

Burgos, Alexander N

Subject: FW: 08 NCAC 04 .0308 and .0309
Attachments: 12.2022 SBOE Rule Return 08 NCAC 04 .0308 and .0309.pdf

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, December 16, 2022 10:19 AM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RE: 08 NCAC 04 .0308 and .0309

Good morning Paul,

Thank you for your email. Please see the attached letter which memorializes the return of the above captioned rules.

As always if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: 08 NCAC 04 .0308 and .0309

From: Cox, Paul <paul.cox@ncsbe.gov>

Sent: Thursday, December 15, 2022 9:26 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>

Subject: RE: 08 NCAC 04 .0308 and .0309

Good evening, Bill.

In response to the Commission's objections communicated in your email below, and due to the scope of the objections, we have concluded that we will need to restart rulemaking on these rules. Accordingly, the State Board will not be resubmitting these rules with changes at this time and requests the return of the rules, pursuant to G.S. 150B-21.12(a)(2) & (d).

Best regards,

Paul Cox | General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

430 N SALISBURY STREET

RALEIGH, NC 27611

919.814.0700

www.ncsbe.gov

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, November 17, 2022 1:30 PM
To: Cox, Paul
Cc: Burgos, Alexander N
Subject: 08 NCAC 04 .0308 and .0309
Attachments: 11.2022 - Elections Objection Letter 08 NCAC 04 .0308 and .0309.docx; 11.2022 Staff Opinion BOE 08 NCAC 04 .0308.doc; 11.2022 Staff Opinion BOE 08 NCAC 04 .0309.doc

Paul,

Attached please find the written statement of objection pursuant to G.S. 150B-21.12 concerning the above captioned rules.

If you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, November 16, 2022 10:51 AM
To: Cox, Paul
Cc: Burgos, Alexander N
Subject: 08 NCAC 04 .0309
Attachments: 11.2022 Staff Opinion BOE 08 NCAC 04 .0309.doc

Good morning Paul,

Attached please find the staff opinion I have issued on the above captioned rule. I apologize for the late notice.

As always if you have any question or concerns please do not hesitate to contact me.

William W. Peaslee
RRC Counsel

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: Consideration of 08 NCAC 04 .0308 and .0309 by RRC
Attachments: 08 NCAC 04 .0309 Nondisclosure Agreement for Review of Escrowed Materials (post request for changes).docx; 09.2022 Elections Request for Changes - SBE responses.docx; 08 NCAC 04 .0308 Authorized Access to Escrow Materials (post request for changes).docx

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, November 7, 2022 8:32 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

Good morning, Bill.

Please find attached the State Board of Elections' responses to the Request for Changes for Rules 08 NCAC 04 .0308 and .0309 and revised rule drafts incorporating requested changes. We look forward to considering any further comments or questions prior to the Commission's meeting.

Best regards,

Paul

Paul Cox | General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
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Burgos, Alexander N

Subject: FW: Consideration of 08 NCAC 04 .0308 and .0309 by RRC
Attachments: 08 NCAC 04 .0309 Nondisclosure Agreement for Review of Escrowed Materials (post request for changes).docx; 09.2022 Elections Request for Changes - SBE responses.docx; 08 NCAC 04 .0308 Authorized Access to Escrow Materials (post request for changes).docx

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, November 7, 2022 8:32 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

Good morning, Bill.

Please find attached the State Board of Elections' responses to the Request for Changes for Rules 08 NCAC 04 .0308 and .0309 and revised rule drafts incorporating requested changes. We look forward to considering any further comments or questions prior to the Commission's meeting.

Best regards,

Paul

Paul Cox | General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
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1 **INTRODUCTORY STATEMENT**

2 The following rule, 08 NCAC 04 .0308, was adopted by the State Board of Elections on July 14, 2022 with changes.
3 Notice of the proposed rule was published in the North Carolina Register on April 1, 2022, Volume 36, Issue 19, pages
4 1524 –1527.

