



**Division for Research, Policy and Programs
U.S. Election Assistance Commission
1201 New York Ave. NW – Suite 300
Washington, DC 20005**

**PUBLIC MEETING – JUNE 28, 2010
TESTIMONY OF
WILLIAM BOEHM, DEPUTY DIRECTOR FOR POLICY**

Commissioners and Mr. Wilkey, I come before you today to provide—for the Commission’s consideration—staff’s recommendations for the text of a proposed rule to incorporate changes into EAC regulations applicable to the National Voter Registration Act of 1993 (NVRA) consistent with the Help America Vote Act (HAVA). I will also present information on the process by which EAC can expeditiously update the NVRA regulations. None of the changes that staff is proposing here today will be in effect for the November 2010 election. There will be no changes to the national mail voter registration application form until after the election.

The purpose of the NVRA was to expand access to voter registration for all American citizens. In order to achieve this goal, the statute requires States to provide voter registration at motor vehicle agencies and other State public assistance offices and through the mail. The Federal Election Commission (FEC) had original responsibility for the NVRA and issued the first regulations for the NVRA on June 23, 1994. The regulations have not been updated since that time.

The 2002 Help America Vote Act (HAVA) transferred statutory responsibility for administering the NVRA from the FEC to EAC, including authority under section 9(a) of the NVRA to issue regulations for developing a national mail voter registration form. The FEC incorporated the new HAVA requirements into the national mail voter registration form in 2003 and the EAC, in consultation with the States, updated the State instructions to reflect HAVA requirements in 2006 that became effective that year. However, until the regulations were formally transferred from the FEC to EAC, the EAC could not propose any changes to the regulations. A lack of a commissioner quorum at the FEC delayed this transfer of regulations until 2009. Both commissions published a notice in the Federal Register (74 FR 37520) announcing the transfer on July 29, 2009. The transfer became effective August 28, 2009.

According to the NVRA as amended by HAVA, EAC is charged with providing information to the States “with regard to the responsibilities of the States” under the Act, for developing a national mail voter registration form, and for submitting a biennial report to Congress regarding the impact of the NVRA. The NVRA limits EAC’s regulatory authority to prescribing only those regulations as are necessary to design the national mail voter registration form and to submit the report to Congress.

The Process

It is against this backdrop that EAC staff recommends issuing a Notice of Proposed Rulemaking (NPRM) in order to incorporate changes into the NVRA regulations that are consistent with HAVA. This NPRM, which will include proposals to amend the regulations consistent with

HAVA, builds on EAC's NVRA work to date. In anticipation of EAC's role related to updating the NVRA regulations it has held several public meetings and a public hearing on the issues of implementing the requirements of the NVRA.

EAC staff recommends that the Commission adopt a Notice of Proposed Rulemaking and authorize staff to place the notice in the Federal Register as soon as possible. An extensive public comment period about the proposed rules commences upon the publication of the notice in the Federal Register.

EAC staff recommends an extensive public comment period of ninety (90) days. This recommendation is based on the testimony received by the Commission at its NVRA public hearing in 2007. If the Commission does issue the Notice, it will begin a 90-day comment period during which the EAC will invite input from chief State election officials, local election administrators, advocacy groups, and the public.

During the comment period, comments will be received via regulations.gov, electronic mail, and postal mail. All submissions must include the agency's name and regulation title (*i.e.* "National Voter Registration Act") for this information and collection recordkeeping requirement. All comments received will be publicly posted, including any personal information provided. The EAC will post comments without change unless the comment contains profanity or material that is prohibited from disclosure by law.

Also, EAC will conduct hearings during the 90-day comment period at which the Commission can receive input from the public. The details of each meeting will be made available on the EAC's website as they become available.

Once this comment period closes, all of the comments and testimonies that EAC has received will be reviewed and considered as the Commission moves into the next phase of the process which will end in the issuance of a Final Rule.

