

**United States Election Assistance Commission
Public Meeting**

Held at

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

on

Wednesday, January 6, 2016

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the United States Election Assistance Commission (EAC) Public Meeting that was 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

CHAIRWOMAN McCORMICK:

Good morning and welcome to the public meeting of the U.S. Election Assistance Commission. I call this meeting to order. I ask you to please join me in saying the Pledge of Allegiance.

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

CHAIRWOMAN McCORMICK:

I'll take the roll. Vice-Chairman Thomas Hicks.

COMMISSIONER HICKS:

Present.

CHAIRWOMAN McCORMICK:

Commissioner Matthew Masterson.

COMMISSIONER MASTERSON:

Here.

CHAIRWOMAN McCORMICK:

And myself, Commissioner Christy McCormick, I'm here. Can I get a motion for adoption of the agenda?

COMMISSIONER HICKS:

I so move.

COMMISSIONER MASTERSON:

Second.

CHAIRWOMAN McCORMICK:

All those in favor?

[The motion carried unanimously.]

CHAIRWOMAN McCORMICK:

We'll now have some welcoming remarks. I will start off. I just wanted to say that we're approaching the one-year date of the three of us being appointed to the Commission and it's been a very exciting and interesting year for us, and we've really accomplished a lot over that year with all the help of our staff and with our stakeholders and our partners in the election community. I'm happy to say that we went out on a listening tour. We heard from folks in over 30 states this year. We went and visited 30 states amongst the three of us and went to many conferences and meetings and meetings with vendors and tried to cover the election community as much as possible, and received a lot of good input on where the Commission should be going and where we should be headed. And we've taken that all to heart, and we, as you can tell from what we accomplished last year, have been working on

those things that were recommended to us by the election community.

Just some of the things that we did, we passed the VVSG 1.1, we updated the Testing and Program manuals, we reinstated the EAC Advisory Boards, the Standards Board and Board of Advisors, we published the 2014 EAVS, NVRA and UOCAVA reports, we recreated the Technical Guidelines Development Committee to work on the next iteration of the Voluntary Voting Systems Guidelines, we held a very successful Election Data Summit, we held a public meeting that was focused on accessibility issues, and we also hired a new Executive Director and General Counsel. Those positions had been vacant for quite some time. The Executive Director position was held by Alice Miller in an acting position, and we want to thank Alice, publicly, for all that she did to keep the Commission going during the years when it had no Commissioners. She did amazing work and we wish her well. She has left the EAC and gone on to a new job, and we wanted to say thank you very much, Alice Miller, for all that you did for the Commission.

I'd like to introduce, now, our new Executive Director and our new General Counsel. Brian Newby, who comes to us from Johnson City, Kansas, is our new Executive Director. Welcome Brian. This is his first public meeting with us and we will be hearing

from him in the Executive Director report. And Cliff Tatum, who comes to us from Washington, D.C., welcome Cliff, as our new General Counsel, and we'll also be hearing from Cliff, as well. So, welcome to the EAC, and we're looking forward to this next great year together and beyond. So welcome, and thank you for joining us.

That's what I have right now. I'd like to pass the mic to Commissioner Hicks for any comments he may have.

COMMISSIONER HICKS:

Thank you Chairwoman McCormick. I want to wish everyone a happy New Year. I'm really looking forward to this new, exciting year in 2016. We -- I'm looking forward to continually working with my fellow Commissioners, looking forward to working with state and election -- state and local election officials and other stakeholders to further the goals of the EAC and further the goals of the American people. I'm very excited to expand our elections team with Brian Newby and Cliff Tatum. I'm sorry to see Alice Miller go and I want to publicly thank her for helping to keep the lights open here at the EAC and all the work that she's done over the last five, six years with the Election Assistance Commission. I'm very excited to continue our listening tour and actually continue more of our work to further the goals of the American folks. I'm excited about what today's public meeting will be speaking about.

So with that, I'm going to turn it over to Commissioner Masterson.

COMMISSIONER MASTERSON:

Thank you and good morning to all of you and happy New Year. 2016 is upon us. We kick off a new year. On Monday when I woke up, I listened closely, and can hear election administrators across the county turn their lights on in their office, look at the calendar as they do every morning and breathe a deep sigh, "Okay it's here, we're here." They've been preparing for some time, but 2016 is here. The focus of the Commission this year will be to serve our customers, the election administrators, across the country to make sure that they have the resources, information that they need to continue to serve their voters. And so, I look forward to the work we're doing this year. I want to publicly thank the Chair for her work last year and all we were able to accomplish. And we turn the page and head into an important and historic Presidential year this year, focused on what we can do to serve the customers of the EAC. And then, I'd also like to echo the thanks to the service of Alice Miller and the work that she did to keep the EAC running, but push it forward, improve the agency and move it forward, and so, all of us wouldn't be sitting here today, being able to do this work, if it wasn't for Alice, and we very much appreciate her work.

So with that, I'll turn it back over to the Chair and look forward to working with all -- the two of you and the EAC staff moving forward this year. Thanks.

CHAIRWOMAN McCORMICK:

Thank you. Now, we'll look to approval of minutes for the last public meeting. Do I have a motion to accept the minutes?

COMMISSIONER MASTERSON:

So moved.

COMMISSIONER HICKS:

Second.

CHAIRWOMAN McCORMICK:

All those in favor say aye.

[The motion carried unanimously.]

CHAIRWOMAN McCORMICK:

We now will go to new business. We'd like to hear the report of the Executive Director Brian Newby. Mr. Newby.