6 **08 NCAC 04 .0308 AUTHORIZED ACCESS TO VOTING SYSTEM INFORMATION IN ESCROW**

7 (a) Subject to the provisions of this Rule, upon written request from a person or entity authorized under G.S. 163-
8 165.7(a)(6) to a vendor of a certified voting system in this state, the vendor shall make available for review and
9 examination any information placed in escrow under G.S. 163-165.9A to an authorized person. The person or entity
10 making the request shall simultaneously provide a copy of the request to the State Board. The State chairs of each
11 political party recognized under G.S. 163-96 who otherwise satisfy the requirements as “authorized persons” shall be
12 granted no more than one request for review and examination of a certified version of a voting system every two years.
13 This Rule is not intended to does not address or restrict the pre-certification review of a vendor’s source code under
14 G.S. 163-165.7(e).

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

17 (1) Is an agent:

- 18 (A) designated by majority vote in a public meeting by the State Board or a purchasing county’s
19 board of commissioners;
20 (B) designated in writing by the chair of a political party recognized under G.S. 163-96; or
21 (C) designated in writing by the Secretary of Department of Information Technology. No more
22 than three people may be designated by an authorized entity under G.S. 163-165.7(f)(9);
23 G.S. 163-165.7(f)(9);

24 (2) ~~Has submitted to a criminal background history record check, to be facilitated by the State Board, as~~
25 ~~provided for in G.S. 163-27.2(b) and been approved by the Executive Director of the State Board~~
26 ~~has not been convicted of a disqualifying offense. Disqualifying offenses include shall be all~~
27 ~~felonies, and any misdemeanor misdemeanors that involves involve theft, deception, the unlawful~~
28 ~~concealment or dissemination of information, falsification or destruction of records, or the unlawful~~
29 ~~access to information or facilities. The Executive Director of the State Board has the discretion to~~
30 ~~deny a person authorization under this Rule based on one or more convictions returned by the~~
31 ~~criminal background check indicating the person is unsuitable to review and examine the~~
32 ~~information placed in escrow. The Executive Director shall resolve any doubts concerning the~~
33 ~~person's suitability in favor of election integrity and security. A single conviction for a minor~~
34 ~~offense, as defined in the State Board of Elections' Criminal Background Check Policy, does not~~
35 ~~constitute a basis to deny a person authorization. The requirement to submit to a criminal~~
36 ~~background history record check does not apply to State employees who have already submitted to~~
37 ~~a criminal background history record check for State employment. employment:~~

- 1 (3) Has submitted to the State Board of Elections a sworn affidavit, under penalty of perjury, attesting
2 that the person:
- 3 (A) has never been found by a court of law, administrative body, or former or current employer
4 to have disclosed without authorization confidential information that the person had access
5 to;
- 6 (B) has never been, either in their private capacity or in any capacity as an agent for another
7 person or entity, subject to any civil or criminal claims alleging misappropriation of a trade
8 secret, violation of confidentiality agreement or nondisclosure agreement, copyright
9 infringement, patent infringement, or unauthorized disclosure of any information protected
10 from disclosure by law, except to the extent any such claims were dismissed with prejudice
11 and not pursuant to a settlement agreement; and
- 12 (C) has never had a security clearance issued by a ~~Federal~~federal agency revoked for any reason
13 other than expiration of the ~~clearance~~clearance;
- 14 (4) Has entered into the Confidentiality and Nondisclosure Agreement with the vendor and State Board
15 of Elections as provided in 08 NCAC 04 .0309. 08 NCAC 04 .0309.
- 16 (5) Has consented in writing to searches of their person and effects to be conducted immediately prior
17 to and during review of the subject ~~information.~~ information; and
- 18 (6) Is a citizen of the United States.

19 (c) Within 20 days of ~~Upon~~ meeting the definition of an authorized person in Paragraph (b) of this Rule, the Executive
20 Director of the State Board shall issue a written authorization to the person or entity making the request under
21 Paragraph (a) of this Rule to review and examine information placed in escrow by a voting system vendor. The
22 authorization shall be presented by the person or entity to the vendor prior to gaining access to such information under
23 this Rule.

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

- 26 (1) The information in escrow shall be made available by the vendor on up to three computers provided
27 by the vendor (one for each potentially designated agent under G.S. 163-165.7(f)(9)) that are not
28 connected to any network and are located within a secure facility, as described in Part (d)(3)(A)
29 below, designated by the State Board of Elections. Such computers shall be preloaded with software
30 tools necessary for use in viewing, searching, and analyzing the information subject to review,
31 including tools permitting automated source code review that are preapproved by the vendor and
32 the State Board. Such computers shall have the following access controls:
- 33 (A) Credentials ~~must~~ shall be traceable to individuals. Generic login accounts are not
34 authorized. Sharing of accounts and reuse of credentials is ~~prohibited, each~~ prohibited.
35 Each user must have their own assigned login account.
- 36 (B) Only one administrative account will ~~shall~~ be present on the system to allow for the initial
37 provisioning of necessary applications and setup of security controls.

