

## Is HAVA Being Abused?

### The 1990 Voting System Standards are Certainly Outdated. Are They Illegal, Too?

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Section 222(e) of the Help America Vote Act of 2002 (HAVA) provides that the 2002 Voting System Standards adopted by the Federal Election Commission are deemed to be adopted by the Election Assistance Commission (EAC) as the first set of voluntary voting system guidelines adopted under HAVA.<sup>1</sup>

HAVA was enacted on October 29, 2002. So why has the National Association of State Election Directors (NASED) continued to use the 1990 standards as the basis for qualifying some voting systems AFTER federal law declared the 2002 standards to be the official guidelines?

Before HAVA, NASED was in charge of the qualification process. HAVA gave the EAC responsibility for administering the qualification process, but since the Administration was nearly 10 months late appointing the commission members, the qualification process remained in the hands of NASED, and little changed.

In this process, voting systems are tested by Independent Testing Authorities (ITA) against federal Voting System Standards (VSS). Once the system passed the testing, NASED reviewed the report from the ITA and if all was in order, NASED assigned the system an official ID# indicating that it met the federal standards. State election officials consider NASED-qualification an important factor when they are certifying systems for use in the state, and in some states, qualification is required by law.

Recently, when we saw a news article referencing a rule that requires all voting systems to meet the 2002 standards after January 2005, we were surprised. We contacted Brian Hancock, the ITA Secretariat appointed by the EAC, and asked him about it. In response, he wrote that, "NASED has incorporated testing to the 2002 VSS in several stages since these Standards were implemented. The attached NASED advisories explain this process."

The advisories explained a lot.

Early in 2003, shortly after HAVA was enacted, NASED adopted "Voting System Testing Updates" to the qualification procedure. An advisory of these updates was distributed to voting machine manufacturers, state election directors, and local election officials. The updated rules address the transition to the 2002 standards adopted by HAVA.

They appear to be phasing in new standards by indicating that:<sup>2</sup>

- ◆ after January 8, 2003, revisions to previously qualified systems and systems entering testing must meet the 2002 standards.
- ◆ until January 1, 2005, if modifications are made to a component of a system, it is not necessary for the entire system to meet the 2002 standards, but will continue to be recognized as a qualified 1990 system.
- ◆ after January 1, 2005, all system revisions must meet the 2002 standards.

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<sup>1</sup> [http://www.eac.gov/election\\_resources/vss.html](http://www.eac.gov/election_resources/vss.html)

<sup>2</sup> The four update statements are paraphrased here according to our understanding of their intent. When we asked for clarification, Brian Hancock, the ITA Secretariat appointed by the EAC, referred us to Tom Wilkey, Chairman of the NASED Voting Systems Board. Mr. Wilkey has not responded to our questions. The two advisories are here: [www.votersunite.org/info/NASEDAdvisory2003.pdf](http://www.votersunite.org/info/NASEDAdvisory2003.pdf) and [www.votersunite.org/info/NASEDAdvisory2005.pdf](http://www.votersunite.org/info/NASEDAdvisory2005.pdf)

- ◆ after January 1, 2005, if modifications are made to a component of a system, the entire system must meet the 2002 standards to retain its qualification status.

This sounds like a reasonable plan. However, the information in the list of systems qualified between December 2003 and March 2005 seems to indicate that NASED didn't follow its plan. For example:<sup>3</sup>

- ◆ AccuPoll Version 2.3.14, with a host of software and hardware, was qualified to the 1990 standards in February 2004.
- ◆ Diebold GEMS Version 1-18-18 was qualified to the 1990 standards in July of 2003; GEMS 1-18-19, in February 2004; and GEMS 1-18-22G, in January 2005.
- ◆ ES&S Unity Version 2.4.2 was qualified to the 1990 standards in February 2004, along with a long list of components including the iVotronic touch screen version 8.0.
- ◆ Hart Intercivic eSlate Systems 3.0, 3.1, 3.2, 3.3, and 3.4 (including the Ballot Now scanner, a couple of versions of the Judges Booth Controller, and other components) were all qualified to the 1990 standards during the period from September 2003 to August 2004.
- ◆ Sequoia WinEDS 3.0 and 3.0.134, along with quite a few new renditions of the AVC Edge touch screen and AVC Advantage push button DRE, were qualified to the 1990 standards during the last half of 2003 and throughout 2004.