MR. NEWBY:

Thank you. And Commissioners, I have provided just a real brief report that I sent to you, and I've left copies at the front. But there are really just three things since I just have joined since November 16th, and I will echo the things that were said about Alice Miller, starting at that point. Alice really needs to be commended for her

leadership in a time when there were no Commissioners, and I think the things that we will be talking about, preparing for 2016 and the accomplishments we hope to have in 2016 and beyond, we'll always owe something to Alice for being able to keep us going in that period and laying the groundwork for what we'll accomplish. So, I wanted to stress that, and also say, at this point we don't anticipate backfilling the role of the Chief Operating Officer. That's not to say that we won't, but we're going to do a process where we look at just our overall staffing needs, what we want to accomplish, and at this point, all of Alice's direct reports from the divisions report to me.

Second, we have major communication activity underway today and another one going on today. You've mentioned the roundtable, and second, we will have a communications video scheduled later this month relating to postal issues. The Commissioners, as you would know, and then, also the Executive Director of FVAP, Matt Boehmer, have sent a letter to the United States Postal Service to talk about issues, raise issues related to the Postal Service, and we have a meeting set up with them later in this month. And then, we hope to follow that up with a kind of what we're calling a Webisode, a communications vehicle with key people related to this issue, just kind of an informational video for election administrators throughout the county. So, we have that

scheduled later, and at the very least we're hoping that that communications will raise awareness as we enter this important year for elections.

And speaking of that, and I think to go from Commissioner Masterson's point of customers, the ultimate customer being voters, for all of us, we know that the voters most often come to the EAC Website to look about how to register to vote, and because of that we're looking at the form for the NVRA, what used to be called the postcard, on our site, and the instructions, the state-by-state instructions. We have some outstanding requests from states that we plan to address very quickly. And then, also do -- start a regular process where we will go to the states and do a sweep, asking the state election directors to review the instructions, let us know if there's any changes that need to be made to be consistent with laws that we're unaware of, and then, make sure that that is correct this time for March 1 on, for 2016, as people begin to make sure that their voting information is updated. And in the future, in odd years, we will do that process November 1, to have everything updated every year January 1 when we enter an even year. So, in 2017 we will send out this sweep again November 1, with the idea that it will be updated January 1 of 2018.

Those are the three things that I wanted to touch on. I'm glad to be here. Thank you very much and I stand for any questions you have.

CHAIRWOMAN McCORMICK:

Any questions from the Commissioners?

COMMISSIONER MASTERSON:

Just a brief one, and that is I know we're working to update the instructions on the form. My understanding is, on our Website, our goal is to drive folks to the state Websites, whether it's their online registration system or their state specific registration form. Is that correct?

MR. NEWBY:

That's how we have it set up, which is very nice. I do think that just there's one thing we'll want to address on our Website to make sure that those links are always operating, and that we have some backup plan, if for some reason they're down, because if the link doesn't work it will look like there's an issue with our site, and so, we want to make sure that we've thought through that. But yes, they all are going to the states, which is the best way, I think, it should be.

COMMISSIONER MASTERSON:

Thank you.

CHAIRWOMAN McCORMICK:

Anything further? Thank you Executive Director Newby.

MR. NEWBY:

Thank you.

CHAIRWOMAN McCORMICK:

Now we'll go on to hear from Brian Hancock, the EAC Director of Testing and Certification, and James Long, Voting Systems Program Manager, if you all could take the witness table. I understand you have a recommendation and discussion on VVSG 1.1 transition date. And Mr. Hancock if you would go first, I'd appreciate it.

MR. HANCOCK:

Thank you Madam Chair, Commissioners, thank you for allowing me to testify on VVSG 1.1 transition this morning. I should say, it would be remiss if on behalf of the EAC staff I did not also welcome Executive Director Newby and General Counsel Tatum to the team, we're very happy to have them, and also, to recognize the leadership of Alice Miller, as you all have already done, over the past several difficult years at the EAC. So, I think it's important, from a staff perspective, to hear that information as well. So, thank you very much.

At the EAC public meeting on March 31st of 2015, the Commissioners unanimously voted to adopt the Voluntary Voting System Guidelines 1.1 for the testing of voting systems.

At that meeting, staff recommended that, after Commissioner approval, VVSG 1.1 be immediately available for the testing and certification of voting systems. In addition, staff suggested that, and the Commissioners agreed, that within six months the Commissioners, after speaking with stakeholders, could identify a timeline for transitioning more fully from the 2006 VVSG, which we had been testing to -- to the 1.1 version of the VVSG. Finally, EAC staff recommended that modifications to systems certified to the 2005 VVSG version 1.0 could still be submitted for testing and certification to that standard after the transition to VVSG 1.1.

Although we are now past the initially recommended six-month goal, I believe that we have received enough feedback from all our stakeholders that we can recommend to the Commission a reasonable timeframe for transitioning fully to VVSG 1.1. Testing and Certification Division staff have spoken to the vast majority of registered manufacturers, to all of the voting system test laboratories, and you'll hear more from James on that shortly, and to numerous state and local election officials. We also understand that as part of the Commissioners' listening tour during the past year, all of you have heard the thoughts of election administrators throughout the country and voting system manufacturers at various locations and various events from time to time. So, we know you've been steeped in this, as well, over the past year.

Staff heard various dates proposed for the transition to VVSG 1.1. Some stakeholders suggested as little as eight to 12 months for the transition period, while others suggested as long as three years. As you will see, staff recommends a period between these two extremes for the implementation of VVSG 1.1.

I believe we must also recognize the fact that the EAC, NIST, and the Technical Guidelines Development Committee and our working group members have already started the process of developing the next iteration of the VVSG. I believe that consideration should be given very early in this process as to how and when the final document should be implemented by the election community. And relevant input from stakeholders now, right now at the present time will make the EAC's decision on implementation dates for that future document more responsive and more acceptable to all of our stakeholders. So, I do urge everyone to become part of that process.