- (C) Where passwords are used to authenticate authorized individuals, login accounts must shall use complex passwords. An example of a A sufficiently complex password is one that is not based on common dictionary words and includes no fewer than 10 characters, and includes at least one uppercase letter, one lowercase letter, one number, and a special character.
- (D) Screen lock times must shall be set to no longer than 10 minutes. All computers shall be locked or logged out from whenever they are not being immediately attended and used.
- (E) The entire hard drive on any computer must have full disk encryption. Where possible, the minimum encryption level shall be AES-256.
- (F) After the information subject to review and software tools for viewing are loaded on the computers, all ports shall be sealed with tamper-evident seals.
- (G) After the ports are sealed, no input/output or recording devices may be connected to the computers. The State Board shall provide for the secure storage of any equipment used for the duration of the review.
- (2) The computers must shall be air-gapped and shall not be connected to a network, and any feature allowing connection to a network shall be disabled. Prohibited network connections include the Internet, intranet, fax, telephone line, networks established via modem, or any other wired or wireless connection.
- (3) The secure facility designated by the State Board under Subparagraph (1) of this Paragraph is the specific location where the computing equipment will be stored and the review conducted, and may be a secured portion of a building. All conduct within the facility shall meet the following conditions:
- (A) The facility must be secured from unauthorized access for the entire review period. For the entire review period, the facility must be secured from access by any person not designated under Subparagraph (b)(1), Part (d)(3)(F), and Subparagraph (d)(7) of this Rule.
- (B) Only individuals authorized under Subparagraph (b)(1), Part (d)(3)(F), and Subparagraph (d)(9) Subparagraph (d)(7) of this Rule may enter the facility. Such individuals must present government-issued photo identification upon initial entry, and may be asked to show identification multiple times throughout the review period.
- (C) Each time an individual accesses the facility, the State Board or its designee shall record the name of the individual, the time of their entry, the time of their departure, and a description of any materials brought in or out of the facility shall be logged.
- (D) All equipment used in the review, as specified in Subparagraph (d)(1) of this Rule, must remain in the facility during the review period.
- (E) No authorized person pursuant to this Rule may possess any removable media device, cell phone, computer, tablet, camera, wearable, or other outside electronic device within the

1 facility where the person is accessing information in escrow. No authorized person may
2 attempt to connect the computers used in the review to any network.

3 (F) State personnel who are designated by the Executive Director of the State Board of
4 Elections and who also satisfy the conditions set forth in Subparagraphs (b)(2) through
5 (b)(5) shall have access to the facility where the review is being conducted at all times, to
6 monitor the process and ensure that all requirements of this Rule are complied with. State
7 personnel may require persons Persons entering and/or or leaving the facility to shall
8 submit to inspection and the removal of any unauthorized devices. State personnel
9 designated pursuant to this subsection shall have the right to inspect the computers used in
10 the review before and after the review for compliance with Subparagraphs (d)(1) and
11 (d)(2).

12 ~~(G) Access allowed to authorized individuals may be conditioned upon their prior submission~~
13 ~~to searches of their persons and possessions.~~

14 (4) Authorized persons are permitted to perform manual source code review and use code analysis tools,
15 as provided in Subparagraph (1) of this Paragraph, to analyze the source code. This source code
16 review shall be performed using “read only” access and any authorized person shall not interact with
17 or perform testing of the software components.

18 (5) Any review performed pursuant to this Rule shall occur during the State Board’s regular business
19 hours and shall last no longer than two work weeks ten business days. Such review shall not occur
20 during the period from the start of one-stop absentee voting through the conclusion of statewide
21 canvassing of the vote.

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

24 (7) Up to three representatives of the vendor may be designated in writing by a corporate executive of
25 the vendor to supervise the review at all times. Such representatives shall not interfere with the
26 review, review and shall be afforded a reasonable opportunity to inspect the facility for compliance
27 with these conditions prior to the review commencing. State Board staff designated under
28 Subparagraph (3) of this Paragraph shall have the right to monitor the review, without interfering
29 with obstructing the review process.