In fact many of the voting systems that we've seen malfunction, heat up, break down, switch votes, and record high undervote rates were qualified by NASED to the 1990 standards **after** federal law made the 2002 standards the official guidelines – and **after** NASED itself adopted rules prohibiting both changed and new systems from being tested to the 1990 standards.

On April 18, 2005, the NASED Voting Systems Board adopted an addendum to its testing update. The new advisory points to two of the rules in the update and states:<sup>4</sup>

This addendum serves only as clarification of these procedures and in no way diminishes or negates the effect of any procedure adopted in February 2003.

Here are the two rules the addendum doesn't diminish or negate:

- ◆ After January 1, 2005, NASED will no longer offer ITA testing for revisions to any voting system approved prior to the use 2002 Voting Systems Standards.
- ◆ After January 1, 2005, any revisions which do not make the voting system totally compliant with the 2002 VSS become non-qualified under the national testing program.

Now here's the clarification that doesn't diminish or negate those rules in any way:

In order to accommodate new devices which may interface with either 2002 or 1990 qualified voting systems with the goal of making those systems HAVA compliant, NASED adds the following statement to the 2003 Testing Update document:

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<sup>3</sup> <http://www.nased.org/ITA%20Information/NASEDQualifiedVotingSystems12.03to5.05.pdf>

<sup>4</sup> [www.votersunite.org/info/NASEDAdvisory2003.pdf](http://www.votersunite.org/info/NASEDAdvisory2003.pdf)

- ◆ After January 1, 2005, only those new devices not currently a part, package or upgrade to an existing 1990 qualified voting system may be tested for qualification with such voting system. These devices must be tested and meet the 2002 Voting Systems Standards and no other portion of a previously 1990 qualified system may be altered or upgraded to accept this device.

Exactly four weeks after the addendum was adopted, NASED assigned a qualification ID number to the Diebold AccuView, the touch screen DRE with a voter-verifiable paper audit trail printer. The new system was qualified to the 1990 standards.

We asked Brian Hancock about this apparent contradiction of the rules, and he responded, "As for the Diebold system with AVPM, it will still technically be 1990. All hardware is 2002 tested, but there are still portions of the software not fully 2002. "

We replied with questions asking how the Diebold AccuView could be qualified, partly to the 2002 standards and partly to the 1990 standards, given the rules in the NASED advisories. Mr. Hancock referred us to Tom Wilkey: "As for the NASED decision process on the 2003 and 2005 guides, you will need to speak with Tom Wilkey as Voting Systems Board Chairman. Tom can most easily be reached via email."

Unfortunately, Mr. Wilkey has not responded to our emails, and we are left with quite a few questions:

- ◆ How does a rule allowing new components to bypass the 2002 standards NOT negate a rule that requires the entire voting system to comply with 2002 standards?
- ◆ When the newly developed printer was added to the Diebold system, did it really NOT require any portion of the Diebold touch screen to "be altered or upgraded to accept this device"?
- ◆ Why were so many new and revised voting systems qualified to the 1990 standards after HAVA made those standards obsolete?
- ◆ Why did NASED break its own testing rules consistently throughout 2003 and 2004, and then adopt a procedural "clarification" to avoid breaking them in 2005?
- ◆ Are the voting machine manufacturers making false claims when they tell their customers that their products meet federal standards, or is NASED violating Section 222(e) of HAVA by qualifying systems that don't meet the standards HAVA established?
- ◆ Or both?

These questions demand an immediate response.