Chairwoman McCormick, Commissioner Hicks, Commissioner Masterson, in light of the information received from various stakeholders over the past nine months, and acknowledging the fact that the next iteration of the VVSG is now under development, EAC staff recommends that the Commissioners vote to require that all new voting systems submitted for EAC testing and certification be tested to the VVSG

1.1 18 months from the date of this meeting or the date of your vote.

At that time, the 2005 VVSG 1.0 will no longer be used for testing new voting systems, but will be available for testing modifications to systems previously certified to that standard. Staff will also provide further clarification regarding the definition of what constitutes a “new” voting system at an EAC public meeting later this year.

Thank you very much and I’d be happy to answer any questions, or if you’d like James to give his testimony, either way is fine.

CHAIRWOMAN McCORMICK:

Okay, we’ll hear from James Long, Voting Systems Program Manager at NTS. Welcome James.

MR. LONG:

Thank you, good morning. Commissioner -- Chairwoman McCormick, Commissioner Hicks, Commissioner Masterson, Executive Director Newby, thank you for the opportunity to allow me to testify regarding the implementation of the Voting Systems Guidelines 1.1.

First, let me congratulate you, the Commission, for such a productive year last year. From a VSTL’s perspective, it was a huge year for us in the adoption of the new program manuals, the

VSTL manual and the new guidelines. So, congratulations to you guys and thank you for your efforts this past year to include us in your conversations.

Since the approval of VVSG 1.1 standard, NTS has been diligently incorporating the new requirements into our testing program. I'm here today to provide a brief summary of NTS's perspective on how the implementation and adoption of 1.1 is progressing. I'd like to begin by talking about the implementation.

So, the distinction between implementation and adoption, real quickly from our perspective, is implementation is our ability to essentially operationalize the standard. That's to take it from its written version and put it into test cases, test procedures that we could then test the manufacturers to for conformance. Adoption is the manufacturer. They have to be able to adopt the requirements, incorporate that into their systems, and then submit those systems.

With any new standard a common understanding of each requirement must be reached. This consensus is very important as it shapes the scope of testing and in turn drives the cost of testing. By making this consensus, you know, we all understand -- all three parties understand what is being tested and how it will be tested. And once again, that drives the cost of the testing from our perspective. In addition it -- in absence of this consensus it can impede an implementation of the standard. Once again, we use

this consensus to design our testing so everyone gets tested the same way. So, without this consensus we would not be able to operationalize the standard. So currently, this is the only issue that we see with the VVSG in our ability to operationalize it. There are a couple of requirements that we are working through with the Testing and Certification Division to get a consensus amongst the manufacturers and the labs of how it should be tested. Together, we're making great progress. The EAC Testing and Certification Division has been very responsive. They have issued five requests for interpretations. Those are on the Website of the EAC so that all the manufacturers, all the testing labs will understand what those interpretations are, and how manufacturers will be judged for conformance to those requirements. We will -- NTS will continue to work with the EAC to establish a common understanding for the other requirements that are in question over the next 18 months, as Director Hancock has mentioned the implementation date.

The other topic I'd like to discuss briefly is adoption. Before any of the benefits of this new standard can be realized, it must be adopted and incorporated into the voting manufacturer's design processes. There are many manufacturers that can drive adoption, but I'm pretty much just going to talk about two here. The most common factor is usually economics. In, you know, the electronics world, what drives new iPhone sales, new computer sales is the

economics. The only reason they continue to develop new things is because there's money to do so, and there's a return on that. In the voting systems industry the economics are a little different, so we really won't be relying upon that, at least from our perspective, to see this adoption. The other factor that you see that drives adoption is the process of sunseting, essentially, which is the process this Commission has used to move the standards forward. Sunseting, you know, is the process of taking the standard as previously required, and setting a fixed date on which it will no longer be applicable. And, as you know, Director Hancock had suggested, that's 18 months, is what the consensus of the elections community has come up with. Sunseting, however, can inadvertently cause a gridlock in the certification of new or modified voting systems. The process of adoption can take a lot of resources, and due to the nature of conformance testing there's not a process or an iterative approach to incorporating the 1.1 standard. It's an all or nothing approach right now. Once again, as Mr. Hancock mentioned in his testimony, the recommendation is for 18 months from today's date, the testing of new voting systems to the 2005 VVSG will be discontinued. The recommendation provides a hard date in which manufacturers are expected to have completed their adoption of the VVSG 1.1 standard. However, during the public hearing, back in March of last year, it was

recommended that systems already certified to 2005 would be allowed to be modified and tested to the 2005 standard. This recommendation, if accepted, should allow for an extended period of use for currently certified systems while manufacturers shift to designing systems to meet the 1.1 standard, and thus, minimize the risk of a gridlock in the certification industry.

As I'm sure you know, the VVSG is a large document. And that's probably an understatement. It contains in excess of 1,700 requirements that the voting system manufacturers must meet for compliance. The 1.1 revision represents more than 700 changes to the 2005 standard. This fall -- this past fall NTS hosted a series of Web conferences where we introduced and discussed all the new requirements in Volume one of the 1.1 standard. The majority of the voting systems manufacturers, EAC Testing and Certification staff, and many other interested parties attended these sessions. During these sessions NTS helped the manufacturers understand where the new requirements are and how NTS will approach testing conformance to these requirements. In addition, these discussions identified where there was not a common understanding on individual requirements and allowed for us to find a resolution. The feedback from the voting system's industry was very positive and we'd like to thank both them and the EAC for their participation this past fall.

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. And thank you again for allowing us to provide our perspective.

CHAIRWOMAN McCORMICK:

Thank you Mr. Long. I'll now take questions and I'll just start off with one. Director Hancock, how has the certification division begun preparing for the transition to the VVSG 1.1?

