

Minutes of the Public Meeting United States Election Assistance Commission

Hyatt Regency Grand Cypress
1 Grand Cypress Boulevard
Orlando, Florida 32836

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Wednesday, August 18, 2010. The meeting convened at 1:00 p.m., EDT. The meeting was adjourned at 2:47 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Donetta Davidson called the meeting to order at 1:00 p.m.

Pledge of Allegiance:

Chair Davidson led all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

Associate General Counsel Tamar Nedzar called roll of the members of the Commission and found present: Chair Donetta Davidson, Commissioner Gracia Hillman and Commissioner Gineen Bresso. Three members were present for a quorum.

Senior Staff:

Associate General Counsel Tamar Nedzar, Executive Director Thomas Wilkey

Panelists:

Dr. Shelly Anderson, Deputy Director for Research, Policy and Programs, EAC; Mark Skall, Consultant; John Wack, Technology Manager, Voting Program, National Institute of Standards and Technology (NIST)

Old Business:

Approval of minutes from the previous meeting

Commissioner Bresso moved approval of the minutes of the June 28, 2010, public meeting, which was seconded by Commissioner Hillman. The motion carried unanimously.

Adoption of Agenda

Commissioner Hillman moved to adopt the agenda as printed, which was seconded by Commissioner Bresso. The motion carried unanimously.

Welcoming remarks

Chair Davidson extended a welcome to those in attendance and encouraged election officials to view EAC's newly designed website and provide both their comments and rate the materials. She also extended her appreciation to EAC staff for hosting an accessibility roundtable that addressed future revisions to the Voluntary Voting System Guidelines, in addition to her appreciation for a workshop in which EAC, NIST and the Federal Voting Assistance Program (FVAP) met to discuss matters pertaining to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Chair Davidson pointed out that her notes comprising a recent trip she took to an E-voting conference in Europe have been posted on EAC's website for review. She concluded her comments by giving a brief update on the status of the logic and accuracy grant.

Commissioner Hillman was pleased to acknowledge the 90th anniversary of women's right to vote, commenting that it was not until 50 years later that African-American women had the right to vote. She also pointed out that the Commission failed to adopt the minutes from the public hearing of June 28, 2010. Ms. Nedzar explained that a motion was necessary to attend to this matter, which it was agreed to defer until a later point during the meeting.

Commissioner Bresso extended her thanks to all the members that participated and public that viewed EAC's first ever virtual Standards Board meeting held July 27, 2010, which she pointed out saved a significant amount of federal dollars holding it in this format. She also was pleased to acknowledge the 90th anniversary of women's right to vote.

Old Business (cont'd)

Report from the Executive Director

Mr. Wilkey extended a welcome to all in attendance, in addition to acknowledging the 90th anniversary of the passage of the 19th Amendment, pointing out that the heart of this effort was accomplished by a courageous group of women from his home State of New York.

Mr. Wilkey provided an update on activities that have taken place since the Commission's June 28, 2010, public meeting in the areas of testing and certification, research and policy, requirements payments, grants, election management guidelines, tally votes, and other news.

Associate General Counsel Tamar Nedzar reviewed the following three policies that were recently adopted by the EAC:

1. Information Quality Guidelines adopted via tally vote June 2, 2010.
2. Privacy Policy Statement adopted via tally vote June 13, 2010.
3. Guide to the Election Administration and Voting Survey adopted via tally vote May 11, 2010.

Ms. Nedzar also reviewed the following two existing policies that the EAC is in the process of amending:

1. Voting by Circulation Policy adopted by the Commission on May 17, 2004.
2. Notice and Public Comment Policy adopted by the Commission on September 18, 2008.

Questions and Answers:

In response to Commissioner Hillman's question regarding what Ms. Nedzar meant when she stated in her overview that "EAC's policies accurately reflect the environment in which the agency is sometimes required to act," Ms. Nedzar explained that this was in reference to the existing two policies that are in the process of being amended, which will assist the EAC in meeting certain timeframes. In response to Commissioner Hillman's second inquiry as to whether any comments were received in connection with EAC's three newest policies, Ms. Nedzar explained it is her belief that no comments had been submitted.

New Business:

Update on the 2010 Election Administration and Voting Survey

Presenter: Dr. Shelly Anderson, Deputy Director for Research, Research, Policy and Programs, EAC provided a brief update on the status of the 2010 Election Administration and Voting Survey for which ICF International will be serving as the contractor to conduct the survey.

Questions and Answers:

In response to Commissioner Hillman's inquiry into what type of technical assistance EAC provides to individuals from States who may be filling out the survey for the first time, Dr. Anderson explained that while EAC only had initial contact with State election officials in June, ICF's technical assistance specialists, in addition to already communicating with all State points of contact, are being proactive and approaching each State to ascertain what assistance they may need.

In response to Commissioner Bresso's inquiry about whether the Commission had previously contracted with ICF, Dr. Anderson responded that ICF had previously been involved with the Commission's educational product evaluation. In response to Commissioner Bresso's inquiry about whether States are expressing a concern regarding the need to return the Statutory Overview templates by September 30th, Dr. Anderson was pleased to report that no States have indicated a problem with this deadline.

