

**Minutes of the Public Meeting
United States Election Assistance Commission**

Held at

Ritz-Carlton Pentagon City
1259 South Hayes Street
The Diplomat Room
Arlington, Virginia 22202

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (EAC) held on Wednesday, January 6, 2016. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 11:04 a.m., EDT.

PUBLIC MEETING

Call to Order:

Chairwoman Christy A. McCormick called the meeting to order at 10:02 a.m., EDT.

Pledge of Allegiance:

Chairwoman McCormick led all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

Chairwoman McCormick called roll of the members of the Commission and found present: Chairwoman Christy A. McCormick, Commissioner Thomas Hicks and Commissioner Matthew V. Masterson. Three members were present for a quorum.

Adoption of the Agenda

Commissioner Hicks made a motion to adopt the agenda for the Board's public meeting. Commissioner Masterson seconded the motion. The motion carried unanimously.

Welcoming remarks

Chairwoman McCormick said it has been almost a year since she and Commissioners Hicks and Masterson were appointed and it's been an exciting and interesting year. She reported that a lot has been accomplished with the help of staff, stakeholders and partners in the election community. Between the three Commissioners, they visited 30 states this year, went to many conferences and meetings, and received a lot of good input concerning where the Commission should be headed.

Chairwoman McCormick reported that accomplishments during the past year included passing the Voluntary Voting Systems Guidelines 1.1 (VVSG 1.1); updating the testing and program manuals; reinstating the EAC Advisory Boards, the Standards Board and the Board of Advisors; publishing the 2014 Election Administration and Voting Survey (EAVS), the National Voter Registration Act (NVRA) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) reports; recreating the Technical Guidelines Development Committee to work on the next iteration of the Voluntary Voting Systems Guidelines; holding a successful Election Data Summit; holding a public meeting focused on accessibility issues; and, hiring a new Executive Director and General Counsel. Chairwoman McCormick thanked Alice Miller, who served as acting Executive Director and kept the Commission going during the years when it had no Commissioners. She also reported that Alice Miller is no longer with the EAC.

Chairwoman McCormick introduced Brian Newby, the new Executive Director and Cliff Tatum, the new General Counsel.

Commissioner Hicks said he is looking forward to the new year working with his fellow Commissioners, state and local election officials, and other stakeholders, to further the goals of the EAC and the American people. He welcomed Brian Newby and Cliff Tatum and expressed his thanks to Alice Miller for all the work she did over the last five or six years with the EAC.

Commissioner Masterson said that the focus of the Commission this year will be to serve its customers, the election administrators, across the country to make sure they have the resources they need to continue to serve the voters. He thanked Chairwoman McCormick for the work she did last year and he echoed the thanks to Alice Miller for the work she did to keep the EAC running and to push it forward.

Old Business:

Approval of the minutes from the previous meeting

Commissioner Masterson made a motion to accept the minutes from the July 28, 2015, public meeting. Commissioner Hicks seconded the motion. The motion carried unanimously.

New Business:

Report of the Executive Director

Executive Director Brian Newby said he only has three things for the Commission since he just joined EAC in November. He first echoed the thanks to Alice Miller and commended her for her leadership during a time when there were no Commissioners.

Mr. Newby reported that the EAC does not foresee backfilling the Chief Operating Officer at this time, although they will be looking at the overall staffing needs.

Mr. Newby reported that there is major communication activity underway today, including a roundtable. In addition, a communications video is scheduled for later this month relating to postal issues.

Mr. Newby reported they are reviewing the voter registration information on the EAC website. They are looking at starting a regular process where they will ask state election directors to review the instructions and let EAC know if any changes need to be made to be consistent with laws. In response to a question from Commissioner Masterson, Mr. Newby confirmed that the EAC Website will direct voters to individual state's websites for online registration or their state-specific registration form.

Recommendation and Discussion on VVSG 1.1 Transition Date – Brian Hancock, EAC Director, Testing and Certification, and James Long, Voting Systems Program Manager, NTS

Presenter: Brian Hancock, EAC Director, Testing and Certification

Mr. Hancock addressed the Commission to provide testimony with respect to recommendations on VVSG 1.1 transition date.

