

1 08 NCAC 04 .0308 is adopted, following publication in the North Carolina Register, Volume 38:01 at pages 3 through
2 6, with revisions, as follows:

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4 **08 NCAC 04 .0308 AUTHORIZED ACCESS TO VOTING SYSTEM INFORMATION IN ESCROW**

5 (a) Subject to the provisions of this Rule, upon written request from a person or entity authorized under G.S. 163-
6 165.7(a)(6) to a vendor of a certified voting system in this state, the vendor shall make available for review and
7 examination any information placed in escrow under G.S. 163-165.9A to an authorized person. The person or entity
8 making the request shall simultaneously provide a copy of the request to the State Board. Any request from the State
9 chairs of a political party recognized under G.S. 163-96 shall be made no later than 90 days before the start of ~~one-~~
10 ~~stop-absentee~~ early voting in the state. This Rule does not address or restrict the pre-certification review of a vendor's
11 source code under G.S. 163-165.7(e).

12 (b) Authorized Persons. Only authorized persons may review and examine the information placed in escrow by a
13 voting system vendor. For the purpose of this Rule, "authorized person" means a person who:

- 14 (1) Is an agent:
- 15 (A) designated by majority vote in a public meeting by the State Board or a purchasing county's
 - 16 board of commissioners;
 - 17 (B) designated in writing by the chair of a political party recognized under G.S. 163-96; or
 - 18 (C) designated in writing by the Secretary of Department of Information Technology. No more
 - 19 than three people may be designated by an authorized entity under G.S. 163-165.7(f)(9);
- 20 (2) Has submitted to a criminal history record check, to be facilitated by the State Board, as provided
- 21 for in G.S. 163-27.2(b) and has not been convicted of a disqualifying offense. Disqualifying offenses
- 22 shall be all felonies, and any misdemeanors that involve theft, deception, the unlawful concealment
- 23 or dissemination of information, falsification or destruction of records, or the unlawful access to
- 24 information or facilities. The requirement to submit to a criminal history record check does not apply
- 25 to State employees who have already submitted to a criminal history record check for State
- 26 employment;
- 27 (3) Has submitted to the State Board a résumé detailing the person's experience with voting systems
- 28 and information technology, to include any training or experience pertaining to computer code
- 29 development or analysis;
- 30 (4) Has submitted to the State Board a sworn affidavit, under penalty of perjury, attesting that the
- 31 person:
- 32 (A) has never been found by a court of law, administrative body, or former or current employer
 - 33 to have disclosed without authorization confidential information that the person had access
 - 34 to;
 - 35 (B) has never been, either in their private capacity or in any capacity as an agent for another
 - 36 person or entity, subject to any civil or criminal claims alleging misappropriation of a trade
 - 37 secret, violation of confidentiality agreement or nondisclosure agreement, copyright

1 infringement, patent infringement, or unauthorized disclosure of any information protected
2 from disclosure by law, except to the extent any such claims were dismissed with prejudice
3 and not pursuant to a settlement agreement;

4 (C) has never had a security clearance issued by a federal agency revoked for any reason other
5 than expiration of the clearance;

6 (D) if granted access to review and examine the information placed in escrow:

7 (i) will not disclose or reveal any proprietary information to which the Authorized Person
8 is granted access, pursuant to G.S. 132-1.2, to any person outside of the individuals or
9 entities identified in G.S. 163-165.7(a)(6), testing and certification program staff at the U.S.
10 Election Assistance Commission, ~~or~~ election infrastructure security staff for the U.S.
11 Department of Homeland Security's Cybersecurity and Infrastructure ~~Security~~; Security,
12 or a court of law using the court's procedures to file such information under seal;

13 (ii) will not disclose or reveal any feature, component, or perceived flaw or vulnerability
14 of the information placed in escrow by a voting system vendor, pursuant to G.S. 132-
15 1.7(a2), G.S. 132-1.7(b), and G.S. 132-6.1(c), to any person outside of other persons
16 authorized under this Rule, the State Board, the vendor, testing and certification program
17 staff at the U.S. Election Assistance Commission, ~~or~~ election infrastructure security staff
18 for the U.S. Department of Homeland Security's Cybersecurity and Infrastructure ~~Security~~;
19 Security, or a court of law using the court's procedures to file such information under seal;