In response to Chair Davidson's question regarding the amount of time it took to fill out the Paperwork Reduction Act process in connection with the survey instrument, Dr. Anderson explained that EAC began the process in September of '09 and culminated in May of 2010 with the posting of the final version on EAC's website. In response to Chair Davidson's final inquiry into whether EAC has submitted any of its surveys/data to the Federal Government's new online clearinghouse, Dr. Anderson stated that 2008 datasets pertaining to the NVRA, UOCAVA and Election Administration and Voting Survey were submitted and accepted, noting that she anticipates the 2010 datasets for these will also be submitted.

Test Suites

Chair Davidson introduced Mark Skall, Consultant, and John Wack, Technology Manager, Voting Program, National Institute of Standards and Technology (NIST).

Presenter: Mr. Skall addressed the Commission to provide testimony with respect to the benefits of test suites for the voting community, and why test suites need to be both uniform among testing laboratories and publicly available. He also provided details with respect to the NIST-developed test suite for the VVSG 2.0 (now known as the "Next Iteration"), in addition to a NIST-developed conformance test suite for the new requirements in the update to the 2005 VVSG (now known as the VVSG 1.1). Mr. Skall discussed the obstacles that need to be overcome in getting a complete set of uniform and public test suites in use by the Voting System Test Laboratories (VSTL).

Presenter: Mr. Wack addressed the Commission to provide an overview of NIST's role in testing and how test suites will assist labs and manufacturers in reducing costs of testing and improving quality and transparency of the testing process. Mr. Wack also provided a brief description of the four NIST-developed test suites that were built to address the following new requirements added to the VVSG 1.1: Two test suites that address the added core requirements, a test suite for the added human factors requirement and a test suite for the added security requirements.

Questions/Answers/Comments:

In response to Commissioner Hillman's inquiry into whether NIST is prepared to make adjustments to its proposed test suites, depending on what version of VVSG 1.1 the Commission will be adopting, Mr. Wack concurred that NIST will need to do some readjusting of the requirements and the tests in conjunction with whatever version of VVSG 1.1 that the Commission adopts. In response to Commissioner Hillman's question regarding whether the components of test suites are black and white or whether there are grey areas subject to interpretation, Mr. Skall explained that because there is always interpretation of requirements in the standards and that writing test suites is a challenge due to the fact that you have to read every standard precisely, and to some degree it's subjective. In response to Commissioner Hillman's inquiry into what type of expertise is required of those who develop and conduct test suites, Mr. Skall pointed out that it encompasses a wide range of expertise including one being well versed both in IT, in voting systems, and the technology that's employed. He also explained that from his experience while working at NIST, existing personnel are typically utilized to develop test suites that have a general expertise in testing, and are then trained in the subject matter, while some outside contractors would be hired for their specific expertise. In response to Commissioner Hillman's next question whether allowing individuals with disabilities to be part of the lab testing process could be or have been included under the proposed test suites for VVSG 1.1, Mr. Wack stated that in the human factors requirements under the test methods, there are procedures for finding a representative sample of certain populations, and especially those with certain types of disabilities who would be involved in testing systems, and that NIST has basically written the test suites to accommodate that need. Mr. Skall commented that due to the cost and the expertise required, to his knowledge, this is not occurring within labs to a great extent.

In response to Commissioner Bresso's first question pertaining to what could be improved upon when developing test suites, Mr. Skall stated that consistency is of paramount importance. In response to Commissioner Bresso's second inquiry into "forum shopping" and what EAC is doing to

minimize any potential “forum shopping” by manufacturers, Mr. Skall explained, the technical reviewers in addition to EAC staff are responsible for overseeing the testing that’s done in the labs to ensure that testing among all labs is uniform and rigorous, which makes “forum shopping” unlikely to succeed under current practice. However, he also stressed that having one set of standards is the best method to prevent “forum shopping” altogether. In response to Commissioner Bresso’s third question related to the amount of work that EAC will need to do with the labs to make the test suites usable, Mr. Skall pointed out that there is a lot of work ahead, both in getting the existing NIST-developed test suites compatible with the labs, with the biggest challenge being the development of new tests for the final adopted version of VVSG 1.1. In response to Commissioner Bresso’s follow-up with regards to whether EAC would have to devote more resources to accomplish that goal, he further commented that, in his opinion, in order to accomplish this, both EAC and the labs will need to provide resources to this end, in addition to NIST’s involvement to help organize and ensure the quality of the tests. In response to Commissioner Bresso’s next inquiry as to the length of time it took for NIST to produce the partial test suites for VVSG 1.1, Mr. Wack pointed out that they were developed over the course of roughly a year-and-a-half, in addition to several more months to look at the requirements that were being added to VVSG 1.1 from VVSG 2.0. In response to Commissioner Bresso’s final question as to why a complete test suite was not produced for VVSG 1.1., Mr. Wack explained that one reason is most likely due to the fact that the requirements were subject to interpretation more so than NIST would have liked. He also reiterated that when the requirements are more precise, it’s much simpler to develop tests for them.

