

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 01 .0107

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

***NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 7, replace "in which" with "where"*

*How can Paragraph (b) occur, given the language in G.S. 163-97?*

*On line 12, please capitalize "State" assuming you mean NC.*

*In (c), line 16, and elsewhere the term is used, what is "regularly scheduled" here? Is this known?*

*In (d)(1), line 26 what is "successful" here? Do you even need the term, or could you state "A petition approved pursuant to G.S. 163-96(a)(2)"?*

*On line 29, please end the sentence with a semicolon and "or"*

*On line 31, why is "Presidential" capitalized here? It is not elsewhere within the Rule.*

*On line 32, this is Paragraph (e) and on line 34, this will be Paragraph (f).*

*In (f), line 34, the cross-citation should be to "Subparagraph (d)(2)"*

*On line 36, consider deleting "but not limited to"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 01 .0107 is adopted as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 01 .0107 POLITICAL PARTY FORMATION, TERMINATION, AND REINSTATEMENT**

(a) Pursuant to G.S. 163-97, a political party ceases to be a political party on the date the State Board certifies the general State election in which the political party failed to poll for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors. Any voter registration form received after that date by a county board of elections in which the applicant chooses to affiliate with an expired political party shall be registered as “unaffiliated,” except that if the person is already registered to vote in the county and that person’s registration already contains a party affiliation, the county board of elections shall not change the registrant’s political party affiliation.

(b) Notwithstanding Paragraph (a), a political party shall not cease to be a political party under G.S. 163-97 if it submits to the State Board of Elections by the date of the state canvass documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election.

(c) Voters affiliated with an expired political party shall be changed to “unaffiliated designation” as required by G.S. 163-97.1 on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date the political party failed to continue its legal status as provided in G.S. 163-97.

(d) The State Board shall order the county boards of elections to change the registration affiliation of all voters who are recorded on the registration books as being affiliated with an expired political party at 5:00 P.M. on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration. Upon making the change, the county board of elections shall send each affected voter verification of the party change by mail in accordance with G.S. 163-82.17(b). However, an expired political party that submits to the State Board one of the following prior to noon on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration shall not have its affiliated voters changed to “unaffiliated designation”:

(1) A successful petition under G.S. 163-96(a)(2). The political party shall comply with all other petition processes and deadlines in G.S. 163-96(a)(2), (b), and (c), including submitting the signatures to each county board of elections no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board as provided in this Paragraph.

(2) Documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election.

(c) For purposes of this Rule, “expired political party” means a party that failed to continue its legal status as provided in G.S. 163-97.

(d) Documentation required under G.S. 163-96(a)(3) for the creation of a political party and under Subparagraph (b)(2) of this Rule for the reinstatement of an expired political party shall include any official State or federal government source, including but not limited to, official election results or statistics from a state or federal government website or publication.

- 1     *History Note:*     *Authority G.S. 163-22; 163-97.1;*
- 2                             *Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 09 .0106

### **DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), is there a corresponding deadline for the State Board to provide this notice?*

*And on line 7, what is a "regular notice list"?*

*Beginning with former Paragraph (e) on line 20, the paragraphs will be re-lettered to (d), (e), etc. This was published correctly in the NC Register, so you will not show it as a change made post-publication with highlighting and brackets.*

*In current (e), line 25, what is "diligently" here?*

*On line 31, please remove the underlining from the struck and bracketed language.*

*In current (g), Page 2, line 4, please insert a period after "recount."*

*In current (h), line 7, is this after the recount is completed?*

*In current (i), line 11, please remove the underlining from the struck and bracketed language.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: August 2, 2021

08 NCAC 09 .0106 is amended with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 09 .0106            GENERAL GUIDELINES**

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts. A county board of elections shall notice the recount at least 48 hours prior to the start of the recount. The county board shall send notice by email to the county board's regular notice list, county party chairs, and the candidates in the contest subject to the recount.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).

~~(d) In conducting recounts of direct record electronic machines and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.~~

(e) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) each separately recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally." If, after diligently seeking to fill the positions with voters affiliated with each of the two parties in the State with the largest number of registered voters, the county board still has an insufficient number of officials for the recount, the county board by a majority vote of its members, including at least one board member of each political party represented on the board, may appoint to the bi-partisan team an unaffiliated voter or voter affiliated with one of the other political parties. In no instance shall the county board appoint more than two members to a bi-partisan team who are unaffiliated or affiliated with one of the other political parties. Bi-partisan team members shall be registered voters in the [county] State. County board members shall not serve on the bi-partisan team.

