

## Information about Notice of Clarification (NOC) Released July 23, 2021

On July 23, 2021 the director of the USEAC's Voting System Test Laboratory Program (director) issued a NOC prospectively amending section 3.8 of the Voting System Test Laboratory Program Manual (Manual). Some observations include:

1. The NOC seems a bit hastily drafted, as it does not use the correct title in referring to the Manual that it purports to amend.
2. The NOC contains a "Purpose" section. That section summarizes some of the standards and testing that support the laboratory accreditation process. However, a careful reading reveals no statement of any "Purpose" for issuing the NOC.
3. The "Clarification" section of the NOC implies a purpose for issuing the NOC, in that it states section 3.8 of the manual is not intended to govern the "accreditation revocation process." However, section 3.8's language before amendment by the NOC does not purport to govern revocations. Nor does it even mention revocations. Indeed section 3.8's title is "**Expiration and Renewal of Accreditation.**"
4. "As of the date of [the NOC]", the NOC claims to have the effect of replacing section 3.8 of the Manual with one titled "**VSTL Accreditation Reassessment.**" Thus, the concepts of "expiration and renewal" are replaced by a system of "reassessment."
5. Section 3.8 before the NOC provided "A grant of accreditation is valid not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation." After the NOC section 3.8 provides "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission consistent with Chapter 5 of this manual. Reassessment of VSTLs shall occur two years from the date their most recent Certificate of Accreditation was issued, or at the discretion of the EAC."
6. The NOC cannot have any effect on accreditations that were in effect or had expired and not been renewed before the NOC's effective date in July 2021. Thus, the NOC cannot alter the fact that Pro V&V's accreditation appears to have lapsed between 2017 and 2021, as documented repeatedly in previous memoranda.
7. The NOC purports to be a "clarification" of USEAC policy and practice. Yet it actually fundamentally changes policy and practice by replacing the normal accreditation expiration regime with one of periodic accreditation "reassessments." This raises the questions of 1. whether the "director" who issued the NOC had the authority to make this policy change without full Commission action, and 2. whether the federal Administrative Procedures Act applies and was not complied with.

8. Finally, the timing of this NOC bears scrutiny. Recently activists have been pressing the Colorado Secretary of State (SoS) to explain why she certified voting systems and components of systems on the basis of Pro V&V's testing when that lab appears not to have had a USEAC accreditation. The SoS has responded that the lab's accreditation never was "revoked;" she does not appear to have disputed that it had expired. During this dispute with the SoS, without any reason stated in the NOC itself, the "director" purported to replace a "revocation and renewal" regime with one based on perpetual accreditation coupled with periodic reassessments. Conveniently, a perpetual accreditation regime is just what the SoS pretends existed in 2017, before Pro V&V's accreditation expired. But it didn't. The "director" is trying to install one now, in mid-2021, though it can't apply retroactively to 2017. In fact, the "director's" attempt to install a perpetual accreditation regime in mid-2021 merely underscores that such a regime was not in force before the NOC was issued.

Maurice Emmer  
Aspen, Colorado

Shawn Smith  
Colorado Springs, Colorado