30 (e) Dispute Resolution. Any dispute that arises between an authorized person and a vendor concerning the execution
31 of review pursuant to this Rule may be presented to the State Board of Elections in the form of a petition seeking
32 relief. The party seeking such relief shall serve their petition on the opposing party, and the opposing party shall have
33 14 days to respond. The State Board shall make a decision on the petition based on the written submissions, or it may
34 schedule a hearing to consider the petition.

35
36 *History Note: Authority 42 U.S.C. 5195c; G.S. 132-1.2; 132-1.7; 132-6.1; 163-22; 163-27.2; 163-165.7; 163-*
37 *165.9A; 163-166.7; 163-275;*

1 **INTRODUCTORY STATEMENT**

2 The following rule, 08 NCAC 04 .0309, was adopted by the State Board of Elections on July 14, 2022 with changes.
3 Notice of the proposed rule was published in the North Carolina Register on April 1, 2022, Volume 36, Issue 19, pages
4 1524 –1527.

6 **08 NCAC 04 .0309 NONDISCLOSURE AGREEMENT FOR REVIEW OF INFORMATION IN**
7 **ESCROW**

8 All persons seeking to gain authorization to review and examine the information placed in escrow by a voting system
9 vendor under 08 NCAC 04 .0308 shall execute a confidentiality and nondisclosure ~~agreement~~ agreement, which
10 ~~obligates the authorized person, as that term is defined in 08 NCAC 04. 0308, to exercise the highest degree of~~
11 ~~reasonable care to maintain the confidentiality of all proprietary and security related information to which the~~
12 ~~authorized person is granted access pursuant to 08 NCAC 04 .0308. The agreement shall require the authorized person~~
13 ~~to agree to the following terms, and no additional terms shall be imposed in the agreement. The agreement shall~~
14 ~~contain only the following terms and conditions, requiring the authorized person to:~~

- 15 (1) Not disclose or reveal any proprietary information to which the Authorized Person is granted access,
16 pursuant to G.S. 132-1.2, to any person outside of the individuals or entities identified in G.S. 163-
17 165.7(a)(6), testing and certification program staff at the U.S. Election Assistance Commission, or
18 election infrastructure security staff for the U.S. Department of Homeland Security’s Cybersecurity
19 and Infrastructure Security Agency. ~~Agency. any proprietary information to which the Authorized~~
20 ~~Person is granted access, pursuant to G.S. 132 1.2.~~
- 21 (2) Not disclose or reveal any feature, component, or perceived flaw or vulnerability of the information
22 placed in escrow by a voting system vendor, pursuant to G.S. 132-1.7(a2), G.S. 132-1.7(b), and G.S.
23 132-6.1(c), to any person outside of other persons authorized under 08 NCAC 04. 0308, the State
24 Board, ~~or the vendor, testing and certification program staff at the U.S. Election Assistance~~
25 Commission, or election infrastructure security staff for the U.S. Department of Homeland
26 Security’s Cybersecurity and Infrastructure Security Agency. ~~Agency. any feature, component, or~~
27 ~~perceived flaw or vulnerability of the information placed in escrow by a voting system vendor,~~
28 ~~pursuant to G.S. 132 1.7(a2), G.S. 132 1.7(b), and G.S. 132 6.1(c).~~
- 29 (3) Agree that the review of the information placed in escrow by a voting system vendor shall take place
30 in accordance with the terms and conditions of the agreement and 08 NCAC 04 .0308.
- 31 (4) Agree that the authorized person's obligation to exercise the highest degree of reasonable care to
32 maintain the confidentiality of all proprietary and security-related information survives the
33 agreement and shall continue permanently.
- 34 (5) Agree to submit copies of any notes taken during the examination of the information in escrow to
35 the State Board.
- 36 (6) Acknowledge that the authorized person is responsible for any unauthorized disclosure that they
37 cause and shall pay for any and all damages they caused by any through unauthorized disclosure of

1 the information under review ~~by the authorized person, except where such disclosure comports with~~
2 Subparagraph (9) below.

3 (7) Acknowledge~~Acknowledges~~ that the North Carolina State Board of Elections and the voting system
4 vendor may enforce the agreement through any legal remedy provided under North Carolina or
5 federal law.

6 (8) Consent to the personal jurisdiction of the courts of North Carolina and agree that the Superior Court
7 of Wake County is a proper venue for any action arising from the agreement.