20 (iii) will submit copies of any notes taken during the examination of the information in
21 escrow to the State Board;

22 (iv) acknowledges that, should the person disclose ~~without authorization~~ any information
23 placed in escrow that is protected under state or federal ~~law~~, law in contravention of
24 subdivisions (b)(4)(D)(i) or (ii) of this Rule, the person will be subject to any remedies
25 provided by law ~~for such unauthorized disclosure~~, which could include monetary damages;
26 and

27 (v) will provide the vendor and the State Board with prompt written notice if the person
28 becomes or is likely to be compelled by law to disclose any of the escrow information, will
29 cooperate with the vendor and the State Board to obtain a protective order or other
30 appropriate remedy, and, in the event any escrow information must be disclosed pursuant
31 to legal compulsion, will disclose only the portion of information that the person is legally
32 required to disclose in the written opinion of its counsel; and

33 (5) ~~Has consented~~ Consents in writing to searches of their person and effects, similar in nature to
34 searches that members of the public submit to when entering the office buildings of the General
35 Assembly, to be conducted upon entry into the secure facility described in Subparagraph (d)(1) of
36 this Rule; and

37 (6) Is a citizen of the United States.

1 (c) Within 30 days of meeting the definition of an authorized person in Paragraph (b) of this Rule, the Executive
2 Director of the State Board shall issue a written authorization to the person or entity making the request under
3 Paragraph (a) of this Rule to review and examine information placed in escrow by a voting system vendor. The
4 authorization shall be presented by the person or entity to the vendor prior to gaining access to such information under
5 this Rule.

6 (d) Conditions of Access. When providing access to information in escrow pursuant to this Rule, the State Board and
7 vendor shall ensure the following conditions are met:

8 (1) The information in escrow shall be made available by the vendor on up to three computers provided
9 by the vendor (one for each potentially designated agent under G.S. 163-165.7(f)(9)) that are not
10 connected to any network and are located within a secure facility, as described in Part ~~(d)(3)(A)~~
11 ~~(d)(3) of this Rule below~~, designated by the State Board of Elections. Such computers shall be
12 preloaded with software tools necessary for use in viewing, searching, and analyzing the information
13 subject to review, including tools permitting automated source code review ~~that are preapproved by~~
14 ~~the vendor and the State Board~~. Such computers shall have the following access controls:

15 (A) Credentials shall be traceable to individuals. Generic login accounts are not authorized.
16 Sharing of accounts and reuse of credentials is prohibited. Each user must have their own
17 assigned login account.

18 (B) Only one administrative account shall be present on the system to allow for the initial
19 provisioning of necessary applications and setup of security controls.

20 (C) Where passwords are used to authenticate authorized individuals, login accounts shall use
21 complex passwords. A sufficiently complex password is one that is not based on common
22 dictionary words and includes no fewer than 10 characters, and includes at least one
23 uppercase letter, one lowercase letter, one number, and a special character.

24 (D) Screen lock times shall be set to no longer than 10 minutes.

25 ~~(E)~~ All computers shall be locked or logged out from whenever they are not being attended
26 and used.

27 ~~(E)(F)~~ The entire hard drive on any computer must have full disk encryption. Where possible, the
28 minimum encryption level shall be AES-256.

29 ~~(F)(G)~~ After the information subject to review and software tools for viewing are loaded on the
30 computers, all ports shall be sealed with tamper-evident seals.

31 ~~(G)(H)~~ After the ports are sealed, no input/output or recording devices may be connected to the
32 computers. The State Board shall provide for the secure storage of any equipment used for
33 the duration of the review.

34 (2) The computers shall be air-gapped and shall not be connected to a network, and any feature allowing
35 connection to a network shall be disabled. Prohibited network connections include the Internet,
36 intranet, fax, telephone line, networks established via modem, or any other wired or wireless
37 connection.

