

DRAFT Comments National Committee for Voting Integrity
Election Assistance Commission
Testing and Certification Program Manual 2006

General Comments

The Election Assistance Commission's staff is limited to 22 positions including the four bipartisan commissioners. We appreciate the difficult task before the commission to accomplish their mission of providing guidance to states in matters related to federal election administration. To assist the agency Congress provided that the National Institute of Standards and Technology would serve in the capacity of technical advisory for key components of the agency's work.

The current laboratory accreditation and voting system certification process has resulted in a great deal of confusion regarding the federal certification status of currently deployed voting systems. The phrase "federally certified voting systems" is communicated when in fact there are no voting systems, which have been federal certified. There are voting systems that have been state or locally certified. The basis of certification may have been derived from the voluntary guidance on voting system certification produced in 1990 and 2002 by the National Association of State Election's Directors (NASSED), with some support provided by the Federal Election Commission.

The National Committee for Voting Integrity (NCVI) has focused its efforts to support the establishment of the Technical Guidelines Development Committee and its role in providing guidance to the EAC on the development of voting technology standards. We have also focused on the issue of transparency in the overall work of the agency.

Our comments to the agency are to support the goals of certification and testing of voting systems. The underlying purpose of testing systems is to prove their ability to accomplish a particular task with an acceptable level of reliability. Testing of systems is a standard means of evaluating their effectiveness, accuracy, reliability, security, and efficacy.

The draft document makes very few, if any changes, to the NASSED process, which has resulted in the approval of systems that fail to perform adequately in public elections. The certification draft document suggests that manufacturers will be allowed to sell voting systems to states that have not completed the certification process. The EAC testing and certification process should not encourage this situation to exist. State should be made aware that preliminary steps taken by manufacturers to receive certification for voting systems, which should not be construed to mean that the system has passed certification.

The NASSED model of allowing vendors to hire laboratories to certify their systems has resulted in process that is not transparent. To allow this situation to continue will further frustrate efforts by states to know all that they should know in making equipment-

purchasing decisions. We strongly recommend that the EAC establish a process that would have manufacturers pay laboratory-processing fees directly to the EAC, which would select federal accredited laboratories on a rolling basis.

The EAC process should be a more transparent and certain means of determining the certification status of voting systems. The proposed “Mark of Conformance” proposal would establish a visible label or mark on systems reflecting their certification status. This is ill advised when considering a certification may not be forever or for the lifetime of a voting system. The draft is silent on the issue of decertification and the “Mark of Conformance,” which could lead to ambiguity and uncertain about its meaning. We would suggest that no external mark or label be applied to voting system, but a web accessible catalog of systems that are certified be made available.

Finally the process of testing and certification must allow reconsideration of approved certification or a public complaint process that allows states to report certified voting systems that failed to meet requirements of the VVSG or VVS. The procedural requirements of this manual should allow adverse court decision, complaints by local and state election administration authorities, and voting advocacy organizations to engage the process in a transparent and meaningful way. The certification, recertification, and decertification process established by the agency is not just of interest to manufacturers, but to all those interested in our nation’s democratic process.

Section-by-Section Comments

Introduction

Comments/Recommendations:

The agency should acknowledge the authorship of this document. It is known that the staff of the agency is limited to 22 full time personnel, which requires that contractors or third parties be employed.

EAC Draft Testing and Certification Program Manual 2006

“1.5.1.3. Certification Testing and Review. Under this program, the testing and review process requires the completion of an application, employment of an EAC accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required steps for voting system testing and review.”

Comment:

The use of the phrase “Initial Decision on Certification” may allow confusion in the certification status of a voting system. The sentence should be struck from Section 1.5.1.3.

Recommendation:

1.5.1.3. Certification Testing and Review. Under this program, the testing and review process requires the completion of an application, employment of an EAC accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. This chapter discusses the required steps for voting system testing and review.

1.5.1.3.1 Manufacturers must state in clear and concise language that a voting system has or has not been certified by the EAC. No mention of the stages of the certification process may be used in the promotion or sale of existing or new voting systems.

1.5.1.3.2 Manufacturers are responsible for providing accurate and complete information to potential customers on the certification, and decertification status of their systems.