(f) The county board of elections shall conduct recounts only as follows:

- (1) the recount is mandatory under G.S. 163-182.7(b) or ~~(e);~~ (c) or G.S. 163-182.7A; or
- (2) the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

1 (g) A candidate shall have the right to call for a hand-eye ~~recount~~ ~~recount, as to elections conducted by optical scan~~  
2 ~~systems~~ within 24 hours after a ~~mandatory or~~ discretionary recount in G.S. 163-182.7(a) or by noon on the next  
3 business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the  
4 discretionary recount first recount, unless human error resulted in the vote count change. A candidate shall have the  
5 right to call for a hand-eye sample recount within 24 hours after a mandatory machine recount, pursuant to G.S. 163-  
6 182.7A.

7 (h) Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next  
8 business day of the county board office, whichever is ~~later.~~ later, if the protest relates to the conduct of the recount.  
9 Allegations unrelated to the recount may not be included in the protest.

10 (i) Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan  
11 team of two county board members. Determinations of voter intent shall be made by [at least] a quorum of the board  
12 and at least one board member of each political party shall be represented.

13  
14 *History Note: Authority G.S. 163-22; 163-182.7;*  
15 *Temporary Adoption Eff. April 15, 2002;*  
16 *Eff. August 1, 2004;*  
17 *Readopted Eff. June 1, 2019;*  
18 *Amended Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 09 .0107

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*So that I'm clear – given the mandate in G.S. 163-182.7(d)(1), this Rule will apply to every type of voting system?*

*On line 9, the cross-reference will now be to .0106(d).*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 09 .0107 is amended as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 09 .0107        RECOUNT OF OPTICAL SCAN BALLOTS FIRST RECOUNT**

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment shall be counted again by machine, ~~the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines.~~ All ballots that ~~are~~ were rejected for tabulation purposes by the machines ~~—commonly called "outstacked" or center bin ballots—~~ shall be recounted by a bi-partisan team of four in accordance with ~~08 NCAC 09. 0106(f).~~ 08 NCAC 09. 0106(e) or duplicated and counted by machine. Ballots accepted by the machines shall not be counted by hand, regardless of whether the ballot is marked, contains overvotes, or is blank.

(b) ~~When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall determine if a second recount is necessary as follows:~~

~~(1) Determine whether the first recount produces a change in the winner in accordance with the following:~~

~~(A) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots; and~~

~~(B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed according to Subparagraph (2) of this Paragraph;~~

~~(2) Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:~~

~~(A) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and~~

~~(B) If the machine totals from the initial balloting and the first recount are not the same, the county board shall proceed according to Subparagraph (3) of this Paragraph;~~

~~(3) Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled. The county board shall examine all outstacked or center bin ballots from the first recount, determine how each ballot shall be counted according to Rule .0106(e) of this Section, and reconcile the count with the machine count on the initial balloting in accordance with the following:~~

~~(A) If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and~~

~~(B) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand to eye, of all ballots.~~

*History Note: Authority G.S. 163-22; 163-182.7;*  
*Temporary Adoption Eff. April 15, 2002;*



- 1                   *Eff. August 1, 2004;*
- 2                   *Readopted Eff. June 1, 2019;*
- 3                   *Amended Eff. September 1, 2021.*

08 NCAC 09 .0108 is repealed as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 09 .0108            RECOUNT OF DIRECT RECORD ELECTRONIC VOTING MACHINES**

*History Note:    Authority G.S. 163-22; 163-182.7;*  
*Temporary Adoption Eff. April 15, 2002;*  
*Eff. August 1, 2004;*  
*Readopted Eff. June 1, 2019;*  
*Repealed Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 09 .0109

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*This Rule is not an amendment; it is an adoption, as the former Rule .0109 was taken out of the Code. Please submit a new form, showing this is an adoption in Box 3, and change the language that refers to amendment in Box 9B. And on the Rule itself, please change the Introductory Statement to reflect that this is an adoption.*

*So that I'm clear – this Rule is to address the mandate of G.S. 163-182.7(d)(2), which states:*

(d) Rules for Conducting Recounts.--The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

- (1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by [G.S. 163-182.7A](#).
- (2) The rules shall provide guidance in interpretation of the voter's choice.
- (3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced.

*Is this correct?*

*Why do you need the language in the sentence on lines 6 to 8?*

*If you need it, what do you mean by "inappropriate manner" on line 7? Is this known to your regulated public?*

*On line 9, in Rule .0106, the term is "bi-partisan" Shouldn't it be the same here? Please note the same change for line 12.*

*Also on line 9, the cross-reference will now be to .0106(d).*

*On line 9 and throughout this Rule, what does "clearly" mean? Will this be determined by each bipartisan team?*

*In (b)(1), line 16, please either end the sentence with a period or insert an "and" after "ballot;."*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: August 2, 2021

*In (c)(1), line 22, and elsewhere the term is used, what is “properly”? Again, will this be for the bi-partisan team to determine?*

*In (c)(3), line 27, will it be for the bi-partisan team to determine if these “appear to indicate support”?*

*In (c)(4), line 30, please replace “and/or” with “or” assuming you mean circling the target area, circling the candidate’s name or both.*

