



COLORADO

Governor's Office of Information Technology

OFFICE OF THE GOVERNOR

Governor's Office of Information Technology

RULES ESTABLISHING TECHNOLOGY ACCESSIBILITY STANDARDS

8 CCR 1501-11

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(Editor's note: This document contains only the draft amendments to the rules.

Strikethrough version containing both the previous and draft language.)

11.1 Authority

The Chief Information Officer in the Office of Information Technology is authorized by the provisions of section 24-37.5-106 (4), C.R.S. and section 24-85-103, C.R.S. to establish rules regarding accessibility standards for an individual with a disability for information technology systems employed by state agencies.

The rules are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq., C.R.S. (the “APA”).

11.2 Scope and Purpose

- A. The purpose of these rules is to define the accessibility standards and compliance parameters for individuals with a disability for information technology systems. The reason for the rules is to improve the accessibility and usability of government information technology products and services in Colorado.
- B. The rules recognize that technology and accessibility standards are evolving and, given the diversity of needs of residents of our state, there is no standard that can guarantee universal access. Therefore, to make information technology accessible, these rules also acknowledge that reasonable accommodations or modifications are an important component of compliance.
- C. The rules apply to all information and communication technology (ICT) in active use that is public-facing or internal-facing that the public entity provides or makes available directly or through contractual, licensing, or other arrangements. ICT includes digital content, self-contained closed systems, and hardware as defined in section 11.4.
- D. Compliance with these rules does not necessarily ensure compliance with other laws, rules, and regulations.

11.3 Applicability

Section 24-34-802(1)(c), C.R.S. specifies that the accessibility standards for individuals with a disability as established by these rules apply to public entities as defined in section 24-34-301(18), C.R.S. Public entities must fully comply with these standards established pursuant to section 24-85-103(2.5), C.R.S.

The rules apply to all ICT that is in active use on or after July 1, 2024 and any ICT that is newly created, developed, acquired, altered, updated, or purchased on or after July 1, 2024. The rules also apply when a non-active version of the ICT is requested by an individual with a disability.

These rules do not require a public entity to take any action that are otherwise exempted under these rules.

11.4 Definitions

Accessible or accessibility: has the same meaning as defined in section 24-85-102(1.5), C.R.S., or as superseded by a future statute, which is perceivable, operable, and understandable digital content that reasonably enables an individual with a disability to access the same information, engage in the same interactions, and enjoy the same services offered to other individuals, with the same privacy, independence, and ease of use as exists for individuals without a disability.

Accessibility standards for individuals with a disability: as used in section 24-34-802(1)(c), C.R.S. means these rules, 8 CCR 1501-11 Rules Establishing Technology Accessibility Standards.

Active use: For public-facing ICT, active use means ICT that is currently used by members of the public, as a primary means, to apply for, gain access to, or participate in a public entity's services, programs, or activities. For internal-facing ICT, active use means ICT currently used by employees to perform their job duties. ICT in active use includes the authorized, official version or versions. ICT in active use does not include previous versions that may still be available, archived content, archivist materials, working products, deliberative materials, or drafts.

Adopted version: When used in reference to guidelines published by the W3C, this means WCAG 2.1 as published on Sep. 21, 2023, not including any later amendments or versions.

Applicable and achievable: In the context of technical specifications, standards, or outcomes, applicable and achievable means all technical specifications, standards, or outcomes which are assessable and/or whose elements, artifacts, or functionality are present in an ICT asset.

Archived content: ICT that is: (1) retained exclusively for reference, research, or recordkeeping; (2) not altered or updated after the date of archiving; and (3) is

organized, stored, or marked in a manner that clearly identifies the ICT as being archived.

Archivist materials: Historical or legacy digital content that: (1) is preserved or retained solely for its cultural, educational, or historic value and is not required for the operation of or access to any governmental entity's services, programs, or activities and (2) either (i) was converted to a digital format before July 1, 2024; (ii) is a reproduction of a physical record, such as a photograph, manuscript, or other non-digital artifact, that has been digitized but is not intended for interactive use; or (iii) has been transferred to the Colorado State Archives by a governmental entity or office in the State of Colorado or otherwise designated for permanent retention by the State Archivist.