Mr. Hancock reported that at the EAC public meeting on March 31, 2015, the Commissioners unanimously voted to adopt VVSG 1.1

for the testing of voting systems and the EAC staff recommended it be immediately available for the testing and certification of voting systems. Staff also suggested, and the Commissioners agreed, that within six months the Commissioners, with input from stakeholders, could identify a timeline for transitioning more fully from the 2005 VVSG. Staff also recommended that modifications to systems certified to the 2005 VVSG 1.0 could still be submitted for testing and certification to that standard after the transition to VVSG 1.1.

Mr. Hancock believes that they have received enough feedback from stakeholders to recommend a reasonable timeframe for transitioning fully to VVSG 1.1. Stakeholders suggested from as little as eight to 12 months for the transition, while others suggested as long as three years. He believes it must also be recognized that EAC, the National Institute of Standards and Technology (NIST), the Technical Guidelines Development Committee (TGDC), and the working group members have already started the process of developing the next iteration of VVSG. He believes consideration should be given very early in the process as to how and when the next iteration should be implemented by the election community. He urged everyone to become part of that process.

Mr. Hancock reported that the EAC staff recommends, in light of the information received from stakeholders over the past nine months, and acknowledging that the next iteration of VVSG is now under development, that the Commissioners vote to require all new voting systems submitted for EAC testing and certification be tested to VVSG 1.1 18 months from today's date or the date of their vote. At that time, the 2005 VVSG 1.0 would no longer be used for testing new voting systems, but would be available for testing modifications to systems previously certified to that standard. Staff will provide clarification regarding the definition of what constitutes a "new" voting system at an EAC public meeting later this year.

Presenter: James Long, Voting Systems Program Manager,
National Technical Systems (NTS)

Mr. Long addressed the Commission to provide testimony with respect to recommendations on VVSG 1.1 transition date, providing a summary of NTS's perspective on how the implementation and adoption of VVSG 1.1 is progressing.

Mr. Long noted the distinction between "implementation" and "adoption" as implementation being the ability to operationalize the standard, or take it from its written version and put it into test cases,

and adoption being that the manufacturers are able to adopt the requirements, incorporate them into their systems, and then submit those systems.

Mr. Long explained that with any new standard, a common understanding of each requirement must be reached and this consensus shapes the scope of testing, and in turn drives the cost of testing. The absence of consensus can impede implementation of the standard. Because consensus is used to design the testing so everyone gets tested the same way, without consensus they cannot operationalize the standard. Currently, they are working through a couple of requirements with the EAC Testing and Certification Division to get consensus among the manufacturers and testing labs as to how they should be tested. NTS will continue to work with EAC to establish a common understanding for other requirements that are in question over the next 18 months.

Mr. Long then addressed adoption by saying that before any of the benefits of the new standard can be realized, it must be adopted and incorporated into the voting manufacturers' design processes. While there are many factors that can drive adoption, Mr. Long addressed two – economics and sunseting. He said the most common factor is usually economics. In the electronics world, the reason companies continue to develop new things such as iPhones and computers is because there is money to do so, and there is a return on that money. However, in the voting systems industry the economics are different, and Mr. Long said they will not be relying on that to see this adoption.

Mr. Long explained that sunseting is the process of taking a standard as previously required and setting a fixed date on which it will no longer be applicable and EAC has used sunseting to move standards forward. Mr. Long noted that sunseting can inadvertently cause gridlock in the certification of new or modified voting systems.

Mr. Long noted that the recommendation is for incorporating VVSG 1.1 in 18 months and discontinuing the testing of new voting systems to the 2005 VVSG at that time. Because the recommendation includes that voting systems already certified to 2005 can be modified and tested to the 2005 standard, the recommendation, if accepted, should allow for an extended period of use while manufacturers shift to designing systems to meet VVSG 1.1. This will minimize the risk of gridlock in the certification industry.

Mr. Long described how NTS worked with voting system manufacturers, EAC Testing and Certification staff, and other interested parties, this past fall to introduce and discuss the new requirements. Over the next 18 months NTS will continue to work with the voting system manufacturers and EAC to help the industry migrate to the new standard.