1.5.1.3.3 The EAC will upon request report to federal, state and local agencies the status of manufacturer registration, voting system certification and decertification.

1.5.1.3.4 Manufacturers found to have materially misrepresented the status of registration with the EAC, voting system certification or decertification will have their registration with the agency suspended pending an investigation by the Commission.

EAC Draft Testing and Certification Program Manual 2006

“1.5.1.4. Grant of Certification. If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before it may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build, the deposit of software into a repository, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer’s post-certification responsibilities.”

Comments:

The phrase “trusted build” and “system identification tools” should be defined under section 1.13. Definitions. The “repository” that will collect software for voting systems under consideration for certification should be the National Institute of Standards and Technology’s National Software Reference Library. The purpose of registering a system should also include the ability to verify that the same technology presented for certification is in fact the same technology that is sold to state and local governments for use in public elections.

Recommendation:

“1.5.1.4. Grant of Certification. If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before it may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build, the

deposit of software with the National Institute of Standards and Technology's National Software Reference Library, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer's post-certification responsibilities."

EAC Draft Testing and Certification Program Manual 2006

"1.5.1.7. Quality Monitoring Program. Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality monitoring process is a mandatory part of the program and includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program."

Comment:

The Quality Monitoring Program should be titled Quality Assurance Program.

Recommendation:

1.5.1.7. Quality Monitoring Program. Under the Certification Program, EAC will implement a quality assurance program that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality assurance process is a mandatory part of the program and includes elements such as randomly testing fielded voting systems, anomaly reporting by manufacturers, bug and error reporting process for local and state election administrators, public comments from voters to report voting technology related problems they experienced during an election, and the quality assurance field team's review of manufacturing sites. This chapter sets forth the requirements of the Quality Assurance Program.

EAC Draft Testing and Certification Program Manual 2006

"1.5.1.8. Interpretation. An Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory (VSTL) may seek clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation."

Comments:

This should not be limited to manufacturers or Voting System Test Laboratories. Customers for voting systems should also have the resource available to better inform their decision making process.

Recommendations:

1.5.1.8. Interpretation. An Interpretation is a means by which a registered Manufacturer, Voting System Test Laboratory (VSTL), local or state election authority may seek clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation.

EAC Draft Testing and Certification Program Manual 2006

“1.5.1.9. Trade Secrets, Confidential Commercial, and Personal Information. Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program’s policies, sets procedures, and discusses responsibilities associated with the public release of potential protected commercial information.”

Comments/Recommendation:

References to federal laws should include specific statutes or legislative titles that apply, i.e. Freedom of Information Act, Federal Privacy Act, etc.

EAC Draft Testing and Certification Program Manual 2006

“1.5.2. Maintenance and Revision. This Manual, which sets the procedural requirements for a new Federal program, is expected to be improved and expanded as experience and circumstances dictate. The Manual will be reviewed periodically and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memorandum and issued to each registered Manufacturer. Changes, addendums, or updated versions will also be posted to the EAC Web site at www.eac.gov.”

Comments/Recommendations:

The EAC should publish a calendar with set dates for the review and updating of guidance and manuals. Changes that are required by changes in federal law should be delineated from other types of updates or changes to the relevant documents. There should be a document that outlines that specific changes made to previous versions. As previously said federal laws affecting this process should be cited, and the phrase “stakeholders” should be defined.

Recommendations:

“1.5.2. Maintenance and Revision. This Manual, which sets the procedural requirements for a new Federal program, will be reviewed for updates and rewrites eighteen months after the adoption of the most recent version, unless circumstances or federal legislation

dictate a different or an expedited schedule. The Manual will be reviewed and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with [cite the federal law] Federal law. Substantive input from manufacturers, local and state election administrators, voting rights advocacy groups, open government groups, and the public will be sought whenever possible. When input is not possible due to an expedited circumstance the reason for not seeking comment prior to adoption will be explained in public notices of the change. Changes in the manual requiring immediate implementation will be published in the federal register, notice to states, registered manufacturers, testing laboratories, and policy memorandum. Changes, addendums, or updated versions will also be posted to the EAC Web site at www.eac.gov.”