8 (9) Comply with the following requirements in the event that~~Where~~ the authorized person becomes or
9 is likely to be compelled by law to disclose any of the escrow information:

10 ~~(a)~~(A) Notice of Disclosure. The authorized person shall provide the vendor and the State Board
11 with prompt written notice so that such parties, or either of them, may seek a protective
12 order or other appropriate remedy and/or waive compliance with the provisions of this
13 Subparagraph;

14 ~~(b)~~(B) Cooperation to Seek Protective Order. The authorized person shall cooperate with such
15 parties to obtain a protective order or other appropriate remedy; and

16 ~~(c)~~(C) Limited Disclosure. In the event that a protective order or other remedy is not obtained, or
17 the other parties waive compliance with the provisions of this Agreement, the authorized
18 person shall:

- 19 (i) disclose only the portion of information that such person is legally required to
20 disclose in the written opinion of its counsel; and
21 (ii) exercise all reasonable efforts to obtain reliable assurances that confidential
22 treatment will be afforded to the information.

23 The executed agreement shall be delivered to the North Carolina State Board of Elections prior to access being granted
24 pursuant to 08 NCAC 04 .0308.

25
26 *History Note:* *Authority 42 U.S.C. 5195c; G.S. 132-1.2; 132-1.7; 132-6.1; 163-22; 163-165.7; 163-165.9A; 163-*
27 *166.7;*
28 *Eff.*

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

The imposition of a question implies that the rule as written is unclear or there is some ambiguity. If the request includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for consideration which the agency may find preferable and clarifying.

To properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: "a~~A~~ssociation"
 - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
 - Wrong: "day;~~;~~and"
 - Right: "~~day;~~ day;and"
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 04 .0308

DEADLINE FOR RECEIPT: September 9, 2022

PLEASE NOTE: *This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Page 1, Lines 7-9, (a), the first sentence does not seem to be necessary as the requirements and authority are already detailed within G.S. §§ 163-165.7 and 163-165.9A. Consider removing. Alternatively, in line 8, place “be” between “to” and “a”. The first sentence details the process by which parties authorized under G.S. § 163-165.7(a)(6) communicate directly to the vendor, which is a procedure not included within the statutes.

Page 1, Lines 11-12, (a): What is the agency’s authority to place limits on the number of requests? G.S. § 163-165.7(f) – “the State Board of Elections shall prescribe rules for the . . . handling . . . of certified voting systems, including . . . : (9) . . . procedures for the review and examination of any information placed in escrow by a vendor. . .” G.S. § 163-22(a) – “State Board shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable. . .”

Given how disruptive, time consuming, and resource-intensive continuous management of these requests would be to the conduct of primaries and elections, a limitation on the number of requests is a reasonable procedure. A reasonable limit on request frequency, corresponding with the length of a general election cycle, does not materially diminish the right to access items placed in escrow by voting system vendors.

Page 1, Line 13, (a): The language “is not intended to” is vague and arguably unenforceable. Consider “shall not” or “does not” in its place. Changed to “does not”.

Page 1, Lines 15-36, and Page 2, Lines 1-18: Are the subparagraphs in paragraph (b) intended to be a list of requirements to be an “authorized person”, each of which is required to be such “authorized person”? If so, the subparagraphs need to end with a semi-colon and subparagraph (5)’s semi-colon should be followed by “and”. It would seem some type of a list exists as to (2)-(5), based on part (d)(3)(F). Should subparagraphs (b)(1) and (b)(2)-(5) be separated? Yes, this should be read as a list of requirements. Updated with semi-colons, and an “and” following subparagraph (5).

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

Page 1, Lines 17-22: Why is this language reasonably necessary? Does not the statute already state this? This language clarifies the process for designating agents (“in writing”) and a process for designating agents by the State Board and county boards of commissioners (“by majority vote in a public meeting”). These processes are not prescribed in statute, but are the type of procedures the State Board is directed to produce pursuant to G.S. § 163-165.7(f)(9).

