the State of California.

Comment No. 9: In Section 20158 subsection (e), remove the text “contain” and add the text “be capable of receiving and recording”; subsection (e)(5) add the text “(inactive, active, removed)”; subsection (e)(6) remove the text “a vote by mail ballot” and add the text “any type of ballot and the type of ballot issued”; subsection (e)(7) remove “the” and replace with “a”; subsection (e)(9) add “Date of birth”; subsection (e)(10) add “Signature image provided by voter registration system”; and subsection (e)(11) add “Language of preference of voter.”

Response: The Secretary of State acknowledges these comments to Section 20158 subsection (e) but has decided to take no action as the language of Section 20158(e) is derived from Elections Code Section 2550.

Comment No. 10: In Section 20158(i), remove the text “a list of” and add the text “and maintain,” “performed by,” and “Audit records shall be preserved in a redundant storage and recoverable in the event of a failure of the electronic poll book.”

Response: The Secretary of State acknowledges this comment but has decided to take no action as it is the intent for electronic poll books to have the ability to store information in the event of a loss in connectivity, power or failure.

Comment No. 11: In Section 20158(j), remove the text “voted” and add the text “been issued a ballot.”

Response: The Secretary of State acknowledges this comment but has decided to take no action as the intent of this regulation is to ensure the electronic poll book can correctly display the fact that a voter has voted.

Comment No. 12: In Section 20158(k), remove the text “voted at the” and add the text “automatically record or has been provided a ballot election and the type of ballot provided.”

Response: The Secretary of State acknowledges this comment but has decided to take no action as the intent of this regulation is to ensure the electronic poll book can correctly log and transmit the fact that a voter has been provided a ballot and voted at the election.

Comment No. 13: In Section 20158(l), add the text “as provided for in Section 20158 (d)(1).”

Response: The Secretary of State acknowledges this comment but has decided to take no action as the intent of this regulation is not to ensure the electronic poll book is compatible with all voter registration election management systems used in the State of California as with section 20158(d)(1), but to ensure the electronic poll book accurately uploads voter activity into the county’s voter registration election management system in near real-time.

Comment No. 14: In Section 20158(m), add the text “as provided for in Section 20158 (d)(1) and check-in and authorization.”

Response: The Secretary of State acknowledges this comment but has decided to take no action as the intent of this regulation is not to ensure the electronic poll book is compatible with all voter registration election management systems used in the State of California as with section 20158(d)(1), but to ensure the electronic poll book accurately uploads voter activity into the county’s voter registration election management system upon connectivity being restored during an interruption in network connectivity of an electronic poll book.

Comment No. 14: Add Sections 20158(n)(4), 20158(n)(5), 20158(r), 20158(s), 20158(t), 20158(u), 20158(v), 20158(w), 20158(x), and 20158(y).

Response: The Secretary of State acknowledges these comments but has decided to take no action as the comments provide specific requirements that do not offer additional value to the security or integrity of an electronic poll book.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE FIRST 15-DAY NOTICE PERIOD ENDING FEBRUARY 6, 2018.

The Secretary of State received one set of comments to the proposed regulations during the first 15-day notice period from Mr. T.J. Burns of Election Systems and Software. Mr. Burns’ comments and the Secretary of State’s responses are as follows:

Comment No. 1: In Section 20158 subsection (i) all electronic poll book transactions and audit logs should be able to be traced back to the specific poll worker(s) through User Name for traceability and security purposes; subsection (n) provide a definition of “industry best standards”; subsection (p)(3) provide the specific section(s) of Payment Card Industry Data Security Standards (PCI DSS) referred to regarding electronic poll books enabled or installed with any technologies delineated in the Institute of Electrical and Electronics Engineers’ (IEEE) 802.11 wireless local area network (LAN) standards; finally, subsection (p)(5)(iii) provide the specific section(s) of PCI DSS referred to

regarding jurisdictions utilizing a wide area network (WAN) to transmit voter registration data from an electronic poll book to a centralized location.