Conforming alternate version: An accessible version of content or functionality provided in a different format as set forth in section 11.8.

Conventional electronic documents: ICT that is in the following electronic file formats: portable document formats (PDF), word processor file formats, presentation in file formats, and spreadsheet file formats.

Digital Content: Any ICT created, shared, or accessed through digital platforms, including electronic documents, websites, mobile applications, and online services. Digital Content does not include self-contained closed products or hardware.

Direct threat: a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

Fundamental alteration: a change in the essential nature of the public entity's program, service, or activity.

Hardware: a tangible device, piece of equipment, or physical component of ICT, such as telephones, computers, multifunction copy machines, and keyboards.

Information and communication technology (ICT): Information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data

and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; web sites; videos; and, electronic documents. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. However, if the embedded information technology has an externally available web or computer interface, that interface is considered ICT. For example, Heating, Ventilation, and Air Conditioning (HVAC) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation are not considered information technology.

Public entity: has the same meaning as defined in section 24-34-301(18), C.R.S., or as superseded by a future statute, which is: (a) Any state or local government; or (b) Any department, agency, special district, or other instrumentality of a state or local government.

Reasonable accommodation: as it pertains to ICT, reasonable accommodation is a change or adjustment to a job or work environment that will enable an individual with a disability to access internal-facing ICT.

Reasonable modification: as it pertains to ICT, reasonable modification is a change in policies, practices, or procedures that is necessary to enable an individual with a disability to access public-facing ICT in order to access the public entity's programs, services, and activities.

Section 508, Section 508 of the Rehabilitation Act: Unless a specific citation is provided, Section 508 refers to the ICT Standards and Guidelines (also known as "Standards and Guidelines"), under Section 508 of the Rehabilitation Act and Section 255 of the Communications Act, as issued on January 18, 2017 and corrected on January 22, 2018 by the U.S. Access Board and not including any later amendments or versions.

Self-contained, closed products: Has the same meaning as defined in section D1194.4 of Section 508 of the Rehabilitation Act, which are products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar types of products.

Single digital product: as used in section 24-34-802(2)(b), C.R.S. means ICT that share a common purpose, intended to support a single program or service, created by the same author, group, or organization, including:

- A. Electronic communications
- B. Digital documents like PDFs and graphics
- C. Mobile applications
- D. Desktop applications
- E. Websites
- F. Digital kiosks
- G. Input devices
- H. Digital video files
- I. Audio recordings

Technical standards: as used in these rules, technical standards refers to the following:

- A. For Digital Content, the applicable and achievable success criteria of the W3C WCAG 2.1 conformance levels A and AA, as published on Sep. 21, 2023, not including any later amendments or versions, hereby incorporated by reference and available from the Office of Information Technology during regular business hours or from the World Wide Web Consortium. Criteria or standards should be read, interpreted, and applied substituting references for “web” or “web content” with “software”, “application”, “document”, or other appropriate term.
- B. For Self-Contained Closed Systems and installed software, such products must interoperate with assistive technology, provide documentation on accessibility features, and provide user control over accessibility features; and conform with

all applicable and achievable success criteria of the W3C WCAG 2.1 conformance levels A and AA.

- C. For all other hardware not otherwise or explicitly addressed in (A) or (B), all applicable and achievable requirements of the standards contained in Chapter 4 of the Information and Communication Technology (ICT) Standards and Guidelines under Section 508, including Standards 402, 404, 407, 408, 409, 410, and 411, as corrected on Jan. 22, 2018, not including any later amendments or versions, hereby incorporated by reference and available from the Office of Information Technology during regular business hours or from the U.S. Access Board.

Undue burden: refers to the standard as construed by C.R.S. § 24-34-601, *et. al.*, C.R.S. 24-34-802, Title II of the Americans with Disabilities Act, and Section 508 of the Rehabilitation Act, and the related conforming and implementing regulations.