*In (c)(5), line 36, “readily apparent” to the bi-partisan team?*

*In (c)(8), Page 2, line 9, do you need to have both “next” and “either before or after” here? They seem repetitive to me.*

*In (c)(13), line 23, please replace “which” before “indicates” with “that”*

*In (c)(14), line 26, what is a “substantial part” here?*

*On line 29, what is the url for the website?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 09 .0109 is amended as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 09 .0109      MANUAL HAND-TO-EYE RECOUNTS GUIDELINES FOR DETERMINING VOTER INTENT**

(a) As provided in G.S. 163-182.1(a), voter intent is the governing standard when questions arise about how to adjudicate markings on a ballot. Questions about voter intent may arise during a hand-to-eye recount if a voter marks the ballot in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise marks the ballot in a manner that causes the voter's choice to be in dispute. Determinations of voter intent shall be made by the county board. If the bipartisan team of four provided for in 08 NCAC 09. 0106(e) encounters a ballot that cannot be clearly identified as a vote for one candidate or another, the ballot must be set aside. During a hand-to-eye audit or recount, all ballots with a potential overvote or undervote shall be adjudicated by the county board at the conclusion of the tallying by the bipartisan team. If the subject to the recount was left blank—meaning there are no marks in the target or candidate area for the contest—the county board shall not need to determine voter intent and the ballot shall not be counted for any candidate in that contest.

(b) For purposes of this Rule, the following definitions apply:

- (1) "Target area" is the square or oval next to the candidate's name on the printed ballot;
- (2) "Candidate area" is the area between the lines separating candidate names, or the area that is clearly closer to one candidate's name than another, and includes the candidate's name and party affiliation, if listed.

(c) For any printed ballot that is to be counted hand-to-eye, the following guidelines shall be used in determining voter intent:

- (1) Any ballot that is properly marked in the target area for one candidate only shall be designated as a vote for that candidate.
- (2) If the names of all but one candidate are stricken through, the ballot shall be counted for the one candidate whose name was not stricken through.
- (3) If there are identical marks for two or more candidates, clarified by an additional or different mark or marks that appear to indicate support for one candidate, the ballot shall be counted as a vote for the candidate with the additional or different marks.
- (4) Any ballot that has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area and/or the candidate's name or making a mark in or around the target area or candidate's name, provided no other candidate for that office is similarly marked, shall be counted as a vote for that candidate.
- (5) Any ballot that has a mark or marks in the target area or candidate area for one candidate, which extends partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if a majority of the mark is in that candidate's area or target area, it is readily apparent that the voter intended to vote for that candidate, and no other candidate is similarly marked.

- (6) Marks extending across more than one candidate's area may be counted if the lines of the "x" or the bottom point of the check mark clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.
- (7) Any ballot that has a mark in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out, or otherwise obliterated, provided no other candidate is similarly marked.
- (8) Any ballot that has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark for that candidate. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark.
- (9) A mark that is between or across more than one candidate's name, candidate area, or target area shall not be recognized as a vote.
- (10) Any writing or comment on the ballot (other than a write-in) that clearly indicates the voter's support for one and only one candidate for the office, and that cannot be interpreted as a comment in favor of any other candidate in that election, shall be counted as a vote for that candidate.
- (11) Any ballot that is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted for that ballot item.
- (12) Any ballot on which there is no mark under the office, or any other mark or comment indicating support for a candidate for the office, is an undervote and shall not be counted as a vote for any candidate.
- (13) A mark that is clearly a negative or extraneous comment, or which indicates the voter's opposition to one or more candidates, shall be considered an undervote, provided the ballot is not so marked to indicate which candidate the voter supports.
- (14) If a substantial part of the candidate's name is crossed through or stricken out, the mark shall be considered an undervote and shall not be counted.

Examples of these guidelines applied to ballot markings are located in Numbered Memo 2020-32 on the State Board of Elections' website.

*History Note: Authority G.S. 163-22; 163-182.7;  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004;  
RRC Objection August 16, 2018 and rule returned to agency on June 1, 2019;  
Amended Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 20 .0101

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Throughout this Rule, please remove the underlining from the language you are now deleting. See lines 5, 8, 33, and 34.*

*I am simply asking – much of the language in this Rule is in statute. Do you need to recite it here?*

*In (b), lines 22, 23, 24, and 25, aren't the changes you are making post-publication to spell out 10 a.m. on the fifth day the same deadline you published, using different words? Was the change made post-publication to be as clear as possible?*

*In (d), Page 2, line 1, do you need the sentence "Observers in the voting enclosure are prohibited from engaging in certain activities."? It seems unnecessary to me in light of the language that follows it.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 20 .0101 is amended with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 20 .0101            ELECTION OBSERVERS**