*Page 1, Line 25, (b)(2): Change “include” to “shall be” to eliminate any ambiguity as to what is disqualifying. The use of “include” can be viewed as there being more disqualifying offenses beyond those listed. **Changed.***

*Page 1, Line 25, (b)(2): Is “offense” defined? Must a conviction be rendered? Who determines whether the offense involves one of the listed disqualifiers? Per the negation in the first sentence of (b)(2), if one is convicted of a disqualifying offense, as defined in the following sentence, they would not meet the requirements to be an “authorized person.” **Added a missing word in line 25 (“of” between “a” and “disqualifying”).** Please let us know if this does not clarify “offense” or “conviction.” Further, the listed categories of offenses in Lines 26-29 correspond with elements of criminal offenses, which are purely legal determinations that would be apparent to attorneys at SBOE reviewing a criminal history record check and reviewing the elements of the offenses listed in such a check.*

*Page 1, Line 26, (b)(2): Misdemeanor should be plural. **Changed. Also will change verb to “involve” so the subject and verb agree.***

Page 2, Line 7, (b)(3)(B): Explain how the addition of “criminal” claims is not a substantially different from the published rule.

The additional requirement does not:

- 1.) affect the interests of persons that, based on the proposed text, could not reasonably have determined that the rule would affect their interests – The combined nature of the published rule, the security risks explained by the State Board in proposing the rule, the inclusion of civil liability which is broader than criminal liability for this conduct, and the inclusion of a criminal background check and the originally worded broad exclusion based on this background check in the name of “election integrity and security,” all provided reasonable notice to those with prior criminal claims involving intellectual property or confidential information. Adding “criminal” claims does not materially change whose interests are affected by the rule.
- 2.) address a subject matter or issue not addressed in the proposed text of the rule – The addition of “criminal” does not address new subject matter or issues. It merely clarifies what one would be attesting to in a sworn affidavit. The affidavit as well as a criminal background check were already included in the published rule. And the subject of the liability was already addressed in the original draft: “misappropriation of a trade secret, violation of confidentiality agreement or nondisclosure agreement, copyright infringement, patent infringement, or unauthorized disclosure of any information protected from disclosure by law, except to the extent any such claims were dismissed with prejudice and not pursuant to a settlement agreement.”

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

3.) produce an effect that could not reasonably have been expected in the proposed text of the rule – The published rule instructed State Board officials to “resolve any doubts concerning the person’s suitability in favor of election integrity and security.” It made clear that those with certain criminal histories would be disqualified from becoming an “authorized person” within the scope of the rule, in the name of securing confidential election information. Therefore, the addition of “criminal” does not produce an effect that was not reasonably anticipated by the text of the published rule.

Page 2, Line 8, (b)(3)(B): “Secrets” should be plural.

See G.S. § 66-153 – would like to keep “secret” as singular to avoid confusion, since misappropriation of a single trade secret is actionable. Added the word “a” between “of” and “trade” to address.

Page 2, Line 11, (b)(3)(B), place an “and” or an “or” after the semicolon depending on the agency’s desires as to the attestation requirements. Updated with “and.”

Page 2, Lines 16-17, (b)(5): Explain how the addition of this requirement is not a substantially different from the published rule.

The additional requirement does not:

- 1.) affect the interests of persons that, based on the proposed text, could not reasonably have determined that the rule would affect their interests – A search provision does not prevent additional persons from becoming an “authorized person” who should not have already expected to be subject to searches during the review process, since the published rule subjected authorized persons to inspection and removal of unauthorized devices and required an accounting of any materials brought into the review facility by any person.
- 2.) address a subject matter or issue not addressed in the proposed text of the rule – The published rule contained numerous provisions relating to security of the proprietary information at stake in a review of the escrow accounts, as well as procedures for search and inspection (See (d)(3)(E)-(F)).
- 3.) produce an effect that could not reasonably have been expected in the proposed text of the rule – The published rule clearly had the effect of ensuring security protocols are in place to protect highly sensitive and confidential information and specifically contemplated inspections of persons.

Page 2, Lines 16-17, (b)(6): Explain how the addition of this requirement is not a substantially different from the published rule.

The additional requirement does not:

- 1.) affect the interests of persons that, based on the proposed text, could not reasonably have determined that the rule would affect their interests – The nature of the published rule taken in combination with the national security risks inherent in the review and examination of critical digital infrastructure (see 42 U.S.C. § 5195c) provided reasonable notice to non-U.S. citizens regarding their ability to become an authorized person. Additionally, the principal regulated parties here are state political parties, which are organizations of registered North Carolina voters, see G.S. § 163-96, and to be registered in this state, one must be a U.S. citizen, see N.C. Const. art. VI, sec. 1; G.S. § 163-82.4.