EAC Draft Testing and Certification Program Manual 2006

“1.6.1. Federal and State Roles. The process to ensure that voting equipment meets the technical requirements is a distributed, cooperative effort of Federal, State, and local officials in the United States. Working with voting equipment manufacturers, these officials each have unique responsibility for ensuring that the equipment a voter uses on Election Day meets specific requirements.”

Comments:

The process outlined by the testing and certification process should provide a feedback mechanism for local and state governments to use as much of the information from that process to better inform them in their electronic voting purchasing or retention process. The testing and certification manual should make it clear that “mock elections” to confirm that a voting system will perform as intended within the election management process” may not mean that the system will meet the fundamental requirements of an election.

The EAC should make available to states the laboratory test information and access to verification of system software with the versions registered with the National Software Reference Library.

“Fundamental requirements” should be defined in Section 1.13 for the purpose of voting equipment.

Recommendations:

Strike 1.6.1.4 and 1.6.1.5

Replace with:

1.6.1.4. In addition, State or local officials are responsible for providing notice to the EAC should a certified system fail to meet the fundamental requirements of voting system certification.

1.6.1.5 State and local officials are required to report glitches, bugs, or errors that effect the conduct of an election.

1.6.1.6. State or local officials perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified State.

1.6.1.7 States or local officials should compare the version of the software provided on voting systems delivered for use in public elections is the same version registered with the National Software Reference Library.

EAC Draft Testing and Certification Program Manual 2006

“1.6.1.1. The EAC Testing and Certification Program plays a vital role in the process. The EAC Program has primary responsibility for ensuring that system designs meet the foundational requirements for all voting equipment in the United States.”

Comments/Recommendations:

Definition section 1.13 should include a definition for “fundamental requirements”

EAC Draft Testing and Certification Program Manual 2006

“1.6.2.3. Are the testing authorities qualified to make an accurate evaluation? The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. Many States provide similar reviews of laboratory reports.“

Comments:

EAC will most probably have to contract out the position of technical expert. If that is the case then this should be a truly transparent process. The position should be open to competitive bidding with a list of core competencies that are compiled with the assistance of NIST and ANSI. The processes for accreditation and certification of laboratories and electronic voting systems should be transparent, impartial, and fair. Conflict of interest is a real problem when no-bid contracts are awarded without a public comment period, and open bidding process that result in no qualified applicants submitting to do the work. Publication of those who applied and the deficiencies of the application that could not be satisfactorily addressed should be acknowledged should a no-bid contract be awarded. The rules for consideration as a contractor should be published and available to all who would apply. There should be restrictions from participating in the bidding process for persons or entities who have with the previous 24 months worked for or been a contractor

with a registered manufacturers. The EAC should adopt a similar system for contract/grant announcements and awards used by the National Science Foundation.

Recommendations:

Replace 1.6.2.3 with the following:

“1.6.2.3. The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC panel of technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. States will be encouraged to conduct their own evaluation and report their findings to the EAC’s panel of technical experts.”

Insert the following after item 1.6.2.4

1.6.2.5. EAC will make available to states the laboratory reports on systems under consideration for retention, purchase or upgrade. States will be advised to field an independent panel of technical experts to review all test reports provided by the EAC to ensure an accurate and complete evaluation.

EAC Draft Testing and Certification Program Manual 2006

1.7 Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Certification Program will be subject to a conflict-of-interest reporting and review, consistent with Federal law and regulation.

Comments:

The laws that will guide the agency in its dealings should be cited. The federal Freedom of Information Act (FOIA) should be part of the list. Agency and employee conduct should be an open record. All contracts should be conducted under a competitive bidding process. The agency should adopt a version control model to avoid changes in documents that have been reported as final. The date and the version number should clearly indicate that it is a new document in a series of documents under the same title. An addition document should accompany the new-posted version as its “Summary of Changes” which outlines the changes made in the originating document.

Recommendations:

1.7 Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All employees, agents and contractors of the EAC involved in the Certification Program will be subject to a conflict-of-interest reporting and review consistent with Federal law and regulation.

Comments:

This is an important goal for the agency to achieve.

Recommendations:

1.7 Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All employees, agents and contractors of the EAC involved in the Certification Program will be subject to a conflict-of-interest reporting and review consistent with Federal law and regulation. All EAC personnel and those awarded no-bid contracts or none competitive grant wards will follow the requirements of the Code of Federal Regulation Volume V Chapter 16 Subchapter B, see: http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs.html.