Response: These comments are identical to Mr. Burns' submissions during the initial notice period. The Secretary of State acknowledges these comments but has decided to take no action as these comments have been addressed on pages four and five above.

The Secretary of State received one set of comments to the proposed regulations during the first 15-day notice period from Ms. Malissa Stallings of San Bernardino County. Ms. Stallings' comments and the Secretary of State's responses are as follows:

Comment No. 1: Add the text "or county EMS" to the Sections 20158(a), 20158(c), 20158(e), and 20158(f).

Response: The Secretary of State acknowledges this comment but has decided to take no action. Per Section 20151, counties utilizing their local election management system at polling locations, in whole or in part, are required to adhere to these sections.

Comment No. 2: Add the text "or county EMS solution" to the Sections 20158(g), 20158(h), 20158(i), 20158(j), 20158(l), and 20162.

Response: The Secretary of State acknowledges this comment but has decided to take no action. Per Section 20151, counties utilizing their local election management system at polling locations, in whole or in part, are already required to adhere to these sections.

Comment No. 3: In Section 20158(h), add the text "encrypted."

Response: The Secretary of State acknowledges this comment but has decided to take no action. Per Section 20158(f), the electronic poll book is already required to encrypt all voter registration data at rest and in transit, utilizing a minimum 256-bit data encryption, based on recognized industry standards

Comment No. 4: In Section 20158(j), it is not clear on how this is implemented.

Response: The Secretary of State acknowledges this comment but has decided to take no action. This is a system requirement. System requirements are verified by the Secretary of State during the electronic poll book certification testing process. This is not something a jurisdiction will be required to verify during the implementation of an electronic poll book solution.

Comment No. 5: In Section 20158(k), define “near real-time.”

Response: The Secretary of State acknowledges this comment but has decided to take no action. "Near real time" is intended to imply that there is no significant delay in the transmission of voter history to every other electronic poll book in the county.

Comment No. 6: In Section 20158(l), remove the text “voter registration.”

Response: The Secretary of State acknowledges this comment but has decided to take no action. "Voter registration" is intended to describe what the election management system is.

Comment No. 7: In Section 20158(m), the language is not clear regarding the county responsibilities to capture and transmit/manually key the data when operating a county EMS solution.

Response: The Secretary of State acknowledges this comment but has decided to take no action. This is a system requirement. System requirements are verified by the Secretary of State during the electronic poll book certification testing process. This is not a county responsibility.

Comment No. 8: In Section 20158(n)(1), “utilize current, industry best standards” is not specific enough to provide vendors with requirements.

Response: The Secretary of State acknowledges this comment but has decided to take no action. "Industry best standards" is a commonly used term and is understood to mean, a method or technique that has consistently shown results and is used as a benchmark. The regulation is written in a way to require minimum best practices be followed but allow flexibility for future changes in the industry.

Comment No. 9: In Section 20158(o), remove the text “voted” and add the text “was issued a ballot”.

Response: The Secretary of State acknowledges this comment but has decided to take no action. The intent of this regulation is to ensure the electronic poll book can accurately transmit all information, including the fact that a voter has voted at the election.

Comment No. 10: In Section 21060, add the text “or equipment associated with a county EMS solution deployed to voting locations.”

Response: The Secretary of State acknowledges this comment but has decided to take no action. Per Section 20151, counties utilizing their local election management system at polling locations, in whole or in part, are already required to adhere to Section 20160.

Comment No. 11: In Section 21061, the requirement is overly burdensome as this will require research and evaluation before disclosure.

Response: The Secretary of State acknowledges this comment but has decided to take no action. Prompt notification of any breach, attempted breach, defect, failure or fault of an electronic poll book is imperative to ensure the security and integrity of an election as identical electronic poll book solutions are typically deployed in other jurisdictions throughout the State.

Comment No. 12: Section 21063 it is too aggressive and more invasive than even voting system requirements.