Undue Hardship: refers to the standard as construed by C.R.S. § 24-34-401, *et. al.* and Title I of the Americans with Disabilities Act and the related conforming and implementing regulations.

Web Content Accessibility Guidelines (WCAG): a single shared standard for web content accessibility that meets the needs of individuals, organizations, and governments internationally, as published by the World Wide Web Consortium (W3C). (<https://www.w3.org/WAI/standards-guidelines/wcag>)

11.5 Technical Requirements

Each public entity shall make their ICT that is in active use accessible by meeting one of the following standards:

- A. Meeting the Technical Standards;
- B. Utilizing a conforming alternative version in accordance with section 11.8; or
- C. Providing reasonable modifications or accommodations, when requested, to remove accessibility barriers. When providing reasonable modification or accommodations, a public entity cannot require an individual with a disability to

pay to cover the cost of measures, such as providing auxiliary aids or barrier removal, that are required to provide that individual with nondiscriminatory treatment.

A public entity has complied with their obligations under this rule if they have met any single, or a combination of, these standards, or if an exception applies under these rules.

11.6 Technology Accessibility Statement Requirement

- A. Each public entity shall develop and publicly post in a conspicuous place a technology accessibility statement.
- B. The technology accessibility statement shall include, at a minimum:
 - 1. A commitment to advancing technology accessibility in the public entity's ICT and the steps the public entity is taking to remove accessibility barriers to ICT.
 - 2. A commitment to a timely response to reports of inaccessible ICT or requests for a reasonable accommodation or modification.
 - 3. A prominent notice informing individuals with disabilities on: (i) how to request reasonable accommodations or modifications; (ii) how to report inaccessible ICT; and (iii) any applicable existing grievance procedures that the public entity is required to maintain under other laws. The notice shall provide more than one contact method, which could include an accessible form to submit feedback, an email address, or a toll-free phone number (with TTY), to contact personnel knowledgeable about the accessibility of the ICT.

11.7 Exceptions

A public entity is in compliance with these rules for ICT that does not fully conform with the requirements of section 11.5 in the following cases:

- A. *Generally.* Making the ICT fully conform with the requirements of section 11.5 would constitute an undue hardship, undue burden, fundamental alteration, or pose a direct threat.

- B. *Content posted by a third party.* Content posted by a third party unless the third party is posting due to contractual, licensing, or other arrangements with the public entity.
- C. *Individualized, password protected or otherwise secured conventional electronic documents.* Conventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured.
- D. *Preexisting social media posts.* A public entity's social media posts that were posted before July 1, 2024.
- E. *Substantially Equivalent access and ease of use.* An individual with a disability is not substantially hindered, with reasonable accommodations or modifications if needed, from accessing or engaging effectively in the same or substantially equivalent services, programs, and activities that the public entity offers through its ICT to those without disabilities, with substantially equivalent ease of use.
- F. *Self-contained, closed products:* Public entities are subject to the federal exemptions enumerated in 508 Chapter 2. Exceptions should be read, interpreted, and applied using "Colorado Standards for Technology Accessibility" in place of "Revised 508 Standards."
 - 1. E202.2 Legacy ICT Exception
 - 2. E202.5 ICT Functions Located in Maintenance or Monitoring Spaces Exception
 - 3. E202.6 Undue Burden or Fundamental Alteration Exception
 - 4. E202.7 Best Meets Exception
- G. *Non-web documents:* Non-web documents shall not be required to conform to the following four WCAG 2.1 Success Criteria: 2.4.1 Bypass Blocks, 2.4.5 Multiple Ways, 3.2.3 Consistent Navigation, and 3.2.4 Consistent Identification.
- H. *Non-web software:* Non-web software shall not be required to conform to the following four Success Criteria in WCAG 2.0: 2.4.1 Bypass Blocks; 2.4.5 Multiple Ways; 3.2.3 Consistent Navigation; and 3.2.4 Consistent Identification. Non-web

software shall not be required to conform to Conformance Requirement 3 Complete Processes in WCAG 2.1.