EAC Draft Testing and Certification Program Manual 2006

1.8. Program Records. The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived, and disposed of in accordance with Federal law, Federal regulations, and procedures of the EAC.

Comment:

The EAC should be responsible for maintaining accurate records. The Commissioners are ultimately responsible for the work of the EAC and should hold the responsibility for all records associated with this manual.

EAC Draft Testing and Certification Program Manual 2006

1.9 Submission of Documents. Any documents submitted pursuant to the requirements of this Manual shall be submitted in the following ways:

1.9.1. If sent electronically, shall be sent either via secure e-mail or physical delivery of a compact disk, unless otherwise specified.

EAC Draft Testing and Certification Program Manual 2006

“1.13. Definitions. For purposes of this Manual, the terms listed below have the following definitions.

Mark of Conformance. A uniform notice permanently posted on a voting system that signifies that it has been certified by the EAC.

Proprietary Information. Commercial information or trade secrets protected from release under the Freedom of Information Act and the Trade Secrets Act.

Technical Reviews. Technical experts in the areas of voting system technology and conformity assessment used by the EAC to provide expert guidance.

Testing and Certification Decision Authority. The EAC Executive Director or individual appointed by the Executive Director authorized to make final agency determinations on certification.

Testing and Certification Program Director. The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.
Voting System. The total combination of mechanical, electromechanical, and electronic equipment that is used to define ballots, cast and count votes, report or display election results, connect the voting system to trail information.

Voting System. The total combination of mechanical, electromechanical, and electronic equipment that is used to define ballots, cast and count votes, report or display election results, connect the voting system to the voter registration system, and maintain and produce any audit trail information.

Comments

“Mark of Conformance,” “Proprietary Information,” “Technical Reviews,” “Testing and Certification Decision Authority”, “Testing and Certification Program Director” and “Voting System” definitions each present points to be considered for their inclusion in this policy manual.

Recommendations:

Mark of Conformance should be struck from the definitions. There should be no physical label on voting systems that indicate their certification status. This will definitely present problems because the certification status may change and the draft recommendations do not address the decertification, recertification of machines that may have had a certification. The remedy to enforce a “Mark of Conformance” would be too costly and burdensome to address the use of this requirement.

A transparent process led by the Panel of Technical Experts should be used to develop the criterion of what information will be proprietary. The rules for proprietary information should be published on the website and provided to manufacturers as part of the registration process. There should be no room for an ad hoc method where determinations are made outside of a formal process.

There are no standards provided for the voting system to be connected to the voter registration system. This is not outlined in HAVA as a requirement of voting systems and poses significant risk to ballot secrecy and voter privacy. The definition should not

include descriptions of voting systems or devices that are not addressed by the current VVSG.

Technical Reviews should be replaced with Panel of Technical Experts. This panel should be chaired by a Commissioner for the EAC not of the same party as the sitting chair of the full Commission. The panel should include the Testing and Certification Program Director of the EAC, and three additional members with one being provided by each of the following: NIST, ANSI, and NASED.

Testing and Certification Decision Authority should be the EAC Commission. They are appointed by the President and confirmed by the Senate and must have the responsibility for this key function of the agency.

The EAC Commission under the advisement of the TGDC should appoint the Testing and Certification Program Director.

Voting System is defined in the EAC's Voluntary Voting System Guidelines as 1.5.2 Types of Voting Systems HAVA Section 301 defines a voting system as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment), that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information. In addition, a voting system includes the practices and associated documentation used to identify system components and versions of such components; to test the system during its development and maintenance; to maintain records of system errors and defects; to determine specific system changes made after initial certification; and to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

Traditionally, a voting system has been defined by the mechanism the system uses to cast votes and further categorized by the location where the system tabulates ballots. In addition to defining a common set of requirements that apply to all voting systems, the VVSG states requirements specific to a particular type of voting system, where appropriate. However, the Guidelines recognize that as the industry develops new solutions and the technology continues to evolve, the distinctions between voting system types may become blurred. The fact that the VVSG refers to specific system types is not intended to stifle innovations that may be based on a more fluid understanding of system types. However, appropriate procedures must be in place to ensure new developments provide the necessary integrity and can be properly evaluated in the certification process.