Response: The text “software, firmware or” has been deleted from Section 20163 without regulatory effect. The text was intended to be struck in the proposed regulations.

The Secretary of State received one comment to the proposed regulations during the first 15-day notice period from Mr. Dean C. Logan of the Los Angeles County Registrar-Recorder/County Clerk’s office. Mr. Logan’s comment and the Secretary of State’s response are as follows:

Comment No. 1: Remove the text “software, firmware or” from Section 20163.

Response: The text “software, firmware or” has been deleted from Section 20163 without regulatory effect. The text was intended to be struck in the proposed regulations.

SUMMARY AND RESPONSES TO COMMENTS RECEIVED DURING THE SECOND 15-DAY NOTICE PERIOD ENDING MAY 1, 2018.

The Secretary of State received one comment to the proposed regulations during the second 15-day notice period from Mr. Jeff Thom. Mr. Thom’s comment and the Secretary of State’s response are as follows:

Comment No. 1: We appreciate the tenor of the electronic poll book regulations, as it appears to require accessibility, as required by both state and federal law. However, the regulations are somewhat general and vague, referring to the need to provide the information that the SOS will need to determine accessibility. This requirement and a review for accessibility may well be sufficient on the surface, but it is important that regulations clearly lay out accessibility requirements so that product manufacturers are provided with the level of detail they require to meet their legal obligations.

Response: California Government Code Section 11346.9(3) does not require a response be provided to any comment not specifically directed at a proposed action or to the procedures followed in proposing or adopting the action for the notice period

ending May 1, 2018. However, the Secretary of State would like to note that California Government Code Section 7405 and State Administrative Manual Section 4833 provide the State requirements to assure equal opportunity to people with disabilities. Both Government Code Section 7405 and State Administrative Manual Section 4833 incorporate the requirements of Section 508 of the Rehabilitation Act of 1973. Section 20158(r) of the proposed regulations was added during the first 15-day notice period ending February 6, 2018, to remind electronic poll book vendors of the need to ensure system compliance with California Government Code Section 7405 and State Administrative Manual Section 4833. Accordingly, testing and review consistent with Government Code Section 7405 and State Administrative Manual Section 4833 will be conducted. In addition, the findings of the accessibility testing and review of each electronic poll book system certified in California will be present in the system Staff Report and will be available on the Secretary of State's website for public consumption. For these reasons, the Secretary of State acknowledges the comment but has decided to take no action.

The Secretary of State received one comment to the proposed regulations during the second 15-day notice period from Mr. Thomas Gregory. Mr. Gregory's comment and the Secretary of State's response are as follows:

Comment No. 1: Our understanding is that the proposed modified regulations published in January 2018 set system requirements in Section 20158(r) as follows: "The electronic poll book shall be reviewed for accessibility." This vague reference to accessibility without any citation to the technical standards, the weight accessibility will hold in a certification review, or anything more specific, is troubling. The lack of detail is in stark contrast to the very specific standards cited for security and other technical requirements. This unclear reference to "accessibility" offers little guidance and is unlikely to promote the accessibility for people with disabilities that disability advocates have raised with the Secretary's office in past hearings and through the regulatory process. We stand with other disability advocacy organizations in a hope that the final rule will take this oversight into account.

Response: California Government Code Section 11346.9(3) does not require a response be provided to any comment not specifically directed at a proposed action or to the procedures followed in proposing or adopting the action for the notice period ending May 1, 2018. However, the Secretary of State would like to note that California Government Code Section 7405 and State Administrative Manual Section 4833 provide the State requirements to assure equal opportunity to people with disabilities. Both Government Code Section 7405 and State Administrative Manual Section 4833 incorporate the requirements of Section 508 of the Rehabilitation Act of 1973. Section 20158(r) of the proposed regulations was added during the first 15-day notice period ending February 6, 2018, to remind electronic poll book vendors of the need to ensure system compliance with California Government Code Section 7405 and State Administrative Manual Section 4833. Accordingly, testing and review consistent with Government Code Section 7405 and State Administrative Manual Section 4833 will be

conducted. In addition, the findings of the accessibility testing and review of each electronic poll book system certified in California will be present in the system Staff Report and will be available on the Secretary of State's website for public consumption. For these reasons, the Secretary of State acknowledges the comment but has decided to take no action.

