

G.S. 150B-21.3A Report for 08 NCAC 09, CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS												
Agency - State Board of Elections												
Comment Period - 8/11/2025 - 10/17/2025												
Date Submitted to APO - Filled in by RRC staff												
Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
		08 NCAC 09 .0106	GENERAL GUIDELINES	Amended Eff. September 1, 2021	Necessary	No		Yes	Necessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt
		08 NCAC 09 .0107	FIRST RECOUNT	Amended Eff. September 1, 2021	Necessary	No		Yes	Necessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt
		08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Eff. September 1, 2021	Necessary	Yes If yes, include the citation to the federal law	52 USC 21081	Yes	Necessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt

								RRC Determination [150B-21.3A(c)(2)]
Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation		
State Board of Elections	08 NCAC 09 .0107	FIRST RECOUNT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Debbie Dante: Rule IS authorized by State Law 163-22 Powers Duties of State BOE & 163-182.7 Ordering Recounts. Rule requires revision due to failure to comply with the specified requirements of a Rule under 150B-19 and 150B-21.9 NOT providing clear instructions of how bi-partisan teams are to carry out the counting-Rule refers to 09.106(d) . SEE § 150B-19.(4) Restrictions on what may be dopted as a Rule: Repetition of the contents of a law, a rule, or federal regulation.	We agree there is statutory authority for the rule. Thank you for your suggested revisions for later consideration . It does not appear you disagree with the agency's initial determination that the rule is necessary.	Select One	Select One	

Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation	RRC Determination [150B-21.3A(c)(2)]
State Board of Elections			Other Statement	Michael Urben: This is a general comment about the PRACTICE of rule making and guidance. N.C.G.S. § 163-22 gives the State Board of Elections general supervision over the primaries and elections in North Carolina. It also may make rules regarding elections and campaign finance PROVIDED THEY DO NOT CONTRADICT THE LAW. I have personally witnessed a majority of Forsyth County's board ELEVATE GUIDANCE OVER STATUTE, in spite of one its own members urging them not to do so! I urge the NCSBE to avoid this pitfall by seeking General Assembly legal counsel for clear understanding of any statute from which rules and guidance are created!	Thank you for your interest in elections and rulemaking.	Select One	Select One
	08 NCAC 09 .0106	GENERAL GUIDELINES					
State Board of Elections			Public Coment as defined in G.S. 150B-21.3A(a)(5)	Debbie Dante: Rule does not state 163-182.1 (a)(6): no write in votes in primaries. Rule cites GS 163-182.1(c)- refers to the statute as to how to count ballots in sead of giving clear instructions.	Thank you for your suggested revision for later consideration. It does not appear you disagree with the agency's initial determination that the rule is necessary.	Select One	Select One
	08 NCAC 09 .0106	GENERAL GUIDELINES					
State Board of Elections			Public Coment as defined in G.S. 150B-21.3A(a)(5)	Pamela Riley: Necessary	We agree.	Select One	Select One
	08 NCAC 09 .0106	GENERAL GUIDELINES					

Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation	RRC Determination [150B-21.3A(c)(2)]
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>J Fenstermaker: NCAC 09. 0109 GUIDELINES FOR DETERMINING VOTER INTENT</p> <p>The rule NCAC 09.0109 references Numbered Memo 2020-32 which in turn references Numbered Memo 2019-07. Numbered Memos are neither Statutes nor Rules but are non-binding interpretive statements (i.e., Policy) and thus should not be included in the rule as there is no legal authority to do so. 150B-2.(8a)(c.)</p> <p>This rule omits the reference to Statute GS 163-182.1 (Principles and rules for counting official ballots) which citation is required for the authority for adoption of uniform standards.</p> <p>The language of this rule omits criteria to follow the law GS 163-182.1(a)(6) which details Write-in votes, i.e., "Write in votes shall not be counted in party primaries or in referenda". The rule is not clear in defining when Write-in votes may be accepted. 150B-19.1.(a)(3)</p> <p>Numbered Memo 2019-07 provides guidance for determining write-in votes in this rule and has been omitted from this rule, although, as stated previously, numbered memos have NO legal basis in North Carolina Chapter 163 Elections and Election Laws.</p> <p>The Numbered Memos 2020-32 and 2019-07 refer to other laws which are not cited by this rule but are applicable to the Rule. Portions of the text of the Memos may be outside the scope of this rule and not relevant to determining voter intent. This applies as § 150B-21.2.(c)(3) requires a citation to the law that gives the agency authority to adopt the Rule.</p> <p>Federal Statute 52 USC 21081 is not referenced in the rule, which is the authority requiring States to adopt their own uniform and non-discriminatory standards for counting votes.</p> <p>This rule is incomplete and should be revised accordingly.</p>	Thank you for your suggested revisions for later consideration. It does not appear you disagree with the agency's initial determination that the rule is necessary.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>klandgren3333@protonmail.com: logo2.png DONATE Post</p> <p>All Posts Administrative Code: Comment on Guidelines for Determining Voter Intent 2 days ago</p> <p>NC Administrative Code: Fixing the Rules</p> <p>Members of the public may comment on the State Board's initial determination that the rules are necessary in any of the following ways through October 17, 2025.</p> <p>References:</p> <p>Administrative Procedures Act</p> <p>OAH RRC Rules Review NCSBE 2025 Plan of Review</p> <p>Administrative Code: Is The Rule Necessary or Unnecessary? This is what happens next.</p> <p>Go to the portal Online: <a href="https://www.ncsbe.gov/about-elections/legal-resources/rulemaking/public-comment-portal-2025-periodic-review-existing-rules">https://www.ncsbe.gov/about-elections/legal-resources/rulemaking/public-comment-portal-2025-periodic-review-existing-rules</a></p> <p>Or Email: <a href="mailto:rulemaking.sboe@ncsbe.gov">rulemaking.sboe@ncsbe.gov</a> (Commenter must identify the specific rule being commented on.)</p> <p>Please comment on these rules. Click the above link link for info on comments.</p>	We agree the rule is necessary. Thank you for your suggested revisions for later consideration. It also appears you included a form comment for another rule with this comment.	Select One	Select One