MR. HANCOCK:

Thank you Madam Chair. I think first of all, we learned quite a bit about perhaps how not to go about doing that during the adoption of the 2005 Voluntary Voting System Guidelines. I think there was -- because we were so new at this, there was some expectation at the Commission that once we put that standard out there things would rather smoothly move forward and the labs would be able to test to that document. But, as those that were here during that time can attest, it didn't quite work out that way. And, as James alluded to, there are always interpretation questions for any standard, no matter how well it's written, right? So, there were quite a few at the beginning, I don't even remember how many interpretations we wrote during those first years, say perhaps 2007 through 2009, but it was in the dozens. Let's just put it that way. We do expect that, and as James also noted, we are already doing that process and

we've started that process for VVSG 1.1. And our experience also showed that as the years go on and as everyone gets more comfortable with the standard, including the EAC, the test labs and the manufacturers, those requests for interpretations die down quite a bit, and over these last several years we've done really fairly few to the 2005. So, we're hoping by getting out in front of that at the present time, and by doing some of the things we've done this year, that is having meetings with the test labs about 1.1, talking with the manufacturers about it, that we will be significantly ahead of the game from where we were back in, say, 2006 and 2007.

CHAIRWOMAN McCORMICK:

Thank you. And then, I have a question for Mr. Long. What are some of the requirements that are preventing implementation of 1.1 right now?

MR. LONG:

Some of the requirements we're still working through. As Mr. Hancock mentioned, this is not uncommon, you know. NTS works in numerous other industries, and when the requirements in those industries change, there's an adoption period, and there's questions and requests for interpretations. But, to the point of your question, we are working through some of the operational, environmental, hardware testing. It's based on the military's specifications and the -- some of the numbers for the temperature

ranges are outside of those ranges and we're harmonizing those two documents.

The other large one that we're working through is the scope of the source code review. The requirement itself is not in question, the requirement is very clear. The issue with the requirement is it is very expensive to test that requirement. So, we are looking at the scope of that review and how to leverage automated testing in which to alleviate that cost.

CHAIRWOMAN McCORMICK:

Thank you. Vice-Chair Hicks, do you have any questions?

COMMISSIONER HICKS:

Yeah, I have just a couple of quick questions. With any sort of compromise, because the actual thoughts were to implement the 1.1 now, and/or go two, three years or so, and so, this is a great compromise on that. But what's the general feeling from the VSTLs and the manufacturers on actually implementing this 18 months from now?

MR. HANCOCK:

I'll take a first crack, and then, I'll let James handle his perspective from a VSTL. From what my understanding the VSTLs are, as James mentioned, working through that, and will get up to speed as quickly as possible. At some point, they will have to be re-accredited by NVLAP, the NIST NVLAP program to that new

standard and I understand that's being worked through at the present time. But until that time, they can remain viable in testing.

The manufacturers, again, there is varied opinions and I think it generally fell into two general camps. The sort of more traditional manufacturers, that have a lot of legacy systems out there, have a bit more work to do to catch up to some of the items in the VVSG 1.1, and so, they tended to be in the camp that wanted it pushed a little bit further out. The newer manufacturers, many of them have looked at VVSG 1.1 and, in fact, have developed a good portion, or perhaps all of their system, to that standard, since it's been out for several years, at least in a public comment format. And so, they have significantly less issues.

That's my take on the question.

MR. LONG:

From the VSTLs' perspective, there's no issue in adopting this, you know. We were already incorporating the standard while it was not even approved yet. And since it has been approved, test cases have been written, procedures have been updated. We're ready. As Mr. Hancock mentioned, our scope of accreditation will need to be adjusted by NVLAP. So, it's all, you know, procedure and paperwork at this moment. There's nothing preventing us from operationalizing this, you know, even in the next couple of months. The 18 month is more, I think what we discussed with the EAC,

was to allow the industry itself to work through the adoption of this standard.

COMMISSIONER HICKS:

Now, with the implementation date being 18 months from now, what sort of impact do you think this will have on the 2016 election cycle itself?

MR. HANCOCK:

I don't expect it to have a great impact on the 2016 cycle, simply because right now we only have one system in the very early stages of testing to 1.1. We may get others later on this year, but currently, all the other projects we're working on are still to the old standards. And so, I don't expect this year there to be a great impact. Perhaps, you know, the 2018 election there may be more, a more significant impact.

COMMISSIONER CHAIR HICKS:

That's all I have for now.

CHAIRWOMAN McCORMICK:

Commissioner Masterson?

COMMISSIONER MASTERSON:

Thank you, and thank you both for being here and addressing this important question. The first you kind of just mentioned, Mr. Hancock, and that is systems can be introduced and submitted right now for testing to 1.1. Is that correct?

MR. HANCOCK:

Correct.

COMMISSIONER MASTERSON:

And if a manufacturer wanted to get certified to 1.1 right now, would they have to -- is there any additional processes that need -- or is it just like any application? Are we ready essentially to take that and put it through the process?

MR. HANCOCK:

Yes, we are ready. In fact, as I mentioned, we do have one system at the early stages of testing to 1.1 in pursuance of certification. So, from a procedural standpoint, the EAC doesn't expect to have too many issues. As you all know, we passed the new program manual guides last year that have sort of moved in the same direction as 1.1. And so, from a procedural standpoint I don't see any major hurdles.

COMMISSIONER MASTERSON:

Mr. Long, have you had manufacturers come to you, you know, beginning to look at testing to 1.1 beyond what, you know, we see in our program, in your conversations with the manufacturers in updating the systems?

MR. LONG:

Yes, we've been contacted by all of our customers. All -- every customer that we do business with has contacted us and we've had

individual discussions about migration to 1.1. As the Commission knows, the voting system test lab does not get involved in development, so we cannot provide any guidance there. But, as far as achieving conformance and how it will be tested is something we've started conversations with.