(a) Observer Lists. The chair of each political party in a county may designate a total of two precinct-specific observers to attend each voting place on Election Day and each one-stop site during a primary or general election in accordance with this Rule. The precinct-specific observer list may include up to eight names and shall include the times that each observer shall serve. [Alternate precinct-specific observers are not permitted.] The county party chair may designate 10 additional at-large observers who may attend any voting place in the county. The list of observers for one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-specific observers, at each one-stop site. At-large observers may serve at any one-stop site. The chair of each State political party may designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

(b) Submission of Lists. The county party chair shall submit a written, signed list of county at-large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one-stop before 10:00 a.m. on the fifth day before the observer is to observe. ~~The party chair may provide the list by facsimile or email provided the letters are signed.~~ The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers. The list of at-large observers who serve during early voting may not be amended after 10:00 a.m. on the fifth day before the at-large observer is to observe. [and the ] The list of precinct-specific observers to serve on Election Day may not be amended after [the submission deadline] 10:00 a.m. on the fifth day prior to Election Day. The State party chair shall submit the written, signed list of State at-large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at-large observer and the county in which the observer is registered. The State Board shall confirm that each State at-large observer is a registered voter of the State. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.

(c) Observers at Voting Place. No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four ~~hours~~ hours; however, the total number of observers from each party [per day] cannot exceed three total observers in the voting enclosure at one time: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.



(d) Observer Conduct. Observers in the voting enclosure are prohibited from engaging in certain activities. Observers who engage in prohibited conduct after receiving a warning may be required by the chief judge to leave the voting enclosure. Prohibited activities by observers include:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

(e) Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.

(f) Observers for unaffiliated candidates. An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as set forth in this Rule.

(g) The use of the term "chief judge" includes one-stop site managers.

*History Note: Authority G.S. ~~163A-741; 163A-821; 163A-1136; 163A-1137; 163-22; 163-45; 163-166.6; 163-166.7;~~  
Eff. October 1, 2018;  
Amended Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0102

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b), lines 17-18, and (e), Page 2, lines 16-17, what is an "authorized officer or authorized representative"? I take it authorized by the filer, but how is it known that this authorization has occurred?*

*I take it the contents of the forms mentioned in Paragraphs (c) and (i) are what is set forth in Paragraph (c)?*

*On line 21, is your website url known?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: August 2, 2021

08 NCAC 21 .0102 is amended with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0102            REPORTING OF INDEPENDENT EXPENDITURES**

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report independent expenditures under G.S. 163-278.12(a) has made independent expenditures with a present actual or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the individual, person, or entity shall report all independent expenditures, and any donations made to further independent expenditures, with the following board of elections:

- (1) if the district of the candidate or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) An independent expenditure filer is the individual, person, or other entity making a reportable independent expenditure under G.S. 163-278.12(a). If the independent expenditure filer is an individual, the individual shall sign all reports. If the independent expenditure filer is a person or other entity, an authorized officer or an authorized representative of the person or entity shall sign all reports.

(c) The independent expenditure filer shall file CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures available on the State Board's website unless the independent expenditure filer files reports electronically consistent with 08 NCAC 21 .0106. Independent expenditure reports filed with the county board of elections or the State Board shall include all of the following:

- (1) the independent expenditure filer's name and mailing address;
- (2) a phone number for the independent expenditure filer;
- (3) if the independent expenditure filer is an individual, the filer's principal occupation as defined in G.S. 163-278.11(a)(1);
- (4) if the independent expenditure filer is a person or entity, the principal place of business of the person or entity;
- (5) for each independent expenditure made:
  - (A) The name and mailing address of the payee;
  - (B) The amount paid;
  - (C) The date the expenditure was incurred;
  - (D) A description of the expenditure; and
  - (E) The name of the candidate, candidates of an identified political party, or referendum supported or opposed by the independent expenditure;

- (6) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):
- (A) the donor's name and mailing address;
  - (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-278.11(a)(1);
  - (C) if the donor is a person or entity, the principal place of business of that person or entity;
  - (D) the amount of the donation; and
  - (E) the date of the donation; and
- (7) a certification as to whether any expenditures reported were made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), a referendum committee, the agent of a candidate, the agent of a candidate campaign committee, or an agent of a referendum committee.
- (d) An independent expenditure filer that makes expenditures with a present, actual, or market value in excess of five thousand dollars (\$5,000.00) during an election as defined in G.S. 163-278.6(30) shall file independent expenditure reports electronically consistent with 08 NCAC 21 .0106.
- (e) For each independent expenditure report filed electronically, the individual or an authorized officer or an authorized representative of the independent expenditure filer shall sign the Independent Expenditure Report Cover and the independent expenditure filer shall file the signed original in accordance with Paragraph (g) of this Rule with the board of elections identified in Paragraph (a) of this Rule.
- (f) The independent expenditure filer shall complete and file forms within the time period set forth in G.S. 163-278.12(d). An independent expenditure filer that makes a reportable independent expenditure within 10 days of an election, and has not previously reported independent expenditures during the election the independent expenditure affects, shall file reports no later than the 10th day after independent expenditures exceed one hundred dollars (\$100.00). After the initial report, the independent expenditure filer shall continue to file independent expenditure reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the independent expenditure filer makes independent expenditures in support of or in opposition to municipal candidates or municipal ballot issues, the independent expenditure filer shall report all independent expenditures according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.
- (g) A report is considered filed either:
- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections;
  - (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4; or
  - (3) for an independent expenditure report filed electronically pursuant to Paragraph (d) of this Rule, on the date the completed report is emailed to the State Board of Elections at [campaign.reporting@ncsbe.gov](mailto:campaign.reporting@ncsbe.gov).