Consequently, vendors that submit a system that integrates components from more than one traditional system type or a system that includes components or technology not addressed in the Guidelines shall submit the results of all beta tests of the new system when applying for national certification. Vendors shall also submit a proposed test plan to the EAC for use in national certification testing. The Guidelines permit vendors to produce or utilize interoperable components of a voting system that are tested within the full voting system configuration.”

The listing below summarizes the functional requirements that HAVA Section 301 mandates to assist voters. While these requirements may be implemented in a different manner for different types of voting systems, all types of voting systems must provide these capabilities:

- permit the voter to verify (in a private and independent manner) the vote selected by the voter on the ballot before the ballot is cast and counted
- provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted
- notify the voter if he or she has selected more than one candidate for a single office, inform the voter of the effect of casting multiple votes for a single office, and provide the voter an opportunity to correct the ballot before it is cast and counted
- be accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters
- provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act

This is the definition of voting system that should guide the testing and certification process. The connecting of voting systems to voter registration is not part of the HAVA directive or the guidance provided to states. To include the connecting of voting systems and voter registration systems should be rejected.

The following definitions should be added:

Appeal Authority

Fundamental Requirements of Voting Systems

Opportunity to Cure

Request to Cure

Compliance Plan

Quality Control Plan

Defect Reporting Plan

Stakeholders

Panel of Technical Experts

EAC Draft Testing and Certification Program Manual 2006

2.3.1.7. A list of production facilities used by the Manufacturer and the name and contact information of a person at each facility. The following information is required for a person at each facility:

EAC Draft Testing and Certification Program Manual 2006

2.3.2.2. Produce and permanently affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements put forth in Chapter 5 of this Manual.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.4. Permit an EAC representative to verify the Manufacturer's quality control by cooperation with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.5. Permit an EAC representative to verify the Manufacturer's quality control by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with VVSG standards or the procedural requirements of this Manual consistent with Chapter 10.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is failure of a voting system, not caused by operator or administrative error, which causes the system to fail or otherwise not operate as designed.

EAC Draft Testing and Certification Program Manual 2006

2.3.2.8. Certify that the entity is not barred or otherwise prohibited by statute, regulation, or ruling from doing business in the United States.

EAC Draft Testing and Certification Program Manual 2006

2.6. Suspension of Registration. Manufacturers are required to establish policies and operate within the EAC Certification Program consistent with the procedural requirements presented in this Manual. When Manufacturers are engaging in management activities that violate the program's requirements, their registration may be suspended until such time as the problem is remedied.

EAC Draft Testing and Certification Program Manual 2006

2.6.1. Procedures. When a Manufacturer's activities violate the procedural requirements of this Manual, the Manufacturer will be notified of the violations, given an opportunity to respond, and provided the steps required to bring itself into compliance.

EAC Draft Testing and Certification Program Manual 2006

3 When Voting Systems Must Be Submitted for Testing and Certification

3.1. Overview. An EAC certification signifies that a voting system has been successfully tested to identified voting system standards adopted by the EAC. Only the EAC can issue a Federal certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC certification, (3) they are modified, and (4) the Manufacturer wishes to test a previously certified system to a different (newer) standard.

EAC Draft Testing and Certification Program Manual 2006

3.2.2.2. Versions—Basis for Certification. The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification. This effort may be accomplished through the setting of an implementation date for a particular version's applicability or the setting of a date by which testing to a particular version is mandatory. The EAC will certify only those voting systems tested to standards that the EAC has identified as valid for certification.

EAC Draft Testing and Certification Program Manual 2006

3.2.2.3. Version—Manufacturer's Option. When the EAC has authorized certification to more than one version of the standards, the Manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standards. Manufacturers must ensure that all applications for certification identify a particular version of the standards.

EAC Draft Testing and Certification Program Manual 2006

3.2.2.4. Emerging Technologies. If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology that is not addressed by a currently accepted version of the VVSG or VSS, the system shall be subjected to full integration testing and shall be tested to ensure that it operates to the Manufacturer's specifications. Information on emerging technologies will be forwarded to the EAC's Technical Guidelines Development Committee (TGDC).