Questions and Answers

In response to Chairwoman McCormick's first question regarding how the certification division had begun preparing for the transition to VVSG 1.1, Mr. Hancock reported that they learned from adoption of the 2005 VVSG that there are always many interpretation questions and they are trying to address those at this time, not waiting until the transition date. They have been doing this by having meetings about VVSG 1.1 with the test labs and talking with the manufacturers.

In response to another question from Chairwoman McCormick regarding what requirements are preventing implementation of VVSG 1.1 right now, Mr. Long responded they are working through some of the operational environmental hardware testing because of military specifications on temperature ranges. He said the other large requirement they are working through is the scope of the source code review. He said the requirement itself is not in question, but the issue is that it is very expensive to test that requirement. They are looking at the scope of that review and how to leverage automated testing to alleviate that cost.

In response to Commissioner Hicks' first question with regard to whether the VSTLs and the manufacturers believe they can actually implement VVSG 1.1 18 months from now, Mr. Hancock responded that he understands the VSTLs will get up to speed as quickly as possible. At some point they will have to be reaccredited by the National Voluntary Laboratory Accreditation Program (NVLAP) to the new standard, but until that time they can remain viable in testing. Concerning the manufacturers, Mr. Hancock believes they generally fall in two camps. The more traditional manufacturers that have a lot of legacy systems have more work to do to catch up to some of the items in VVSG 1.1 and they would like the implementation date pushed further out. The newer manufacturers have developed a good portion, or perhaps all, of their system to the VVSG 1.1 standard so they have significantly less issues. Mr. Long responded that from the VSTLs' perspective there is no issue in adopting the VVSG 1.1 standard; they were already incorporating the standard before it was even approved. However, as mentioned

by Mr. Hancock, the scope of accreditation will need to be adjusted by NVLAP. He said there is nothing preventing them from operationalizing in the next couple of months. He believes the 18 months is more to allow the industry itself to work through the adoption of the standard.

In response to another question from Commissioner Hicks' on the impact of VVSG 1.1 on the 2016 election cycle Mr. Hancock responded that he does not expect it to have a great impact because right now there is only one system in the very early stages of testing to VVSG 1.1, although they may get others later this year. He said that perhaps there will be a more significant impact on the 2018 election cycle.

In response to Commissioner Masterson's first question regarding whether systems can be submitted for testing to VVSG 1.1 at this time Mr. Hancock confirmed that they can be submitted now.

In response to Commissioner Masterson's follow-up question regarding whether EAC is ready to take applications from manufacturers to get certified to VVSG 1.1 Mr. Hancock responded that they are ready to do so. He reiterated that they have one system already in the early stages of testing to VVSG 1.1 in pursuance of certification.

In response to another follow-up question from Commissioner Masterson concerning whether manufacturers have contacted NTS Mr. Long said they have been contacted by all of their customers and they have had individual discussions about migration to VVSG 1.1. He noted that VSTL does not get involved in development so it cannot provide any guidance there, but it has started conversations about achieving conformance and testing.

In response to another question from Commissioner Masterson regarding changes in the program manual to create efficiencies for the speed of testing and the ability to continue to test to the 2005 VVSG, Mr. Hancock responded that early on in the program the biggest complaint was that testing takes too long and perhaps is too expensive. He said that early on manufacturers submitted voting systems not yet ready for testing which resulted in time consuming back and forth between the test lab and manufacturer. He believes that working with manufacturers has led to them now submitting voting systems that are much more ready for testing. Mr. Hancock added that EAC has implemented a pre-test to verify that systems are ready for testing. This includes ensuring the manufacturer has all the hardware needed for the test and ensuring

the source code looks like it is generally correct and maintainable. Mr. Long added that the readiness of the voting systems being submitted now is very different than those originally submitted and the time to test and the cost has been reduced tremendously. In addition to improvement in the readiness of the voting systems being submitted, Mr. Long said NTS has reduced the testing cost through efficiencies such as more efficient testing and a more efficient process for generating reports and collecting data.