State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>Ruth Engram:</p> <p>Rule is inadequate for the titled purpose and requires substantial revision.</p> <p>Rule IS authorized by NCGS §163-182.7(d). Rules for Conducting recounts.</p> <p>Rule IS necessary to serve the public interest to fairly evaluate voter intent through standardized adjudication of disputed ballots during recounts, preventing inconsistent county-level decisions.</p> <p>Rule DOES "seek to reduce the burden upon those persons or entities who must comply with the rule" by providing predefined objective criteria to evaluate voter intent. HOWEVER, the criteria included referenced Numbered Memos, which have NO Statutory Authority within the 150B Administrative Procedures Act, therefore invalidating the included information and violating the compilation requirements of the Rule.</p> <p>Rule IS clear but incomplete.</p> <p>Rule IS reasonably necessary to implement or interpret federal or State law by providing uniform standards, but fails to achieve the purpose of the Rule.</p> <p>Rule DOES have a "cumulative effect" "related to the specific purpose of determining voter intent for which the rule is proposed." The cumulative effect of determining voter intent in the Rule is INCOMPLETE, relying on additional Numbered Memos which need to be incorporated into the RULE so as to carry out the tasks for which the Rule is required.</p> <p>Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT achieve the requirements set forth in G.S. § 150B-2. Definitions. (8a) Rule "that describes the procedure or practice requirements of an agency", because it is INCOMPLETE in listing the procedure or practice requirements.</p>	We agree there is statutory authority for the rule and that the rule is necessary. Thank you for your suggested revisions for later consideration.	Select One	Select One
				<p>Rule is based on election administration best practices along with the EAC's Voluntary Voting System Guidelines (VSG) under HAVA.</p>			
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>Glen Engram:</p> <p>v Rule IS authorized by NCGS §163-182.7(d). Rules for Conducting recounts.</p> <p>NCGS §163-182.7 Ordering Recounts authorizes county boards to conduct recounts, including hand-to-eye adjudication, and empowers NCSBE to adopt implementing rules.</p> <p>NCGS §163-22, Powers and duties of State Board of Elections grants NCSBE rulemaking authority for election administration.</p> <p>Rule IS indirectly authorized by Federal Law U.S.C. § 21081 which requires states to define vote standards and uniformity.</p> <p>v Rule IS necessary to serve the public interest to fairly evaluate voter intent through standardized adjudication of disputed ballots during recounts, preventing inconsistent county-level decisions.</p> <p>v Rule DOES "seek to reduce the burden upon those persons or entities who must comply with the rule" by providing predefined objective criteria to evaluate voter intent. HOWEVER, the criteria included referenced Numbered Memos, which have NO Statutory Authority within the 150B Administrative Procedures Act, therefore invalidating the included information and violating the compilation requirements of the Rule.</p> <p>v Rule IS clear but incomplete.</p> <p>v Rule IS reasonably necessary to implement or interpret federal or State law by providing uniform standards, but fails to achieve the purpose of the Rule.</p> <p>v Rule DOES have a "cumulative effect" "related to the specific purpose of determining voter intent for which the rule is proposed." The cumulative effect of determining voter intent in the Rule is INCOMPLETE, relying on additional Numbered Memos which need to be incorporated into the RULE so as to carry out the tasks for which the Rule is required.</p> <p>v Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT</p>	We agree there is statutory authority for the rule and that the rule is necessary. Thank you for your suggested revisions for later consideration.	Select One	Select One