- 1 (3) The secure facility designated by the State Board under Subparagraph (1) of this Paragraph is the
2 specific location where the computing equipment will be stored and the review conducted, and may
3 be a secured portion of a building. All conduct within the facility shall meet the following
4 conditions:
- 5 (A) For the entire review period, the facility ~~must~~ shall be secured from access by any person
6 not designated under Subparagraph (b)(1), Part ~~(d)(3)(F), (d)(3)(G),~~ and Subparagraph
7 (d)(7) of this Rule.
- 8 (B) Only individuals authorized under Subparagraph (b)(1), Part ~~(d)(3)(F), (d)(3)(G),~~ and
9 Subparagraph (d)(7) of this Rule may enter the facility. Such individuals ~~must~~ shall present
10 government-issued photo identification upon initial entry, and may be asked to show
11 identification multiple times throughout the review period.
- 12 (C) Each time an individual accesses the facility, the State Board or its designee shall record
13 the name of the individual, the time of their entry, the time of their departure, and a
14 description of any materials brought in or out of the facility.
- 15 (D) All equipment used in the review, as specified in Subparagraph (d)(1) of this Rule, must
16 remain in the facility during the review period.
- 17 (E) No authorized person pursuant to this Rule ~~must~~ shall possess any removable media device,
18 cell phone, computer, tablet, camera, wearable, or other outside electronic device within
19 the facility where the person is accessing information in escrow.
- 20 ~~(F)~~ No authorized person ~~must~~ shall attempt to connect the computers used in the review to
21 any network.
- 22 ~~(F)(G)~~ State personnel who are designated by the Executive Director of the State Board of
23 Elections and who also satisfy the conditions set forth in Subparagraphs (b)(2) through
24 (b)(5) shall have access to the facility where the review is being conducted at all times, to
25 monitor the process and ensure that all requirements of this Rule are complied with.
- 26 ~~(H)~~ Persons entering the facility shall submit to inspection, as provided for in
27 ~~Subparagraph~~ Subparagraph (b)(5), and shall be denied entry if they possess any
28 unauthorized devices.
- 29 ~~(I)~~ State personnel designated pursuant to this subsection shall inspect the computers used in
30 the review before and after the review for compliance with Subparagraphs (d)(1) and
31 (d)(2).
- 32 (4) Authorized persons are permitted to perform manual source code review, and use code analysis
33 ~~tools, tools~~ tools as provided in Subparagraph (1) of this Paragraph, to analyze the source code. This
34 source code review shall be performed using “read only” access and any authorized person shall use
35 only the analysis tools preloaded on the computers, as described in Subparagraph (1) of this
36 Paragraph, to examine the information placed in escrow, not interact with or perform testing of the
37 software components.

1 (5) Any review performed pursuant to this Rule shall occur during the State Board’s regular business
2 hours and shall last no longer than ten business days. Such review shall not occur during the period
3 from the start of ~~one-stop absentee~~ early voting through the conclusion of statewide canvassing of
4 the vote.

5 (6) Authorized persons and the vendor are each responsible for bearing their own costs in conducting
6 the review pursuant to G.S. 163-165.7(a)(6).

7 (7) Up to three representatives of the vendor may be designated in writing to the State Board by a
8 corporate executive of the vendor to supervise the review at all times. Such representatives shall not
9 interfere with the review and shall be afforded ~~a reasonable~~ an opportunity to inspect the facility for
10 compliance with these conditions prior to the review commencing. State Board staff designated
11 under Subparagraph (3) of this Paragraph shall monitor the review, without obstructing the review
12 process.

13 (e) Dispute Resolution. Any dispute that arises between an authorized person and a vendor concerning the execution
14 of review pursuant to this Rule may be presented to the State Board of Elections in the form of a petition seeking
15 relief. The party seeking such relief shall serve their petition on the opposing party, and the opposing party shall have
16 14 days to respond. The State Board shall make a decision on the petition based on the written submissions, or it may
17 schedule a hearing to consider the petition.

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19 *History Note: Authority 42 U.S.C. 5195c; G.S. 132-1.2; 132-1.7; 132-6.1; 163-22; 163-27.2; 163-165.7; 163-*
20 *165.9A; 163-166.7; 163-275;*
21 *Eff. Feb. 1, 2024*