The Secretary of State received one set of comments to the proposed regulations during the second 15-day notice period from Mr. Christopher Hays. Mr. Hays' comments and the Secretary of State's responses are as follows:

Comment No. 1: Section 20153(c), should be amended to read "No proprietary or confidential information will be permitted. California elections require complete public disclosure of the entire voting process, and electronic poll books are not an exception to this principle."

Response: California Government Code (GC) Section 11346.9(3) does not require a response be provided to any comment not specifically directed at a proposed action or to the procedures followed in proposing or adopting the action for the notice period ending May 1, 2018. For this reason, the Secretary of State acknowledges the comment but has decided to take no action.

Comment No. 2: In Section 20158 subsection (c) the requirement for two hours of backup power may not be enough and the rules should require a paper poll book be printed for each precinct as a backup; subsection (n) current electronic signature capture devices do not capture signatures accurately enough and it will be difficult to impossible to match a voter's signature with the signature on file in the Registrar's files; subsection (p) poll books should not under any circumstances use wireless technology; finally, subsection (q) WAN has come to mean the Internet in the minds of many and it is recommended that the internet not be permitted to carry the information.

Response: These comments are identical to Mr. Hays' submissions during the initial 45-day notice period. The Secretary of State acknowledges these comments but has decided to take no action as these comments have been addressed on pages three and four above.

The Secretary of State received one set of comments to the proposed regulations during the second 15-day notice period from Ms. Ever Lee Hairston. Mr. Hairston's comment and the Secretary of State's response are as follows:

Comment No. 1: The proposed modified regulations published earlier this year set system requirements in Section 20158(r) as follows: "The electronic poll book shall be reviewed for accessibility." This vague reference to accessibility without any citation to the technical standards, the weight accessibility will hold in a certification review, or anything more specific, is a major problem. The lack of detail is in stark contrast to the very specific standards cited for security and other technical requirements. This unclear

reference to “accessibility” offers little guidance and is unlikely to promote the accessibility for blind persons that is required by federal and state law. We hope that the final rule will take this oversight into account.

Response: California Government Code Section 11346.9(3) does not require a response be provided to any comment not specifically directed at a proposed action or to the procedures followed in proposing or adopting the action for the notice period ending May 1, 2018. However, the Secretary of State would like to note that California Government Code Section 7405 and State Administrative Manual Section 4833 provide the State requirements to assure equal opportunity to people with disabilities. Both Government Code Section 7405 and State Administrative Manual Section 4833 incorporate the requirements of Section 508 of the Rehabilitation Act of 1973. Section 20158(r) of the proposed regulations was added during the first 15-day notice period ending February 6, 2018, to remind electronic poll book vendors of the need to ensure system compliance with California Government Code Section 7405 and State Administrative Manual Section 4833. Accordingly, testing and review consistent with Government Code Section 7405 and State Administrative Manual Section 4833 will be conducted. In addition, the findings of the accessibility testing and review of each electronic poll book system certified in California will be present in the system Staff Report and will be available on the Secretary of State’s website for public consumption. For these reasons, the Secretary of State acknowledges the comment but has decided to take no action.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

The Secretary of State determined that no reasonable alternative it considered to the regulations or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

STATEMENT JUSTIFYING INCORPORATION BY REFERENCE

We are incorporating the 139 page Payment Card Industry Data Security Standards (PCI DSS) Version 3.2 Requirements and Security Assessment Procedures document by reference because given its length, it would be burdensome and unnecessary to include in this document.

UPDATED INFORMATIVE DIGEST

After the second 15-day comment period, which closed May 1, 2018, there were no modifications made to the originally proposed text.