EAC Draft Testing and Certification Program Manual 2006

3.2.3. Significance of an EAC Certification. An EAC certification is an official recognition that a voting system (in a specific configuration) has been tested to and has met an identified set of Federal voting standards. An EAC certification is not any of the following:

3.2.3.1. An endorsement of a Manufacturer, voting system, or any of the system's components.

3.2.3.2. A Federal warranty of the voting system or any of its components.

3.2.3.3. A determination that a voting system, when fielded, will meet all HAVA requirements.

3.2.3.4. A substitute for State or local certification and testing.

3.2.3.5. A determination that the system is ready for use in an election.

3.2.3.6. A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

EAC Draft Testing and Certification Program Manual 2006

3.3. Effect of the EAC Certification Program on Other National Certifications. Before the creation of the EAC Certification Program, national voting system qualification was conducted by a private membership organization, the National Association of State Election Directors. NASED offered a qualification for voting systems for more than a decade, using standards issued by the Federal government. The EAC Certification Program does not repeal NASED issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with State law; however, a NASED-qualified voting system is not an EAC-certified system and is treated like an uncertified system for purposes of the EAC Certification Program.

EAC Draft Testing and Certification Program Manual 2006

3.5. Provisional, Pre-Election Emergency Modification. To deal with extraordinary pre-election emergency situations, the EAC has developed a special provisional modification process. This process is to be used only for the emergency situations indicated and only

when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

EAC Draft Testing and Certification Program Manual 2006

3.5.1. Purpose. The purpose of this section is to allow a mechanism within the EAC Certification Program for Manufacturers to modify EAC-certified voting systems in emergency situations immediately before an election. This situation arises when a modification to a voting system is required and an election deadline is imminent, preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the Manufacturer, granting it leave to make the modification without submission for modification testing and certification.

EAC Draft Testing and Certification Program Manual 2006

3.5.2.1. The modification is functionally or legally required; that is, the system cannot be fielded in an election without the change.

3.5.2.2. The voting system requiring modification is needed by State or local election officials to conduct a pending Federal election.

3.5.2.3. The voting system to be modified has previously been certified by the EAC.

3.5.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this Manual, at least 30 days before the pending Federal election.

3.5.2.5. Relevant State law requires Federal certification of the requested modification.

3.5.2.6. The Manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system, and otherwise will not negatively affect system reliability, functionality, and accuracy.

3.5.2.7. The Manufacturer has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.

3.5.2.8. The emergency modification is required and otherwise supported by an election official seeking to field the voting system in an impending Federal election.

EAC Draft Testing and Certification Program Manual 2006

4. Certification Testing and Technical Review

4.1. Overview. This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC-accredited testing laboratory, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.

4.2. Policy. Generally, to receive an initial determination on an EAC certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) submitted an EAC-approved test plan created by an

accredited laboratory, (3) tested a voting system to applicable voting system standards using an accredited VSTL, (4) submitted a test report (through the VSTL) to the EAC for technical review and ap(5) received EAC approval of the report in an Initial Decision on Certification.

EAC Draft Testing and Certification Program Manual 2006

4.3.1.2. Accredited Laboratory Information. Identification of the accredited laboratory that will perform voting system testing and other prescribed laboratory action consistent with the requirements of this Manual.

EAC Draft Testing and Certification Program Manual 2006

5. Grant of Certification

5.1. Overview. The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the Initial Decision of the Decision Authority. This decision becomes final after the Manufacturer confirms that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC-approved repository and can be verified using the Manufacturer's system identification tools. After a certification is issued, the Manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC Web site. Manufacturers with certified voting systems are responsible for ensuring that each system it produces is properly labeled as certified.