1 (h) A report that is missing any of the information in Paragraph (c) of this Rule shall not be considered filed in  
2 accordance with G.S. 163-278.12(d).

3 (i) An independent expenditure filer that makes an expenditure of five thousand dollars (\$5,000) or more or receives  
4 a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report  
5 due before that election, shall file a 48-hour report with the State Board or county board of elections using forms  
6 available on the State Board's website. An independent expenditure filer that makes a reportable independent  
7 expenditure within 10 days of an election, and has not previously reported independent expenditures during the  
8 election the independent expenditure affects, shall file 48-hour reports in accordance with this Paragraph. A 48-hour  
9 report shall be made using CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further  
10 Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures. 48-hour reports may be  
11 filed by fax or email.

12  
13 *History Note: Authority G.S. 163-278.12; 163-278.21; 163-278.22;*  
14 *Eff. May 1, 2020;*  
15 *Amended Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0103

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b), line 15, what is an "authorized officer or authorized representative"?*

*Are the contents of the forms referenced in Paragraphs (c) and (g) set forth in Paragraph (c)?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: August 2, 2021

08 NCAC 21 .0103 is amended with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0103           REPORTING OF SPECIAL CONTRIBUTIONS**

(a) Once a person as defined in G.S. 163-278.6(72) or other entity required to report contributions under G.S. 163-278.12(b) has made contributions with a present, actual, or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the person or entity shall report all contributions made, and any donations made to further contributions, with the following board of elections:

- (1) if the district of the candidate, committee, or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate, committee, or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) A special contributor is the person or other entity making a reportable contribution under G.S. 163-278.12(b). An authorized officer or an authorized representative of the person or entity shall sign all reports.

(c) When reporting contributions, the special contributor shall file CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees available on the State Board's website. Special contributor reports filed with the county board of elections or the State Board of Elections shall include all of the following:

- (1) the special contributor's name and mailing address;
- (2) the special contributor's principal place of business;
- (3) for each contribution made;
  - (A) the name and mailing address of the recipient committee;
  - (B) the amount of the contribution;
  - (C) the date of the contribution; and
  - (D) for any in-kind contribution, a description of the expenditure;
- (4) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):
  - (A) the donor's name and mailing address;
  - (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-2778.11(a)(1);
  - (D) if the donor is a person, the principal place of business of that person;
  - (E) the amount of the donation;
  - (F) the date of the donation;

(d) The special contributor shall complete and file forms within the time period set forth in G.S. 163-278.12(d). A special contributor that makes a reportable contribution within 10 days of an election, and has not previously reported contributions during that election, shall file reports no later than the 10th day after contributions exceed one hundred

dollars (\$100.00). After the initial report, the special contributor shall continue to file special contributor reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the special contributor makes contributions in support of or in opposition to municipal candidates or municipal ballot issues, the special contributor shall report all contributions according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.

(e) A report is considered filed either:

(1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections; or

(2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(f) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12(d).

(g) A special contributor that makes a contribution of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report due before that election, shall file a 48-hour report with the State Board or county board of elections using forms available on the State Board's website. A special contributor that makes a reportable contribution within 10 days of an election, and has not previously reported contributions during that election, shall file 48-hour reports in accordance with this Paragraph. A 48-hour report shall be made using CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees. 48-hour reports may be filed by fax or email.

*History Note: Authority G.S. 163-278.12; 163-278.21; 163-278.22;*

*Eff. May 1, 2020;*

*Amended Eff. September 1, 2021.*



## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0104

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 7, I do not understand the phrase, "... an election as defined in G.S. 163-278.6(8j)" as that statute defines "electioneering communication." Are you saying here that if there is an electioneering communication, then the individual/person/entity shall report it?*

*In (b), lines 16-17, what is an "authorized officer or authorized representative"?*

*Are the contents of the forms referenced in Paragraphs (d) and (h) set forth in Paragraph (d)?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 21 .0104 is amended with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0104           REPORTING OF ELECTIONEERING COMMUNICATIONS**

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report electioneering communications under G.S. 163-278.12C has incurred an expense for the direct cost of producing or airing electioneering communications with a present actual or market value aggregating in excess of five thousand dollars (\$5,000) during an election as defined in G.S. 163-278.6(8j), the individual, person, or entity shall report all electioneering communications, and any donations made to further electioneering communications, with the following board of elections:

(1) if the district of the candidate referred to is within one county, and the candidate is not running for a legislative, judicial or district attorney office, the report shall be filed with the county board of elections; or

(2) if the district of the candidate referred to extends to more than one county, or the candidate is running for a legislative, judicial or district attorney office, the report shall be filed with the State Board.