11.8 Conforming Alternate Versions

A public entity may use conforming alternate versions of ICT to comply with these rules only where it is not possible or practical to make the ICT directly accessible due to technical or legal limitations.

A. Alternative versions must:

1. Be available in all human languages supported by the original format.
2. Provide all of the same information and functionality.
3. Meet the requirements established by Section 508 Standard E101.2 (Equivalent Facilitation) and Section 508 Standard 302 (Functional Performance). Standards E101.2 and 302 of the Information and Communication Technology (ICT) Standards and Guidelines under Section 508 of the Rehabilitation Act.

B. Digital content: Alternative versions may be created whose number of pages varies from the original. Alternate versions may be provided for:

1. A part of a web page, entire web pages, or an entire site.
2. A part of an electronic document or an entire electronic document.
3. Any information conveyed in a digital format.

C. Self-contained, closed products: Alternative versions are generally not available. Equally effective alternative access using a separate product may be acceptable. Alternative products must ensure the same access to all functionality and information.

D. Installed software: Alternative versions must be compatible with the originally supported device(s) and operating system(s) or made available as a web application.

11.9 Equivalent Facilitation

Nothing in these rules prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods, or

techniques result in substantially equivalent or greater accessibility and usability of the ICT.

As an example, for instance, WCAG success criterion 3.3.4 requires that user submissions are automatically checked to prevent common errors in legal or financial transactions made through websites. If a public entity failed to do this (thus violating WCAG) but requires all users to separately verify important transactions in person and outside of its website prior to processing the transaction, it would meet this requirement through equivalent facilitation.

11.10 Undue Burden, Fundamental Alteration, or Direct Threat

- A. Where a public entity has concluded that compliance with section 11.5 would result in a fundamental alteration in the nature of a service, program, or activity, or an undue burden, said decision must be made by the head of the public entity or their designee after considering all available resources, and the extent to which conformance would impose significant difficulty or expense. The decision must be accompanied by a written statement of the reasons for reaching that conclusion. Undue burden determinations may include, but are not limited to the following:
 - 1. The resources of the program, service, or activity are not readily available, or the use of such resources would fundamentally alter the nature of the program, service, or activity;
 - 2. Contractual, legal, regulatory, or technical constraints prevent the modification of the program, service, or activity; or
 - 3. When the necessary auxiliary aids or services are not feasibly available.
- B. In determining whether compliance with section 11.5 would pose a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, to ascertain:
 - 1. the nature, duration, and severity of the risk;
 - 2. the probability that the potential injury will actually occur; and
 - 3. whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

- C. If an action would result in a fundamental alteration, undue burden, undue hardship, or a direct threat, a public entity shall take any other reasonable action, including providing reasonable accommodations or modifications that would not result in such an alteration, such burden, or such a direct threat but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

11.11 Materials Incorporated by Reference

- A. The following standards are hereby incorporated by reference into 8 CCR 1501-11 Rules Establishing Technology Accessibility Standards, pursuant to C.R.S. §24-4-103(12.5), and do not include any later amendments.
 - 1. The World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) version 2.1 conformance levels A and AA, as published on Sep. 21, 2023, incorporated by reference into these rules is available at no cost in electronic form online at <https://www.w3.org/TR/WCAG21/>.
 - 2. US Section 508 of the Rehabilitation Act of 1973, as corrected on Jan. 22, 2018, incorporated by reference into these rules is available at no cost in electronic form online at <https://www.access-board.gov/ict/#chapter-4-hardware>.
- B. The Colorado Governor's Office of Information Technology also maintains a copy of the policies, rules, and standards incorporated by reference into these rules, which is available from the office during regular business hours.

11.12 Severability

If any provision of these Rules Establishing Technology Accessibility Standards, 8 CCR 1501-11, is found to be invalid by a court of competent jurisdiction, the remaining provisions of these rules shall remain in full force and effect.