COMMISSIONER MASTERSON:

Mr. Hancock, you mentioned modifications to the systems. You both have harped on it, and I think it's an incredible lesson that we learned from the 2005, that you have to continue to test systems to the standard they are certified to. And so, modifications coming in can still be tested to 2005 regardless of what we do here today.

As we look at 2016 and the changes to the program manual and testing those modifications, I think election officials across the country are looking at maintaining their old systems whether it's 2016 or beyond. Can you speak to both the changes in the program manual to create efficiencies for the speed of the testing or efficiency of the testing and the ability to continue to test to 2005?

MR. HANCOCK:

Sure, I'll start and James can step in if he has some things to add. Right, and obviously, early on in our program the biggest complaint we heard, and to some extent we still hear from time to time, is the testing takes too long and perhaps that it's too expensive and, you know, time is money. So, they're very much related. What we

found, and I think most folks, certainly everyone in my division and the test labs would attest to, as well, is that the thing that takes the most time is when a voting system comes in that is not ready to be tested, right, that there has to be a lot of back and forth between the EAC, between the test lab and the manufacturer, to bring that system to a state where it can very easily and systematically go through all the tests that the VSTLs will be doing. And I think working with the manufacturers, and to give them a lot of credit, almost all of them have come a long way and are showing us and bringing us and the labs systems that are much more ready for testing than they were at the beginning of our program.

That said, we've also, as you noted, implemented some things to verify that these systems are in fact ready. We have sort of a pre-test, essentially, readiness for testing program now, where the test labs will take a look at a number of items to make sure that the system, from their point of view, is acceptable and can be ready for testing, you know. Do they have all the hardware that they need to test? Is the source code, does it look like it's generally correct and maintainable? You know, things like that that, you know, save a lot of time down the road, literally months and months of time.

MR. LONG:

I would echo that from Mr. Hancock. The readiness of the voting systems that are being submitted, now, it's just a night and day

difference. They are so much more ready for testing. They understand the process so much better. The time to test and the cost has come down tremendously. I think we -- last year we tested two systems, one fairly large modification, within three months, and the cost of that modification was under \$50,000. I mean, that may sound like a lot to anyone not in the industry, but the cost used to be much, much higher than that. We've reduced, at our lab, the cost through other efficiencies; more efficient testing and a more efficient process for generating the reports and collecting the data. So, I think the cost and the time has come down tremendously and, you know, through some effort the VVSG 1.1 should have very little impact on that.

COMMISSIONER MASTERSON:

Would you say -- just to follow up on that, would you say it's fair to say that because of the work you all have done, Mr. Hancock has done, that the time to test modifications has gone from months to month or even, in some cases, weeks with the cost being significantly lower?

MR. LONG:

Absolutely.

COMMISSIONER MASTERSON:

Just quickly, I'm going to just be brutally -- just tee it up for you -- can you walk through the standards development process we're in

now and just give a big old plug for how people can get involved with the standards development process now that we have ongoing?

MR. HANCOCK:

Since you're twisting my arm Commissioner, I certainly will do that.

[Laughter]

MR. HANCOCK:

You know -- and the people that are involved now kind of understand this, but we all heard and felt, over the past five or six years, that the old way of developing the standards wasn't working, right? We didn't get the product that perhaps we were all seeking out of that process. And, as you know, the process was essentially a lot of up front work by NIST, the Technical Guidelines Development Committee and the EAC to sort of develop the document, you know, have the TGDC open public meetings from time to time, but then, put out a whole document, a very holistic almost complete document for public comment. And the public comment process I don't think gave us the input that we needed or perhaps certainly not at the time that it was needed to really affect the document. And that's why this time, as you well know, we are sort of reversing the process, and through the process of using working groups made up of, chaired by TGDC members that are election officials, and then, constituency groups that are generally

chaired by technologists, we hope to get a lot of that input upfront, right? And we also hope to make this document more clearly based on the election process, right? The other thing, as you well know that we've heard, is that maybe the VVSG doesn't necessarily reflect the election process as it currently happens out there, and it needs to be more responsive to that. So, hopefully by frontloading and getting information from as many folks as possible; election officials, both state and local, academics, technologists, you know, everyone, test labs, absolutely test labs, we hope to get a better document, hopefully, in as quick or quicker period of time to give to the community.

COMMISSIONER MASTERSON:

So, if I were, oh I don't know, an election official that wanted to get involved in the public working groups, how would I do that?

MR. HANCOCK:

The easiest way is to go to the vote.nist.gov site. The EAC also has a link to that on our Website. And there are e-mail lists. You can sign up for any one or all of those working groups, if you wish. So you're not necessarily constricted to just working with a pre-election or post-election working group or any of the constituencies. You can sign up there. NIST runs those mailing lists. They will respond to you and get you hooked up as quickly as possible and

you will be able to communicate directly with the chairs and co-chairs of those committees.

COMMISSIONER MASTERSON:

Thank you. Mr. Long, you mentioned the need to have a smooth transition and the need for an iterative process for standards implementation, right? As we're looking at the next set of requirements, the next set of VVSG one of the things we've been told by the elections community, the manufacturers, and what not, is this need for a higher level standard that allows for some iteration on it as opposed to constantly readopting new standards. Can you speak to the value of -- in the test lab community the value of that approach or the struggles with that approach as we look at this?

MR. LONG:

The value of the approach is it gives flexibility in instances of what this agency has already experienced once in which the Commission was not in place and due to the policy of how the standards are created as outlined in HAVA, we were -- we were stuck with the 2005. We had the 1.1 standard for years that we -- that just stayed there and no one was able to adopt it. Adopting higher level requirements and controlling them at the lower level test assertion stage, if you will, provides the flexibility to have the goal of what you want the requirement to be, but the actual way that it's implemented or interpreted can be controlled outside of the

high level policy level. It provides great flexibility and adoption to new changes in technology. The pitfalls of it, from the lab point of view, is it has to be testable. We can't test adjectives. We can't test if something is good. It has to be measurable and a way to judge conformance equally amongst all manufacturers. So those are the challenges with the requirements that are developed in that nature.

