



July 24, 2009

Honorable Mark Goins  
State Coordinator of Elections  
312 Rosa L. Parks Avenue, Snodgrass Tower, 9th Floor  
Nashville, TN 37243

Dear Coordinator Goins,

We write regarding the term “applicable voluntary voting system guidelines” contained in the Tennessee Voter Confidence Act (Tenn. Code. 2-20-104(a)(1)(A)). We hope to clarify the Help America Vote Act's designation of the 2002 federal voting system standards as the first iteration of voluntary voting system guidelines adopted by the U.S. Election Assistance Commission (EAC). We further note that the term “applicable” is used in the EAC Testing and Certification Manual to refer to the iteration of standards to which a system has been tested and certified.

HAVA mandates that the most recent set of federal voting system standards adopted by the Federal Election Commission as of the date of enactment of HAVA are deemed adopted by the Election Assistance Commission as the first set of voluntary voting system guidelines developed pursuant to Part 3 of the Act. This mandate is found in Section 222(e):

*[222] (e) Special Rule for Initial Set of Guidelines.--Notwithstanding any other provision of this part, the most recent set of voting system standards adopted by the Federal Election Commission prior to the date of the enactment of this Act shall be deemed to have been adopted by the Commission as of the date of the enactment of this Act as the first set of voluntary voting system guidelines adopted under this part. <sup>1</sup>*

The term “the Commission” in the above paragraph refers to the EAC. The Help America Vote Act was signed into law by President Bush on October 29, 2002, and the last set of voting system standards adopted by the Federal Election Commission prior to that date are the 2002 standards.

The term “applicable” is used in the EAC Testing and Certification Manual to refer to the specific iteration of standards (including all voluntary voting system guidelines) to which a system has been presented to the EAC for certification.<sup>2</sup> “Applicable” may mean either 2002 or 2005 standards.<sup>3</sup>

As HAVA makes clear, the 2002 voting system standards are lawfully “voluntary voting system guidelines,” and as the EAC Testing and Certification Manual provides context for the term “applicable,” we respectfully suggest that the term “applicable voluntary voting system guidelines” is by no means limited to the most recent VVSG, but instead may refer any of the following: the first set of voluntary voting system guidelines, the 2002 voting system standards, or the 2005 voluntary voting system guidelines.

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<sup>1</sup> [http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt)

<sup>2</sup> Usage of the term “applicable” in this context is found on pages 25, 28, 40, 45, 56, 60, and 61 of the EAC Testing and Certification Manual. [http://www.eac.gov/voting%20systems/docs/testingandcertmanual.pdf/attachment\\_download/file](http://www.eac.gov/voting%20systems/docs/testingandcertmanual.pdf/attachment_download/file)

<sup>3</sup> Systems submitted through December of 2007 could be tested to either 2002 or 2005 standards, at the option of the submitting vendor. The two systems to complete EAC certification to date are a MicroVote DRE system (Feb. 2009, to the 2005 standards) and an ES&S system which includes digital scan (July 2009, to the 2002 standards).



We look forward to your response concerning this matter, and we thank you for your time and consideration.

Sincerely,  
Pamela Smith  
President  
Sean Flaherty  
Researcher

Cc: Secretary of State Tre Hargett, Attorney General Robert E. Cooper, Representative Gary Moore, Representative Gary Odom, Senator Roy Herron, Sally Swaney, Dick Williams, Tom Humphrey, Richard Locker, Mark Silverman