After publishing the final rule, the Commission, based on public comments and available evidence, may consider alterations to the design of the national mail voter registration form. The Commission would consult with the chief State election officials on any redesign of the national mail voter registration form, as required by statute.

The public comments and testimony received during the public comment period will also assist EAC in determining what type of guidance that EAC will provide to States regarding their responsibilities under the NVRA.

The Notice of Proposed Rulemaking (NPRM)

The NPRM includes several proposed changes to the NVRA regulations. The proposed changes are within the narrow scope of authority granted to EAC and address HAVA-related requirements. To be clear, the proposed modifications to the regulations reflect changes to the Federal form that the FEC made in 2003 to reflect HAVA's new requirements.

The primary objective of EAC staff is to modify the NVRA regulations to make them consistent with HAVA requirements and the HAVA changes already made to the Federal form. The proposed changes to the regulations fall into the following categories: HAVA requirements, HAVA-related requirements, and Technical Amendments. A secondary objective is to ask for public comment on other issues of interest to EAC.

The **HAVA requirements** are the a) Inclusion of questions and checkboxes asking applicants to indicate whether or not they are U.S. Citizens and eighteen in accordance with section 303 (b)(4)(A) (i) (18) years of age; b) Inclusion of a statement advising applicants that if they checked 'no' in response to either of the aforementioned questions, they should not complete the form; and, c) Addition of a statement informing applicants that if they are registering for the

first time, the required voter identification information should be submitted with the national mail voter registration form to avoid the additional identification requirements upon voting for the first time. All of the foregoing are specific requirements of the Help America Vote Act.

In addition to the statutory HAVA requirements addressing what must be on the Federal form, there are procedures which result from other HAVA requirements that staff proposes to include in the regulations. These **HAVA-related requirements** include:

1. Authorizing in the regulations the statement appearing under the question and checkbox pertaining to age. This statement appears on the form to alert applicants that their State might allow individuals under age 18 to vote in primaries that precede the general election or in those States that allow under age 18 pre-registration.
2. A change in the format for the Federal form. The current regulations prescribe a format for the form that makes it impossible for voters to submit the HAVA-required identification documents via the mail. Staff proposes modifying the regulation to allow the form to be printed on paper stock and mailed in an envelope to the appropriate address. This proposal gives voters the option of avoiding additional identification requirements upon voting for the first time by allowing them to mail the identification with the completed national mail voter registration form, which is consistent with HAVA
3. Clarification of the State-specific instructions regarding State voter identification requirements. HAVA exempts voter registration applicants who will be voting for the first time and registering by mail from enclosing identification documents under certain conditions that could vary from State to State.

EAC staff is also proposing several **technical amendments** to update the regulations. These include ensuring that there are no existing references to the FEC in the regulations and that address information for the EAC is correct; adding references to HAVA where a requirement is contained in both the NVRA and HAVA, eliminating internal references to dates that no longer have any relevance such as the beginning date for States to certify the information for the first biennial report to Congress, and adding an amendment that requires a Privacy Act notice on the national mail voter registration form.

Finally, there are other possible issues which could be addressed in the regulations but are not required or addressed by HAVA. But because they are not required by HAVA, staff recommends that EAC ask for public comment on them and not propose them as amendments to the NVRA regulations in the Notice of Proposed Rulemaking.

These issues include asking for public comments on a) The use of an electronic, web-based form; b) A proposal to add additional information on the form such as the applicant's e-mail address and boxes for the applicant to check to indicate whether the applicant is an overseas citizen or military voter covered by the Uniformed and Overseas Citizen Absentee Voting Act; and, c) Changing the deadline for States to certify information to the EAC for the NVRA report to Congress from March 31 to 90 days after the date of each regularly scheduled general election for Federal office, which is the deadline required by UOCAVA for the certification of UOCAVA information and obtained by EAC through the same Survey instrument.

I am happy to answer any questions you may have at this time.