COMMISSIONER MASTERSON:

Thank you and I look forward to your lab, all the labs and all the manufactures participating in the working group process, that we get your expertise.

MR. LONG:

Thank you.

MR. HANCOCK:

Thanks.

CHAIRWOMAN McCORMICK:

Further questions?

COMMISSIONER HICKS:

Yeah, just one quick follow-up, one does not have to be an election official to participate in the working groups?

MR. HANCOCK:

No, not at all. Again, as we mentioned, the test labs, manufacturers, and any member of the general public that feels they have something to give to this process can be a member.

COMMISSIONER HICKS:

So, anyone can join?

MR. HANCOCK:

Yes sir.

COMMISSIONER HICKS:

Thank you.

CHAIRWOMAN McCORMICK:

I have a couple more questions. What impact will transitioning to the 1.1 have on state certifications?

MR. HANCOCK:

In most states, probably not a heavy impact. As you probably know, some states, California in particular, have already sort of adopted 1.1 with their own additional standards and, you know, California is sort of working through how to go about testing systems to that document themselves. As you know, most state certification testing concentrates more on the peculiar requirements or particular requirements of a state, and many of them do rely heavily on the federal test lab/test report or the EAC certification as a basis, and then, the states go ahead and do whatever is unique

to their own state in their testing process. So, certainly, initially I don't see a huge impact right now.

MR. LONG:

You know, if adopted as recommended with modifications being allowed to continue in 2005 and with, you know, the 1.1 not being mandatory for systems for 18 months, the impact should, you know, be much less, because a new system, no matter how it's defined, for at least the next 18 months would still be able to be tested to the 2005. This is something that everyone is familiar with, the states are familiar with, and the impact should not be any different than it is for what the testing is right now. Anytime a manufacturer comes through for testing outside of the EAC program, you know, we do state level testing as well. They still have to go back for state certification. So, whether they're getting modifications tested to 2005 or new systems to 1.1., the paradigm doesn't shift for the state certification process. They would still have to take it to the state for certification.

CHAIRWOMAN McCORMICK:

On a recent trip out to Ohio I met with local officials and we -- I had a lot of questions on the transition and there was some concern over whether old systems that were tested under 2005 would still be certified, you know, going forward, whether or not they should purchase systems only tested to 1.1. Have you all heard anything

from local election officials, yourselves, maybe these kinds of concerns and could you address those concerns? I tried to address them when I was in Ohio, but I think that for a larger audience it would probably be good just to clarify those questions.

MR. HANCOCK:

Sure, yeah, absolutely, we've certainly heard those same concerns as we travel, you know, about the country attending various conferences and meeting with state and local election officials. You know, to some extent they were burned last time, because we did have kind of a hard and fast date whereby the very old 2002 standard that was adopted by the Federal Election Commission was cutoff and many, many state and local election officials had systems that became a significant problem because of that cutoff. They could not modify those systems, essentially, under our program. And so, I think we learned from that, and hopefully, by allowing modifications to the 2005, those fears can be alleviated for the most part and 1.1 adoption can move forward, you know, in a much smoother fashion that is timely but can be spread out over a little bit longer period of time.

MR. LONG:

I would echo Mr. Hancock and just add that the states and local jurisdictions should work with their manufacturers. It ultimately is the manufacturer's decision on what to do with these older

systems, whether it's economically viable for them to maintain it to 2005. I would state that, you know, from what we've seen come through the lab very few 2005 certified systems could meet the 1.1 standard, and that's mostly intentional, when your revenue standards is to improve the systems. So, they would have to do something to the older systems to make them 1.1 compliant, and that's a manufacturer's decision. And they need to work with their manufacturers and let them know what their needs are, to either drive that change or to adopt something new.

CHAIRWOMAN McCORMICK:

So, the local election officials could demand that a system be tested to 1.1. Is that right?

MR. LONG:

It would be their decision.

CHAIRWOMAN McCORMICK:

Yeah.

MR. LONG:

They could write it into RFPs or, you know, work with their manufacturers, and that would drive adoption from the manufacturer, if the manufacturer wanted to continue to support the jurisdiction.

CHAIRWOMAN McCORMICK:

Okay. Other questions?

COMMISSIONER MASTERSON:

No.

CHAIRWOMAN McCORMICK:

Commissioners, do you want to accept the recommendation of staff? And if so, can I have a motion for that?

COMMISSIONER MASTERSON:

Sure, I would move 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:

I second that motion.

CHAIRWOMAN McCORMICK:

All those in favor say aye.

[The motion carried unanimously.]

CHAIRWOMAN McCORMICK:

Motion adopted. Thank you.

MR. HANCOCK:

Thank you.

CHAIRWOMAN McCORMICK:

Thank you very much for joining us and...

MR. LONG:

Thank you.

CHAIRWOMAN McCORMICK:

...helping us through this decision.

MR. HANCOCK:

Absolutely.

CHAIRWOMAN McCORMICK:

I now call on our General Counsel Clifford Tatum. I believe he has some recommendations regarding policy on employment participation with outside organizations. This is EAC related, yes?

MR. TATUM:

Yes.

CHAIRWOMAN McCORMICK:

Okay, Mr. Tatum?

MR. TATUM:

Thank you Madam Chair. As you know -- Commissioner Hicks and Commissioner Masterson, as you know, we've been discussing employee activities related to outside activities, and so, I've taken a look at what the current state of the law is and what the Code of Ethics are related to that, and I have some information I'd like to share with you for your consideration.