2.) address a subject matter or issue not addressed in the proposed text of the rule – The addition of (b)(6) does not address new subject matter or issues. It merely clarifies the requirements to become an “authorized person” within the scope of the rule. The published rule contained numerous provisions under (b) addressing the definition of “authorized person.”

3.) produce an effect that could not reasonably have been expected in the proposed text of the rule – Considering the national security interests at stake, which were apparent in the published rule given the nature of the information held in escrow by voting system vendors and the background provided by the State Board regarding the rule, the addition of (b)(6) does not produce an effect that was not reasonably anticipated by the text of the published rule. And again, the principal regulated entities are organizations of registered voters which may only be U.S. citizens.

Page 2, Line 28, (d)(1): What is a “secure” facility? Further clarified in (d)(3)(A) (“secured from unauthorized access”). If preferred, we can include a reference in the text, such as “, as described in Part (d)(3)(A) below,” between “facility” and “designated.” But this does not seem necessary for a person to understand the nature of the facility in context.

Page 2, Line 33, (d)(1)(A): Change “must” to “shall”. Changed.

Page 2, Line 34, (d)(1)(A): Place a period after “prohibited”. Capitalize “Each”. Changed.

Page 2, Line 36, (d)(1)(B): Change “will” to “shall”. Changed.

Page 3, Lines 1-4, (d)(1)(C): Change “must” to “shall”. Consider making these requirements rather than just an example for clarity. Changed. Deleted “An example of.”

Page 3, Lines 5-6, (d)(1)(D): Change “must” to “shall” and remove “immediately” as it creates unnecessary ambiguity. Changed.

Page 3, Line 10, (d)(1)(F): Is the term “tamper-evident seals” an industry term? Is it widely known? What is it? When applied to computer ports (as here), and as suggested by the plain language of the phrase itself, tamper-evident seals produce visual indications of peeling, removal, or other physical tampering. Voting system vendors would be responsible for facilitating the review and providing the computers. They are in the business of using tamper-evident seals to secure voting systems and therefore would certainly be familiar with the term.

Page 3, Line 14, (d)(2): Change “must” to “shall”. Changed.

Page 3, Line 14, (d)(2): Is the term “air-gapped” an industry term? Is it widely known? What is it? Air-gapping is a security measure to physically isolate a computer in order to prevent external connections with other computers or network devices. As above, voting system vendors, who are responsible for facilitating the review and providing the computers, are familiar with air-gapping procedures to secure voting systems.

Page 3, Line 22, (d)(3)(A): If a secured facility is not already secured from unauthorized access, then what is a secured facility secured from? Consider “The facility must be secured from access by any person not designated under paragraph (b) of this Rule as an “authorized person.” This provision is written to provide a temporal specification for how long the facility shall be secured (“for the entire review period”). Further, Part (d)(3)(F) provides for a separate category of persons who are authorized to access the facility. To clarify, we have changed to: “For the entire review period, the facility must be secured from access by any person not designated under Subparagraph (b)(1), Part (d)(3)(F), and Subparagraph (d)(9) of this Rule.”

As a further note, we’ve also corrected the internal reference at page 3, lines 26 and 27, (d)(3)(b).

Page 3, Line 29, (d)(3)(C): Logged by whom? How long must the log be maintained? Is there a particular format for the log? Does the log need to be sent to the SBOE? Changed to insert “the State Board or its designee shall record” between “the facility,” and “the name”. Removed “shall be logged” from the end of (d)(3)(C).

Page 3, Line 30, (d)(3)(D): What does the agency mean by “equipment”? Is that the same as the three computers? It is the same as the three computers. Changed to include “, as specified in Subparagraph (d)(1) of this Rule,” between “review” and “must” for clarification.

Page 4, Lines 2, (d)(3)(F): What does the agency mean by “inspection”? Stop and frisk? See Subparagraph (b)(5): “searches of their person and effects”

Within other NCAC titles, there are examples of secure facilities with search procedures to prohibit facility entry with certain forbidden items or to keep valuable and sensitive state property secure, and typically the agency does not specify this procedure in a rule at such granular level as to identify the specific method of search of persons or possessions:

Any visitor granted an exception may be subject to a security check on entering and leaving the galleries and may be required to carry a written security pass issued by the guard force and surrendered upon departure.