In response to Chair Davidson’s request for elaboration on the type of roadblocks that might be encountered in having a meeting between EAC, NIST and the VSTLs contributing their test cases for the requirements not tested in the NIST-developed test suites in order to ensure a complete, comprehensive, uniform and public test suites for all of VVSG 1.1 that then can be shared with all labs, Mr. Skall explained that from a technical standpoint it would require both quality assurance and a good review process and have legal staff review to make sure there are no antitrust issues. In response to Chair Davidson’s question into the length of time it will take NIST to provide EAC with final-form test suites, upon finalization of VVSG 1.1, Mr. Wack stated that this is a high priority item and he anticipates being able to accomplish this in a month or so. He further explained in order to ensure that the tests are suitable and can be run well by the labs, this may require some additional time. In response to Chair Davidson’s next question pertaining to what steps NIST takes to validate a test to make sure that it’s workable, Mr. Wack pointed out that this is accomplished through several ways, including the National Voluntary

Laboratory Accreditation Program (NVLAP) and also observing labs both in developing and running tests against the voting systems, which NIST is currently in the process of doing.

In response to Commissioner Bresso's follow-up inquiry seeking clarification on how the VSTLs are able to test to the 2005 VVSG, if test suites have not yet been developed, both Mr. Wack and Mr. Skall explained that this is being accomplished through the development of proprietary test suites on the part of individual labs, which are reviewed by the EAC to ensure their completeness and that they are a correct interpretation of the requirement. Mr. Skall reiterated that if the VSTLs cooperate and contribute test suites that could be reviewed by EAC and NIST in order to monitor the quality, he is confident that a complete set of test suites will be available for VVSG 1.1. In response to Commissioner Bresso's final question as to why the labs have already been able to develop their own proprietary test suites and yet NIST has not done so, Mr. Wack commented that while it would require a significant amount of work, NIST could potentially do this work. He also explained that some decisions are made above his level.

In response to Chair Davidson's follow-up question as to whether there are clear pass/fail criteria in NIST's test suites, Mr. Wack explained that while there were several requirements that were not clear, NIST went through a process of making them more clear.

In response to Commissioner Hillman's first follow-up question as to who adopts the test suites, Mr. Wilkey stated that, in his opinion, the Commission will be adopting the test suites. Chair Davidson, in response to Commissioner Hillman's inquiry regarding whether the use of the test suites will be voluntary or mandatory on the part of labs, stated that, according to her understanding, it will be a requirement on the part of labs. Mr. Skall, in response to Commissioner Hillman's question regarding what he envisions the lag time being between when the Commission adopts VVSG 1.1 and when the test suites will be available for EAC action stated he anticipates three to four months. He reiterated that it largely depends on when VVSG 1.1 is adopted by the Commission.

In response to Executive Director Wilkey's question as to what may have contributed to the lack of comments on the part of the VSTLs to the test suites that were made available on NIST's website, Mr. Skall commented that in his opinion it was a business decision on the part of labs to not comment, possibly because they were in the middle of test campaigns and did not have enough resources available to provide a comprehensive review. Mr. Wack added that while only two labs have responded since the comment period commenced in April of 2009, he anticipates the responses will increase, based upon the one-on-one meetings that NIST

is having with the labs. In response to Mr. Wilkey's next question pertaining to whether the Votetest distribution test is able to match what the VVSG provides for, in terms of volume testing, Mr. Wack explained that while he did not have the exact figures for the amount of volume, it's significantly high in comparison to the number of ballots that are being run through the test labs presently. He also commented he anticipates, upon completion of the test scripts, there will be a specified number as part of the test. Mr. Wilkey concluded by commenting on the fact he is at a loss to understand why the testing labs cannot give individuals with disabilities who will be utilizing the equipment an opportunity to participate in some of the testing, which neither Mr. Wack nor Mr. Skall had a response to.

Mr. Wack, in response to Chair Davidson's final question as to whether NIST received any comments from manufacturers over the test suites, stated that very few, if any, provided comments.

Old Business: (Cont'd)

Approval of minutes from the previous public hearing

Commissioner Hillman moved to adopt the minutes from the June 28, 2010, public hearing on voting system pre-election logic and accuracy testing and post-election audit grants, which was seconded by Commissioner Bresso. The motion carried unanimously.

Amendment to minutes from previous meeting

Commissioner Hillman moved to amend the minutes from the June 28, 2010, public meeting, which was seconded by Commissioner Bresso. The motion carried unanimously. Commissioner Hillman then moved to adopt the minutes from the June 28, 2010, meeting as amended, which was seconded by Commissioner Bresso. The motion carried unanimously.

Adjournment

Commissioner Hillman moved to adjourn the meeting, which was seconded by Commissioner Bresso. The motion carried unanimously.

The public meeting of the EAC adjourned at 2:47 p.m.