As you know, the administrative manual for the Election Assistance Commission sets forth policy, and the policy of the EAC is to maintain the highest ethical standards. Accordingly, it is the agency's policy that, number one, employees shall conduct

themselves in a manner befitting the public trust; number two, conduct all agency business impartially; number three, use government resources appropriately; and number four, avoid the appearance of impropriety in all matters. All EAC employees are responsible for conducting themselves in a manner consistent with federal laws and regulations relating to employee conduct, including adherence to the criminal statutes that generally prohibit federal employee conflict of interest found in 18 U.S.C. 201 through 209, civil statutes found at 5 U.S.C. at 4, and regulations found in 5 C.F.R. part 2635. Those are commonly referred to as the Standards of Ethics for Employees of the Executive Branch which implements the Ethics and Government Act of 1978. In general, the criminal statutes set forth specific activities and conduct that an employee is prohibited from engaging in, and the Ethics and Government Act sets forth standard of conduct for employees of the Executive Branch and includes regulations that govern employee conduct. The majority of the regulations and the statutes set forth standards that deal with financial conflicts of interest and outside employment activities that are closely associated to financial interest and personal gain.

Accordingly, it is our intent 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. So, the purpose of these regulations we are currently drafting and will propose to the Commissioners supplemental regulations to 5 C.F.R. part 2635. The scheme behind these draft regulations is to provide more clarity to situations not specifically addressed by the criminal statutes or the civil statutes or the Code of Ethics, at this time, and for situations that involve appearances of conflicts and provides that circumstances be judged from the perspective of a reasonable person with knowledge of the relevant facts.

Accordingly, these draft regulations are intended as a starting point for the Commissioners' consideration. Once the Commissioners have had an opportunity to review these draft regulations and provide input, the next course of action is to coordinate the office -- coordinate with the Office of Government Ethics (OGE) for the concurrence and joint and issuance of these regulations as provided by 5 C.F.R. part 2635.105. As provided by C.F.R. -- 5 C.F.R. part 2635.105, once the supplemental regulations are approved, an employee shall comply with these supplemental regulations, as well as the regulations in part 2635.

I have drafted some language and will provide a highlight of some of the areas that I think the Commissioners want to consider. These are not ready for public comment as of yet, so, once you all see a draft of the -- of what I've put together, I expect that you all

will make edits and revisions and suggestions which will get us to the next level of the draft. At that point, I would contact the Office of Government Ethics and ask them to assist us in preparing the supplemental regulations for joint concurrence, and then, publication in the *Federal Register* for activation.

So just to...

CHAIRWOMAN McCORMICK:

Do you need us to vote on that?

MR. TATUM:

I do not need you to vote on that today.

CHAIRWOMAN McCORMICK:

Okay.

MR. TATUM:

But just to highlight a couple of the areas that we're looking at, we will -- we're looking at policies that will prohibit outside employment and business activities related to elections industry type standards or areas. For instance, we'd look at whether an employee could have some involvement with an outside entity that manufactures or sells voting equipment. We'd look at whether an employee could have interaction in providing consultation, advice or subcontracting services with any programs or operations -- programs that affect the operations or programs of the Election Assistance Commission. We would look at whether an employee could be -- have any

outside activities associated to any programs that are funded by the Election Assistance Commission. For instance, we provide a number of grants to different organizations to participate -- to conduct research and studies for us. Could an employee actually be involved with that type of organization under the current code? We are looking at whether or not the General Counsel or staff in the General Counsel's office could be involved with legal matters or work on a legal matter that somehow has an impact on the Election Assistance Commission. So, those will be some of the areas that we're taking a look at.

We're also looking at whether or not employees can participate in non-profit organizations or non-federal organizations that advocate for or against any particular policies associated to the elections industry. We know that there's a number of associations in the country that advocate for or against rules and regulations, that advocate for or against different types of voting systems and whether or not it would be permissible or whether it would be -- it would appear to be a conflict of interest for an employee to be involved or a member of that particular organization when that organization may be advocating against a position that the EAC itself is taking.

So, these are some of the areas that we've drafted language in, and we anticipate providing you with that draft language to provide us with some feedback.

Of course, as under the Code of Ethics, there are exceptions to what we call the prohibitions and there would be a process within our supplemental regulations that would allow an employee to seek approval to participate in perhaps what would be a covered activity, if you will, and that approval process would follow the same standards that are in the Code of Ethics at this time. We would also include definitions of certain activities or employee activities that we believe would be covered by the regulations. And once we get the full package together we would then submit that package to the -- work with the Office of Government Ethics to make sure that we aren't going overboard and that these are regulations that would be appropriate for our staff and our agency.

So, at some point I will be asking you all to approve my interaction with the OGE to work -- move forward on these supplemental regulations.

CHAIRWOMAN McCORMICK:

Okay. Can we ask you a few questions?

MR. TATUM:

Sure.

CHAIRWOMAN McCORMICK:

Okay. Would approval by -- of an employee's activity absolve an employee of any violations of this ethics policy?

MR. TATUM:

No, it would not and that's a very good question. The -- under the current codes and the criminal statutes there is the ability to be -- for an employee to receive approval. However, if that activity moves towards some sort of violation, then the employee would be responsible for that conduct, and then could be held responsible for it.

CHAIRWOMAN McCORMICK:

So, if there is a violation, then what happens?

MR. TATUM:

Then the employee would be asked to stop participating in the activity. There is the matter of whether or not the activity reaches the level of criminal activity, and then there's a referral from our office to the Office of Government Ethics. And, at the end of the day, it's the DOJ that has the decision to move forward with some sort of criminal prosecution.