EAC Draft Testing and Certification Program Manual 2006

5.3. Initial Decision. The Decision Authority shall make a written decision on all voting systems submitted for certification and issue the decision to a Manufacturer. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an *Initial Decision* pending required action by the Manufacturer. The following actions are necessary to write the Initial Decision:

EAC Draft Testing and Certification Program Manual 2006

5.3.2.2. Depositing software in an approved repository pursuant to Section 5.7 of this chapter.

EAC Draft Testing and Certification Program Manual 2006

5.15. Mark of Certification Requirement. Manufacturers shall post a mark of certification on all

EAC-certified voting systems produced. This mark or label must be permanently attached to the system before sale, lease, or release to third parties. A mark of certification shall be made through the use of an EAC-mandated template available for download on the EAC Web site: www.eac.gov. These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

5.15.1. The Manufacturer may use only the mark of certification that accurately reflects the certification held by the system. In the event a system has components or modifications tested to various versions of the VVSG (or VSS), the system shall bear only one mark of certification—the mark of the oldest or least rigorous standard to which any component or modification of the system was tested.

5.15.2. The mark shall be placed on the outside of the voting system in a place readily visible to election officials.

5.15.3. The notice shall be permanently affixed to the voting system. The label shall not be a paper label. “Permanently affixed” means that the label is etched, engraved, stamped, silk-screened, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by use of welding, riveting, or permanent adhesive.

5.15.4. The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

EAC Draft Testing and Certification Program Manual 2006

6.5.5. All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.

EAC Draft Testing and Certification Program Manual 2006

6.6.1. Basis and Explanation. The Initial Decision of the Decision Authority shall accomplish the following:

EAC Draft Testing and Certification Program Manual 2006

6.6.2. Manufacturer’s Rights. The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, including the following:

EAC Draft Testing and Certification Program Manual 2006

6.8. Opportunity To Cure. Within 20 calendar days of receiving the EAC's Initial Decision on certification, a Manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

EAC Draft Testing and Certification Program Manual 2006

6.10. Agency Final Decision. The Decision Authority shall issue a written Agency Decision after review of the Manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The following actions are necessary for writing the decision:

EAC Draft Testing and Certification Program Manual 2006

6.11. Appeal of Agency Final Decision. A Manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. Requesting Appeal. A Manufacturer may appeal a final decision of the agency by issuing a written request for appeal.

6.11.1.1. Submission. Requests must be submitted in writing to the Program Director, addressed to Chair of the U.S. Election Assistance Commission.

6.11.1.2. Timing of Appeal. The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. Contents of Request.

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision it wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

EAC Draft Testing and Certification Program Manual 2006

6.11.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

EAC Draft Testing and Certification Program Manual 2006

6.12.2. Determinations. The Appeal Authority may make one of three determinations.

6.12.2.1. Approval of Certification. The Appeal Authority may overturn the decision of the Decision Authority and grant the appeal in full. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. Denial of Certification. The Appeal Authority may uphold the decision of the Decision Authority and deny the appeal in full. In such cases the application for appeal is finally denied.

6.12.2.3. Grant of Appeal in Part With Opportunity To Cure. The Appeal Authority may grant the appeal in part. This will occur only in instances in which the denied issues on appeal may be cured. In such cases, the Manufacturer must cure the identified discrepancies before the grant of certification. The Appeal Authority shall remand the matter to the Decision Authority to initiate the cure process consistent with the decision.

6.12.2.3.1. If the Manufacturer successfully completes the cure process, the certification will be approved by the Decision Authority subject to the requirements in Chapter 5.

6.12.2.3.2. If the Decision Authority determines the cure process to have failed, he or she shall submit a report to the Appeal Authority (with a copy to the Manufacturer) for final determination. If the Appeal Authority concurs with the report, the Appeal Authority shall issue a Second Decision on Appeal denying certification. If the Appeal Authority disagrees with the Decision Authority, the matter shall be remanded back to the Decision Authority with specific instructions.

EAC Draft Testing and Certification Program Manual 2006

7.2. Decertification Policy. Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable Voluntary Voting System Guidelines standards, (2) they have been modified without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual so that the quality, configuration, or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

EAC Draft Testing and Certification Program Manual 2006

7.3.3.1. Initiation. Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8).

EAC Draft Testing and Certification Program Manual 2006

7.3.3.2. Inquiry. The Informal Inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for Decertification. No set procedure for an inquiry exists. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

EAC Draft Testing and Certification Program Manual 2006

7.3.4. Closing the Matter Without Referral. If the Program Director determines, after Informal Inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the findings of the inquiry and the reasons a Formal Investigation was not warranted.