In response to another follow-up question from Commissioner Masterson asking if due to the work done by EAC the time to test modifications has gone from months to a month or even, in some cases, weeks with the cost being significantly lower, Mr. Long responded affirmatively.

In response to Commissioner Masterson asking for a walk-through of the standards development process and a plug for how people can get involved with the standards development process Mr. Hancock obliged. He said that over the last five or six years everyone knew the old way of developing the standards wasn't working. The process essentially involved a lot of up front work by NIST, the TGDC and the EAC to develop a document for public comment and the public input was not received at the time it was needed to affect the document. This time they reversed the process and have used working groups to get public input early in the process. In addition, they realize that the VVSG has not necessarily reflected the election process as it really happens and by getting more up front information from as many groups as possible, such as state and local election officials, academics, technologists, and test labs, they hope to develop a better document.

In response to Commissioner Masterson asking how an election official can get involved with the public working groups Mr. Hancock said the easiest way is to go to the vote.nist.gov site. The EAC also has a link on its website. Individuals can sign up for any or all of the working groups and NIST maintains the mailing lists.

In response to Commissioner Masterson asking about the value, in the test lab community, of an iterative process approach for the next VVSG Mr. Long stated that it provides flexibility and adoption to new changes in technology. Mr. Long said the pitfall, from the lab point of view, is that it has to be testable. The lab cannot test if something is "good" – it has to be measurable and there must be a way to judge conformance equally among all manufacturers.

In response to a follow-up question from Commissioner Hicks asking if one has to be an election official to participate in the working groups Mr. Hancock said that election officials are not the only participants. He reiterated that the test labs, manufacturers, and members of the general public who feel they have something to offer to the process can be a member; anyone can join.

In response to a question from Chairwoman McCormick about the impact transitioning to VVSG 1.1 will have on state certifications Mr. Hancock responded that it will probably not have a heavy impact in most states. He said that many states rely heavily on the EAC certification and then go ahead and do whatever is unique to their own state in the testing process. Mr. Long responded that the impact should not increase; a new system for at least the next 18 months would be able to be tested to the 2005 VVSG. He added that if manufacturers are getting modifications tested to the 2005 VVSG or VVSG 1.1, the paradigm does not shift for the state certification process; they still have to go to the state for certification.

In response to a follow-up question from Chairwoman McCormick asking if EAC and NTS have heard from local election officials with concern whether old systems that were tested under 2005 VVSG would still be certified or whether they should be purchasing systems tested only to VVSG 1.1 Mr. Hancock responded that he has heard those concerns. He explained that in the past there was a hard and fast cutoff date and local election officials had systems that could not be modified under the EAC program, but EAC learned from that. He said that allowing modifications to the 2005 VVSG should alleviate that past problem and the VVSG 1.1 adoption can move forward. Mr. Long responded by echoing Mr. Hancock and adding that the states and local jurisdictions should work with their manufacturers because it is ultimately the manufacturers' decision on what to do with the older systems, whether it's economically viable to maintain them to VVSG 2005. He added that from what has come through his lab, very few 2005 VVSG certified systems could meet the VVSG 1.1 standard; something would have to be done to the older systems to make them VVSG 1.1 compliant and that is a manufacturer's decision.

In response to another follow-up question from Chairwoman McCormick asking if local election officials can demand that a system be tested to VVSG 1.1 Mr. Long responded that it would be their decision. He said they could write that requirement into RFPs and/or work with their manufacturers and that would drive adoption

from the manufacturer if the manufacturer wanted to continue with the jurisdiction.

Commissioner Masterson made a motion to adopt full implementation for VVSG 1.1 at the date 18 months from today's vote with no new systems being tested to the 2005 VVSG after that date. Commissioner Hicks seconded the motion. The motion carried unanimously.

Recommendation of Policy Regarding Employee Participation with Outside Organizations

Presenter: Cliff Tatum, EAC General Counsel

Mr. Tatum addressed the Commission to provide information with respect to recommendations on policies regarding employee participation with outside organizations.