(b) For an individual required to report electioneering communications, the individual shall sign all reports. For a person or other entity required to report electioneering communications, an authorized officer or an authorized representative of the person or entity shall sign all reports.

~~(b)(c)~~ The direct cost of producing or airing electioneering communications includes, but is not limited to, the cost of studio rental time; video or audio recording media; staff salaries; consultant fees; talent; airtime on broadcast, cable or satellite radio and television stations; and the charges for a broker to purchase the airtime.

~~(c)(d)~~ When reporting electioneering communications, the individual, person, or entity shall file CRO-2310 Electioneering Communications Report Cover, CRO-2320 Controlling/Directing Entity List; CRO-2330 Receipts for Electioneering Communications, and CRO-2340 Incurred Costs for Electioneering Communications available on the State Board's website. Electioneering Communication reports filed with the county board of elections or the State Board of Elections shall include all of the following:

- (1) the name and mailing address of the individual, person, or entity incurring the expense;
- (2) a phone number for the individual, person, or entity incurring the expense;
- (3) the name and mailing address of the custodian of the books and accounts of the individual, person, or entity incurring the expense;
- (4) if the expense is incurred by an individual, the individual's principal occupation as defined in G.S. 163-278.11(a);
- (5) if the expense is incurred by a person or entity, the principal place of business of the person or entity;
- (6) if an individual, person, or entity is sharing or exercising direction or control over the activities of the individual, person, or entity incurring the expense with regards to the electioneering communication:
  - (A) the name and mailing address of the individual, person or entity sharing or exercising direction or control;

- (B) if an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1);  
and  
(C) if a person or entity, the principal place of business of the person or entity;
- (7) for each electioneering communication reported:
- (A) the name and mailing address of each individual, person or entity paid to produce the electioneering communication;
- (B) the amount paid to each individual, person or entity to produce the electioneering communication;
- (C) the date of the electioneering communication;
- (D) a description of the electioneering communication, including any title; and
- (E) the name of the candidate or candidates referred to in the electioneering communication;
- (8) for each donation of more than one thousand dollars (\$1,000) during the reporting period made to further the electioneering communication:
- (A) the donor's name and mailing address;
- (B) if the donor is an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1);
- (C) if the donor is a person or entity, the principal place of business of the person or entity;
- (D) the amount of the donation; and
- (E) the date of the donation.
- ~~(d)(e)~~ The individual, person, or entity required to report electioneering communications shall ~~complete and sign~~ file the forms within the time period set forth in G.S. 163-278.12C(b). After the initial report, the individual, person, or entity incurring the expense shall continue to file electioneering communications reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election.
- ~~(e)(f)~~ A report is considered filed either:
- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections; or
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.
- (g) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12C.
- (h) A 48-hour report shall be filed with the State Board of Elections or county board of elections using forms provided by the State Board if an individual, person or entity that produces or airs an electioneering communication incurs an expense of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more for making an electioneering communication before an election but after the period covered by the last report due before that election. A 48-hour report shall be made using CRO-2310 Electioneering Communications Report Cover, CRO-

1 2320 Controlling/Directing Entity List, CRO-2330 Receipts for Electioneering Communications, and CRO-2340  
2 Incurred Costs for Electioneering Communications. 48-hour reports may be filed by fax or email.

3

4 *History Note:* Authority G.S. 163-278.12C; 163-278.21; 163-278.22;

5 Eff. May 1, 2020;

6 Amended Eff. September 1, 2021.

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0107

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*On line 4, please insert a comma after "disclosures"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 21 .0107 is adopted as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0107        ELECTRONIC SIGNATURE**

Any political committee, referendum committee, or other filer authorized to submit reports, disclosures or certifications consistent with 08 NCAC 21 .0106 may use an electronic signature permissible under G.S. 66-58.5.

*History Note:     Authority G.S. 163-278.9; 163-278.21;*

*Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0202

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 6, and elsewhere the term is used, is "board of elections" referring to the county board?*

*In (a)(2), I take it the contents of this form are what are in the cited laws?*

*In (c), line 15, what are the contents of this certification? Is it what is in (a)(1)?*

*In (e), so that I'm clear – this will apply to submitting the certification in (a)(1) and (b), correct?*

*In (f), line 24, what makes a committee "eligible" to close? Is it meeting the requirements of this Rule?*

*On lines 27-28, what is a "final examination" here? And what are "all potential prohibited transactions"?*

*On lines 29-30, when will this occur? Is this what is addressed in (h)?*

*Please end (h)(2), Page 2, line 3, with a period, rather than a semicolon.*

*In the History Note, G.S. 163-278.6(74) defines the term "political committee" It does not confer rulemaking authority. I'd put this citation within the Rule text (maybe on line 4, "A political committee as defined in G.S. 163-278.6(74) may close...") and remove it from the History Note.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 21 .0202 is adopted with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0202            PROCEDURES FOR CLOSING A COMMITTEE**

(a) A political committee may close and cease filing reports according to the schedules set forth in G.S. 163-278.9 or Article 22A, Part 2 if it stops receiving contributions or making expenditures and disposes of all assets and liabilities.