CHAIRWOMAN McCORMICK:

Okay. And then, whose responsibility is it to ensure that these -- this code wouldn't -- this ethics policy wouldn't be violated?

MR. TATUM:

Ultimately, it is the employee's responsibility to make certain that any outside activities that they are participating in is not a covered activity that's prohibited by the federal statutes or by our supplemental regulations. And if an employee believes or is about to participate in some sort of activity, then they should seek approval/clearance from our office, first, so that we can determine whether or not there is, in fact, a conflict of interest.

And let me say that the supplemental regulations do not supplant the Code of Ethics. So, at the very beginning there's the conflict of interest related to financial gain that an employee has to be mindful of, and these are supplemental to those standard code -
- that standard code of conduct.

CHAIRWOMAN McCormick:

Okay, Commissioner Hicks, do you have any questions?

COMMISSIONER HICKS:

Yeah, I have a few. Again, welcome to the new team of election -- for the Election Assistance Commission and we're very happy to have you onboard, Mr. Tatum.

I wanted to just basically clarify that with the new rules that you're -- regulations that you're proposing for us to take a look at that they're not in any way intended to prohibit any of the employee's First Amendment rights of association, but also, that

they're not a blanket prohibition for them to have any sort of outside activities as well.

MR. TATUM:

Very good question, and, no, the regulations are not a blanket prohibition of any and all activities. It's a starting point to address what could appear to be an appearance of impropriety. And so, while the federal laws and the code of conduct does provide for prohibited activities that truly are "you cannot do this" if it is as you describe it to be, there would be the opportunity for an employee to ask for approval or to ask for a waiver. And our supplemental regulations would include that process.

COMMISSIONER HICKS:

Have there been any other agencies that have submitted other supplemental regulations, and what's the number of those agencies that have done so?

MR. TATUM:

There are. There are roughly 50 plus agencies that have submitted supplemental regulations. I think the agency closest to our vein is the FEC, the Federal Election Commission. The United States Postal Service has submitted regulations and there's a list of 50 or more that have submitted supplementals.

COMMISSIONER HICKS:

Great, thank you.

CHAIRWOMAN McCORMICK:

Commissioner Masterson?

COMMISSIONER MASTERSON:

I just have one quick one. Good morning and welcome. It's nothing like sitting down in your seat and getting handed ethics drafting to start. So...

[Laughter]

COMMISSIONER MASTERSON:

The quick, I guess, question or two questions is we already have, in a sense, a code of ethics at least within the program manual of the testing and certification program. I assume that in drafting these you're making sure that those jive with whatever you're drafting and vice versa. Is that correct?

MR. TATUM:

That is correct.

COMMISSIONER MASTERSON:

And then, secondly, I assume that part of the protocol in doing this is then training for the staff on what these supplement. So, we already have a Code of Ethics that exists across the Federal Government. Then, we'll do additional training with the staff so they understand the responsibilities. Is that correct?

MR. TATUM:

That is correct.

COMMISSIONER MASTERSON:

That's all I got.

CHAIRWOMAN McCORMICK:

And will these -- this policy affect the Commissioners as well?

MR. TATUM:

So -- that's a good question. I'll have to take a look at that.

[Laughter]

MR. TATUM:

As you know the Commissioners are subject to the Code of Ethics and there are some -- I think, some exemptions, some fast and hard prohibitions against you all from participating in certain outside activities. So, those would not change. I did not draft these in mind of prohibiting you any further than that, but we will certainly take a look at that.

CHAIRWOMAN McCORMICK:

We have some prohibitions under HAVA itself, so ...

MR. TATUM:

That's correct.

CHAIRWOMAN McCORMICK:

Yes, any further questions?

COMMISSIONER HICKS:

Do you have a ballpark timeframe for getting this to us?

MR. TATUM:

Within the next couple of weeks I propose to have -- to receive your edits and revisions, and then, perhaps in February would be able to move these forward to have discussions with the Office of Government Ethics.

COMMISSIONER HICKS:

Thank you.

CHAIRWOMAN McCORMICK:

And will we need a vote at that time?

MR. TATUM:

Yes, I believe at that time you will have to give...

CHAIRWOMAN McCORMICK:

Okay.

MR. TATUM:

...me approval to move forward, so that may require a tally vote or if we're having a public meeting.

CHAIRWOMAN McCORMICK:

Okay, anything else?

COMMISSIONER MASTERSON:

No.

COMMISSIONER HICKS:

No.

CHAIRWOMAN McCORMICK:

Thank you very much Mr. Tatum.

MR. TATUM:

Thank you.

CHAIRWOMAN McCORMICK:

Welcome, again.

MR. TATUM:

Thank you.

CHAIRWOMAN McCORMICK:

Do we have any other business to take care of at this meeting? So, closing remarks, Commissioner Hicks, do you want to start?

COMMISSIONER HICKS:

I just want to say thank you. I'm looking forward to the 2016 election cycle and continuing our jobs, basically. So, thanks.

CHAIRWOMAN McCORMICK:

Okay. Commissioner Masterson?

COMMISSIONER MASTERSON:

I'll just plug the roundtable at 2:30 today, a conversation with battleground jurisdictions. It will be Webcast, so if you're here watching this public meeting, come back and join us at 2:30 with representatives from many of the major battleground states or jurisdictions. It should be a really good conversation.

CHAIRWOMAN McCORMICK:

Go ahead.

COMMISSIONER HICKS:

I was going to say that at two o'clock we're still going to be broadcasting our -- your version of TED Talks on our Website, as well. So...

CHAIRWOMAN McCORMICK:

Okay. And it looks to be that this is going to be a very interesting and exciting year, so 2016, here we come. And with that I adjourn this meeting.

[The public meeting of the U.S. Election Assistance Commission adjourned at 11:04 a.m. EST]