Mr. Tatum provided information on the EAC administrative manual and EAC's policies on employee conduct noting that all EAC employees are responsible for conducting themselves in a manner consistent with federal laws and regulations, commonly referred to as the Standards of Ethics for Employees of the Executive Branch. He said the majority of the regulations and statutes set forth standards that deal with financial conflicts of interest and outside employment activities. Accordingly, he intends to propose draft policies/regulations to develop standards that specifically address the appearance of impropriety and impartiality associated with outside activities as well as employment related activities to provide more clarity to situations not specifically addressed by criminal statutes or the civil statutes or the Code of Ethics and for situations that involve appearances of conflicts.

Mr. Tatum provided a highlight of draft regulations intended as a starting point for the Commissioners noting that the draft regulations are not yet ready for public comment. After the Commissioners make edits and revisions and suggestions, Mr. Tatum will contact the Office of Government Ethics (OGE) for assistance in preparing the regulations for joint concurrence and publication in the *Federal Register*. Highlights of the draft regulations include policies prohibiting outside employment and business activities related to the elections industry; whether employees can participate in non-profit organizations or non-federal organizations that advocate for or against any particular policies associated with the elections industry; a process for employees to

seek approval to participate in what might be a covered activity; and, definitions of covered activities.

Questions and Answers:

In response to Chairwoman McCormick's first question with respect to whether approval of an employee's activity absolves an employee of any violations of the ethics policy Mr. Tatum responded that it would not. Under the current Codes and criminal statutes employees can receive approval for some activities, but if that activity moves toward a violation, then the employee would be responsible for the conduct.

In response to Chairwoman McCormick's follow-up question asking what happens if an employee commits a violation Mr. Tatum said the employee would be asked to stop participating in the activity and if the activity reached the level of criminal activity there would be a referral to the OGE. The Department of Justice (DOJ) would decide if criminal prosecution was warranted.

In response to another follow-up question from Chairwoman McCormick asking whose responsibility it is to ensure that the ethics policy is not violated Mr. Tatum said that ultimately it is the employee's responsibility to make certain that any outside activities they participate in are not a covered activity prohibited by federal statutes or by EAC supplemental regulations. Employees should seek approval/clearance from his office before participating in any activity they believe maybe a covered activity. In addition, Mr. Tatum noted that supplemental regulations do not supplant the Code of Ethics.

In response to Commissioner Hicks' first question concerning whether the proposed regulations prohibit any of an employee's First Amendment rights of association and whether they are a blanket prohibition for them to have any sort of outside activities Mr. Tatum responded that the regulations are not a blanket prohibition; they are a starting point to address activities that might have the appearance of impropriety.

In response to Commissioner Hicks' follow-up question regarding whether other agencies have similar supplemental regulations Mr. Tatum responded that roughly 50 plus agencies have submitted supplemental regulations, with the Federal Election Commission (FEC) being the most similar to this agency.

In response to Commissioner Masterson's first question concerning whether the draft regulations and the EAC's Code of Ethics will jive with each other Mr. Tatum responded that they will.

In response to another question from Commissioner Masterson regarding whether the staff will be appropriately trained so they understand their responsibilities Mr. Tatum responded that they will be trained.

In response to another question from Chairwoman McCormick asking if the supplement regulations will affect the Commissioners Mr. Tatum replied that he will look further into that matter. He noted that the Commissioners are subject to the Code of Ethics and that he did not draft these regulations with the intent of any further prohibitions for the Commissioners.

In response to another question from Commissioner Hicks concerning the timeframe Mr. Tatum responded that he proposes receiving the Commissioners' edits and revisions within the next couple of weeks and then in February move forward to have discussions with OGE.

In response to a follow-up question from Chairwoman McCormick concerning whether a vote would be needed Mr. Tatum replied that a vote would probably be needed for him to move forward with OGE.

Commissioners' Closing Remarks

Commissioner Hicks said he is looking forward to the 2016 election cycle and the Commission continuing its job. He also noted that at 2:00 p.m. today they will be broadcasting their version of TED Talks on the website.

Commissioner Masterson noted there is a roundtable today at 2:30 p.m., a conversation with battleground jurisdictions.

Chairwoman McCormick concluded by noting that this will be a very interesting and exciting year.

The public meeting of the EAC adjourned at 11:04 a.m.