In order to close, a political committee shall file all of the following with the board of elections:

(1) a certification that the political committee intends to close and cease existence and that all assets have been disposed of and reported; and

(2) a Final Report setting forth the information in G.S. 163-278.11 and covering the period since the last report filed under G.S. 163-278.9 or Article 22A, Part 2. The Final Report shall disclose no cash on hand at the end date of the reporting period; no outstanding loans, and no outstanding debts and obligations owed by the political committee.

(b) A political committee that qualifies under threshold in accordance with G.S. 163-278.10A shall only file a certification as described in Subparagraph (a)(1) of this Rule.

(c) A political committee shall file the certification and Final Report by filing forms available on the State Board of Elections website with the board of elections. The certification and Final Report are considered filed:

(1) on the date received by hand-delivery during regular business hours at the board of elections;

(2) on the date postmarked by the United States Postal Service or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(d) Notwithstanding Paragraph (c) of this Rule, a political committee required to file reports electronically pursuant to G.S. 163-278.9(i) shall complete and file a Final Report consistent with 08 NCAC 21 .0106. All other political committees may elect to file a Final Report consistent with 08 NCAC 21 .0106.

(e) The certification in Subparagraph (a)(1) of this Rule shall be filed within 15 calendar days of the Final Report.

(f) Upon receipt of the certification and Final Report, a political committee that is eligible to close shall be placed in “closed pending” status. A political committee that is closed pending is not required to file reports under G.S. 163-278.9 or Article 22A, Part 2. A political committee that is closed pending shall continue to preserve records consistent with G.S. 163-278.35. The political committee shall be closed after the board of elections completes a final examination of the political committee’s reports and all potential prohibited transactions are resolved and all amended reports are filed. The State Board may order a committee closed that has not resolved potential prohibited transactions or filed amended reports.

(g) A candidate committee shall not close after the candidate supported files a notice of candidacy, or the candidate’s name has been placed on the general election ballot pursuant to G.S. 163-122. A candidate committee may close after the candidate supported withdraws as a candidate pursuant to G.S. 163-106.4 or after the certificate of nomination or election is issued under G.S. 163-182.15.

(h) A political committee shall not close if:

(1) the political committee has failed to file a report required by G.S. 163-278.9 or Article 22A, Part 2;  
or



1           (2)       the political committee has ~~an unpaid penalty~~ a penalty assessed under G.S. 163-278.34 that remains  
2                   unpaid within three years of the date the assessment was due. A political committee may close after  
3                   the State Board waives a penalty under G.S. 163-278.34;

4       (i) A closed or closed pending political committee may re-open at any time. A committee shall be re-opened upon  
5       receipt of an Organizational Report as described in G.S. 163-278.9(a)(1). A political committee shall be assigned the  
6       same ID Number issued by the board of elections upon re-opening.

7  
8       *History Note:*     *Authority G.S. 163-278.6(74); 163-278.21;*  
9                         *Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0203

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 5, what "board of elections" are you referring to? The county board?*

*In (a)(3), so that I'm clear – there will never be an election in odd-numbered year that will be governed under this Rule?*

*In (b), line 14, please insert a comma after "G.S. 163-278.40D"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: August 2, 2021

08 NCAC 21 .0203 is adopted as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0203            CERTIFICATION OF THRESHOLD**

(a) A political committee that intends to stay within the threshold in G.S. 163-278.10A for a subsequent election cycle shall file a certification with the board of elections according to the following schedule:

(1)        for a candidate committee with an election cycle ending on December 31 of an odd-numbered year, by January 31 of the next even-numbered year.

(2)        for a candidate committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.

(3)        for a political party committee or affiliated party committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.

(b) A political committee that fails to file the certification by the due date in Paragraph (a) of this Rule, shall be responsible for filing all reports required in G.S. 163-278.9 or G.S. 163-278.40B, G.S. 163-278.40C, G.S. 163-278.40D or G.S. 163-278.40E for the subsequent election cycle.