EAC Draft Testing and Certification Program Manual 2006

7.4. Formal Investigation. A Formal Investigation is an official investigation to determine whether a voting system requires Decertification. The end result of a Formal Investigation is a Report of Investigation.

EAC Draft Testing and Certification Program Manual 2006

7.4.5.4. Confidential Collection of Information. Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public

confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.

EAC Draft Testing and Certification Program Manual 2006

7.4.5.5. Methodologies. Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:

EAC Draft Testing and Certification Program Manual 2006

7.6. Notice of Non-Compliance. If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a Decertification of the voting system. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

7.6.1. Noncompliance Information. The following actions are necessary for preparing a Notice of Non-Compliance:

7.6.1.1. Provide a copy of the Report of Investigation to the Manufacturer.

7.6.1.2. Identify the non-compliance, consistent with the Report of Investigation.

7.6.1.3. Inform the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

EAC Draft Testing and Certification Program Manual 2006

7.6.2. Manufacturer's Rights. The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, which include the following:

7.6.2.1. Right To Present Information Prior to Decertification Decision. The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

7.6.2.2. Right To Have Access to the Information That Will Serve as the Basis of the

Decertification Decision. The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an agency Decision on Decertification.

7.6.2.3. Right To Cure System Defects Prior to the Decertification Decision. A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

EAC Draft Testing and Certification Program Manual 2006

7.7. Procedure for Decision on Decertification. The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

EAC Draft Testing and Certification Program Manual 2006

EAC Draft Testing and Certification Program Manual 2006

7.7.1. Opportunity To Cure. The Manufacturer shall have an opportunity to cure a non-conformant voting system in a *timely* manner prior to Decertification. A cure is timely when the cure process can be completed before the next Federal election, meaning that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

EAC Draft Testing and Certification Program Manual 2006

7.7.2. Opportunity To Be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), however, the Decision Authority may provide a Manufacturer less time to

submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:

EAC Draft Testing and Certification Program Manual 2006

7.9. Appeal of Decertification. A Manufacturer may, upon receipt of an Agency Final Decision on Decertification, request an appeal in a timely manner.

7.9.1. Requesting Appeal.

7.9.1.1. *Submission.* Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

EAC Draft Testing and Certification Program Manual 2006

7.9.4. Effect of Appeal.

EAC Draft Testing and Certification Program Manual 2006

7.10. Effect of Decertification. A voting system that has been decertified no longer holds an EAC certification under the EAC Certification Program. For purposes of this Manual and the program, a Decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

EAC Draft Testing and Certification Program Manual 2006

9. Interpretation

9.1. Overview. A Request for Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Requesting for Interpretation.

EAC Draft Testing and Certification Program Manual 2006

9.4. Procedure for Submitting a Request for Interpretation. A Request for Interpretation shall be made in writing to the Program Director. All requests should be

complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

EAC Draft Testing and Certification Program Manual 2006

9.5. EAC Action on a Request for Interpretation. Upon receipt of a Request for Interpretation, the EAC shall take the following action:

EAC Draft Testing and Certification Program Manual 2006

9.5.3. Interpretation. The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer. The following actions are necessary to prepare this written Interpretation:

EAC Draft Testing and Certification Program Manual 2006

9.7. Library of Interpretations. To better serve Manufacturers and those interested in the EAC voting system standards, the Program Director shall select Interpretations for general publication. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions is posted on the EAC Web site: www.eac.gov.

EAC Draft Testing and Certification Program Manual 2006

10.5. Documents Submitted Voluntarily. Documents submitted voluntarily to a Federal agency are granted a greater degree of protection from public release than those documents submitted involuntarily. Information the EAC requires Manufacturers to submit as a function of the Certification Program is not provided voluntarily. Voluntarily submitted documents are those the Manufacturer chooses to submit outside the Certification Program requirements. If a Manufacturer wishes to provide such information, it should contact and coordinate with the certification Program Director. If the Program Director determines the information to be voluntary in nature, the Manufacturer should label the information appropriately. Such action will prevent the inappropriate or inadvertent release of protected information.

10.6. EAC's Responsibilities. The EAC is ultimately responsible for determining whether or not a document must be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the Manufacturer submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

EAC Draft Testing and Certification Program Manual 2006