State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>JOAN BROOKS:</p> <p>The opening statement in Rule 08 NCAC 09 .0109 establishes the deficits of the rule as a whole. The majority of this "rule" merely restates policy/statutes/regulations. The Administrative Procedures Act §150B 2 indicates the definitions of Policy and Rule.</p> <p>Restatement of the Statute/Regulation is not only NOT a Rule, but also prohibited by §150B19.(4). The entire paragraph (a) IS a repetition of Statutes and other Rules referenced (which are rife with the same errors and deficiencies.)</p> <p>Paragraph (a) is not clear, is not unambiguous and does not give the Procedures/Directives required to achieve the purpose of the Rule in a cost-effective or timely manner. Election Officials referring to the Rule to determine the tasks of their job to determine Voter Intent won't find a definition of Voter Intent, much less HOW to determine the intent of a Voter in multiple situations that present during the course of an Election.</p> <p>§ 150B-19.1.(a)(3) and §150B-19.1.(a)(6) are violated multiple times. The construction and content of the cumulative contents of the Rule does NOT reduce the burden on those required to comply with the Rule as required by §150B-19.1.(a)(2) by the omission of clear instructions and directives.</p> <p>The Definitions referenced omit Voter Intent; Hand to Eye Recount; Audit; Overvote; Undervote as a few examples of information helpful to understand the few actual directives given in the Rule. The cumulative effect relating to the purpose of the Rule makes the Rule unnecessary as it does NOT achieve its intended purpose. §150B-19.1.(a)(4).</p> <p>Multiple Statutes including the information needed to compile the Rule are omitted from the History of Authority as required by § 150B-21.2.(c)(3) invalidating the Rule from adoption.</p> <p>The primary Statute indicating the requirements for determining Voter Intent and the counting of ballots § 163-182.1, is completely OMITTED in the Rule with references only to Numbered Memos 2020-32: Hand-To-Eye Recount and Numbered Memo 2019-07: Guidance Regarding What Constitutes a Vote.</p> <p>There is NO reference to or definition of "Numbered Memo" in Chapter 150B Administrative Procedures Act or Chapter 163 Elections and Election Laws.</p> <p>Numbered Memos referenced as having statutory authority to write an existing Rule is inapplicable under § 150B-19.(1), restricting adoption of a Rule that implements or interprets a law without the legal authority to do so.</p> <p>The Rule lacks declarative statements giving specific commands to implement NC Law regarding the determination of Voter Intent on Ballots cast in an Election. The Rule also completely disregards Electronic</p>	<p>Thank you for your suggested revisions for later consideration. We do not agree that the rule is unnecessary, but we will certainly welcome comments going forward when the substance of this rule is subject to public comment as part of this periodic review process. To the extent you contend numbered memos are not lawful or otherwise issued without statutory authority, that is incorrect.</p>	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>Linda Reback:</p> <p>Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT achieve the requirements set forth in G.S. § 150B-2. Definitions. (8a) Rule "that describes the procedure or practice requirements of an agency", because it is INCOMPLETE in listing the procedure or practice requirements.</p>	<p>We agree that the rule is necessary. Thank you for your suggested revisions for later consideration.</p>	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	<p>☐ Rule IS authorized by NCGS §163-182.7(d). Rules for Conducting recounts.</p> <p>NCGS §163-182.7 Ordering Recounts authorizes county boards to conduct recounts, including hand-to-eye adjudication, and empowers NCSBE to adopt implementing rules.</p> <p>NCGS §163-22, Powers and duties of State Board of Elections grants NCSBE rulemaking authority for election administration.</p> <p>Rule IS indirectly authorized by Federal Law U.S.C. § 21081 which requires states to define vote standards and uniformity.</p> <p>☐ Rule DOES "seek to reduce the burden upon those persons or entities who must comply with the rule" by providing predefined objective criteria to evaluate voter intent. HOWEVER, the criteria included referenced Numbered Memos, which have NO Statutory Authority within the 150B Administrative Procedures Act, therefore invalidating the included information and violating the compilation requirements of the Rule.</p> <p>☐ Rule IS clear but incomplete.</p> <p>☐ Rule DOES have a "cumulative effect" "related to the specific purpose of determining voter intent for which the rule is proposed." The cumulative effect of determining voter intent in the Rule is INCOMPLETE, relying on additional Numbered Memos which need to be incorporated into the RULE so as to carry out the tasks for which the Rule is required.</p> <p>☐ Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT achieve the requirements set forth in G.S. § 150B-2. Definitions. (8a) Rule "that describes the procedure or practice requirements of an agency", because it is INCOMPLETE in listing the procedure or practice requirements.</p>	<p>We agree there is statutory authority for the rule and that the rule is necessary. Thank you for your suggested revisions for later consideration.</p>	Select One	Select One