*History Note:     Authority G.S. 163-278.10A; 163-278.21;  
                              Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0401

### **DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*The name of the Rule is not the same on Box 2 of the Submission for Permanent Rule form (on the form, the term is "Examination" singular; on the Rule, it is "Examinations" plural). Please amend the Rule or the form so that they match.*

*In (a), line 4, what is the "given period" here? The reporting period determined by law?*

*On line 5 and line 21, what do you mean by "detailed"?*

*On line 5, consider deleting "but not limited to"*

*On line 7, please insert a comma after "22M"*

*Also, what do you mean by "the truth"? If you are referring to the language in G.S. 163-278.24, I suggest stating that here. "... 22M, or to the truth, as set forth in G.S. 163-278.24."*

*On line 11, since you are defining "good cause" with (a)(1) through (5), I recommend putting the phrase in quotes here. "For the purposes of this Rule, "good cause" exists when:"*

*In (a)(1), line 12, (a)(2), line 13, (a)(3), line 15, please insert a comma after "assistant treasurer"*

*In (a)(3), line 16, please capitalize "State" in "state-declared"*

*In (a)(5), how will this be determined exactly? What do you mean by "sufficient response"?*

*In (c), lines 31 and 32, respond how?*

*In (e), Page 2, line 1, replace "in which" with "that" or "when"*

*In (f), line 3, what does "regularly" mean here?*

*In the History Note, please put the citations in numerical order.*

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: August 2, 2021

*I do not think you need to cite to G.S. 136-278.24 in the History Note, but should instead insert it into the Rule text.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

08 NCAC 21 .0401 is adopted as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0401 EXAMINATIONS BY STATE BOARD OF ELECTIONS**

(a) After completing an examination of reports for a given period, State Board staff shall submit in writing to the treasurer any requests to inspect detailed accounts, requests to inspect bank records, including but not limited to checks or other written verifications of payment, or other questions related to a report's conformance to Article 22A, Article 22M or to the truth. If a candidate committee, a copy of the correspondence shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond with the requested records or written answers to questions within 15 business days. An extension of time may be granted for good cause. To obtain an extension of time, the treasurer or assistant treasurer shall submit the request in writing within 15 business days of receiving the request for records or written answers. For purposes of this Rule, good cause exists when:

- (1) there is a death in the family of the candidate, treasurer, assistant treasurer or custodian of books;
- (2) the candidate, treasurer, assistant treasurer or custodian of books, or someone in his or her family, is ill or hospitalized;
- (3) the candidate, treasurer, assistant treasurer or custodian of books is unable to provide a timely response due to a state-declared natural disaster;
- (4) there is any change in the name, address or email address of the treasurer within 10 calendar days preceding the submission of the written requests or questions; or
- (5) due to the complexity of the response required, State Board staff determines additional time is necessary for the committee to provide a sufficient response.

(b) State Board staff shall submit any subsequent requests to inspect detailed accounts, requests to inspect bank records, or other questions in writing to the treasurer. For each subsequent submission of requests or questions, the treasurer or assistant treasurer shall respond within 15 business days. An extension of time may be granted for good cause consistent with Paragraph (a) of this Rule.

(c) After the expiration of time for all requests and questions in Paragraphs (a) and (b) of this Rule, State Board staff shall prepare a draft examination memorandum. The draft examination memorandum shall set forth any potential prohibited transactions, reporting errors, or informational items identified by State Board staff during the examination. The draft examination memorandum shall include any recommendations for corrective actions and requests that the committee amend any reports. A copy of the draft examination memorandum shall be submitted in writing to the treasurer. If a candidate committee, a copy of the draft examination memorandum shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond in writing within 20 business days.

(d) After the expiration of time in Paragraph (c) of this Rule, State Board staff shall finalize the examination memorandum. State Board staff shall note any amended reports filed by the treasurer prior to the expiration of time in Paragraph (c) of this Rule. State Board staff shall publish a copy of the final examination memorandum and a copy of any written response provided by the treasurer or assistant treasurer on the State Board of Elections website.

1 (e) Any day in which the State Board of Elections office is closed shall not be counted as a business day for the  
2 purpose of this Rule.

3 (f) This Rule shall not apply to any examination by a county board of elections of a committee that regularly files  
4 reports with the county board of elections.

5  
6 *History Note: Authority G.S. 163-278.21; G.S. 163-278.24; G.S. 163-278.8;*

7 *Eff. September 1, 2021.*

## **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Board of Elections

RULE CITATION: 08 NCAC 21 .0501

**DEADLINE FOR RECEIPT: Friday, August 13, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*On line 4, please insert a comma after "surface"*

*The change in size made to this Rule post-publication nearly triples the allowed size. Was this change made in response to public comment?*

*And what are "flags or banners" here?*

*In the History Note, please put the citations in numerical order.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: August 2, 2021



08 NCAC 21 .0501 is adopted with changes as published in 35:19 NCR 2123-2133 as follows:

**08 NCAC 21 .0501 BILLBOARDS**

For the purpose of Chapter 163, Article 22A, Part 1A, a “billboard” is any sign, flat surface or other display greater than ~~2,160 square inches.~~ 50 square feet. This definition shall not include flags or banners.

*History Note: Authority G.S. 163-278.39; 163-278.21;*

*Eff. December 1, 2021.*