State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Jane Bilello: v Rule is intended to provide specific operational guidelines not detailed in the statutes, but FALLS SHORT as two (2) Numbered Memos were published to provide more specific details that are not contained in the Rule.  v Rule is NECESSARY to implement Statutes but fails to achieve multiple requirements of the referenced law.  v Rule contains references to NUMBERED MEMOS which have NO Statutory Authority under 150B Administrative Procedures Act. Those portions of the Rule are likewise INVALID.  v Rule is inadequate for the titled purpose and requires substantial revision.	We agree the rule is necessary. Thank you for your suggested revisions for later consideration. We do not agree that portions of the rule are invalid, but we will certainly welcome comments when addressing the substance of the rule in future rulemaking proceedings as part of this periodic review.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Jane Bilello: Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT achieve the requirements set forth in G.S. § 150B-2. Definitions. (8a) Rule "that describes the procedure or practice requirements of an agency", because it is INCOMPLETE in listing the procedure or practice requirements.	We agree that the rule is necessary. Thank you for your suggested revisions for later consideration.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Karen Raines: Although it is necessary, this rule contains references to NUMBERED MEMOS which have NO Statutory Authority under 150B Administrative Procedures Act, making those portions of the Rule likewise INVALID; as such the rule is inadequate for the titled purpose and requires substantial revision.	We agree the rule is necessary. Thank you for your suggested revisions for later consideration. We do not agree that portions of the rule are invalid, but we will certainly welcome comments when addressing the substance of the rule in future rulemaking proceedings as part of this periodic review.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Pamela Riley: Necessary	We agree.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Kenneth Harden: Rule is necessary. Rule DOES have a "cumulative effect" "related to the specific purpose of determining voter intent for which the rule is proposed." The cumulative effect of determining voter intent in the Rule is INCOMPLETE, relying on additional Numbered Memos which need to be incorporated into the RULE so as to carry out the tasks for which the Rule is required.  v Rule is NECESSARY for the stated purpose, but as it is written is UNNECESSARY because it DOES NOT achieve the requirements set forth in G.S. § 150B-2. Definitions. (8a) Rule "that describes the procedure or practice requirements of an agency", because it is INCOMPLETE in listing the procedure or practice requirements.	We agree that the rule is necessary. Thank you for your suggested revisions for later consideration.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Debbie Dante: Rule DOES "seek to reduce the burden upon those persons or entities who must comply with the rule" by providing predefined objective criteria to evaluate voter intent. HOWEVER, the criteria included referenced Numbered Memos, which have NO Statutory Authority within the 150B Administrative Procedures Act, therefore invalidating the included information and violating the compilation requirements of the Rule. Rule references the statutory authority under G.S. §163-22, Powers of State Board of Elections and G.S. §163-182.7, recount procedures) per G.S. §150B-21.2(c) (rule notice requirements) but EXCLUDES G.S. §163-165.3A (voter intent governs) and G.S. §163-182.1, Principals and rules for counting official ballots. Rule contains references to NUMBERED MEMOS which have NO Statutory Authority under 150B Administrative Procedures Act. Those portions of the Rule are likewise INVALID.	Thank you for your suggested revisions for later consideration. We do not agree that portions of the rule are invalid, but we will certainly welcome comments when addressing the substance of the rule in future rulemaking proceedings as part of this periodic review. It does not appear you disagree with the agency's initial determination that the rule is necessary.	Select One	Select One
State Board of Elections	08 NCAC 09 .0109	GUIDELINES FOR DETERMINING VOTER INTENT	Public Coment as defined in G.S. 150B-21.3A(a)(5)	Agnes Puzak: Eliminate this rule and retire Numbered Memo 2020-32. Voters are told in writing on the ballot and verbally instructed when receiving their ballot to "Completely fill in the oval". Warn the voters that any other marking, such as circling their choice or crossing out names, will cause their ballot to be invalidated and their vote will not count.	Thank you for your suggestion. To the extent your comment that the rule should be eliminated is an objection to the agency's initial determination that the rule is necessary, we disagree.	Select One	Select One