7 N.C.A.C. 3B.0102(c) (North Carolina Museum of Art, Admission and Visitation)

A routine search may also include the search of personal effects.

14B N.C.A.C. 12D.0101(c) (Div. of Corrections, Custody and Security, Searches of Visitors and Other Persons)

As an agency of the State of North Carolina, the State Board is subject to the Fourth Amendment of the United States Constitution, as applied through the Fourteenth Amendment, whether the State’s administrative code says so or not.

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

Page 4, Lines 2, (d)(3)(F): Change “may” to “shall” or state the criteria upon which the state personnel will consider in making the determination to “inspect”. Changed to “shall”. Suggest adjusting start of sentence to state: “Persons entering or leaving the facility shall submit to. . .”

Page 4, Line 4, (d)(3)(F): Do state personnel have “rights” in this context or authority? Consider striking “have the right to”. If the personnel may inspect the computers, state the criteria upon which the state personnel make that the determination. Changed to “shall,” removed “rights” language, and added “for compliance with Subparagraphs (d)(1) and (d)(2) to clearly explain that this is in service of the State’s obligation to supervise the review process for security purposes.

Page 4, Line 2, (d)(3)(F): Remove the “and/” so only “or” is left. Use of “and/or” is discouraged, since typically one or the other is desired. Here, “or” would achieve the desired result. Changed.

Page 4, Lines 6-7, (d)(3)(g): Explain how the addition of this requirement is not a substantially different from the published rule. After changing (d)(3)(F) to “shall,” (d)(3)(G) is no longer necessary and is removed.

Page 4, Lines 6-7 (d)(3)(G): This sentence could use some improvement. “Access allowed” may be conditioned? Consider a re-write. After changing (d)(3)(F) to “shall,” (d)(3)(G) is no longer necessary and is removed.

Page 4, Lines 6, (d)(3)(G): If the search is going to be discretionary, who will be making the determination and upon what criteria will the decision be made? Who will be conducting the search? After changing (d)(3)(F) to “shall,” (d)(3)(G) is no longer necessary and is removed.

Page 4, Lines 7, (d)(3)(G): Define “searches”. After changing (d)(3)(F) to “shall,” (d)(3)(G) is no longer necessary and is removed.

Page 4, Line 7, (d)(3)(G): Change “or” to “of”. After changing (d)(3)(F) to “shall,” (d)(3)(G) is no longer necessary and is removed.

Page 4, Line 11, (d)(4): If the authorized person is not testing “software components” what are they reviewing? They are manually reviewing the source code and using code analysis tools, as specified in Subparagraph (d)(1). This is distinguishable from running tests of the software components, which is not explicitly authorized in G.S. § 163-165.7(f)(9). Note the difference between subsection (f)(8) of that statute, which permits elections officials to examine and “test[]” voting systems, and subsection (f)(9) which permits authorized individuals at issue here to review and examine escrowed materials with no reference to testing.

Page 4, Lines 12-14, (d)(5): Are the business hours 9 AM through 5 PM, or the normal hours for the vendor? Also, is the “two work weeks” requirement supposed to be ten business days? Stating it in days would clear ambiguity on how the days are calculated. Updated to make this the regular business hours of the State Board, as intended, since the State Board is managing this process. See 08 NCAC 01 .0101. Updated to ten business days.

Page 4, Line 20,(d)(7): Which “conditions”? Subparagraphs (d)(1)-(7). The title of this Paragraph is “Conditions of Access.”

Page 4, Lines 20-22, (d)(7): Do state personnel have “rights” in this context or authority? Consider striking “have the right to”. If the personnel may monitor the review, state the criteria upon which the state personnel will make the determination. Changed to “shall” and removed “rights” language.

Page 4, Line 21, (d)(7): What is meant by representatives shall not “interfere”? It is stated twice in this subparagraph. Is this defined? Interference is vague and can mean just about anything, depending on the determining party. Changed to “obstructing,” which has a clearer meaning.

Additionally, per the Administrative Rule Style Guide, when deleting any punctuation, the word immediately preceding the punctuation should be deleted along with the punctuation, then the word retyped. Therefore, in subparagraph (d)(7), line 19, the rule should read “~~review~~, review and”. Updated.

Please review and state whether and why each of the following laws are applicable in the authority section: 42 U.S.C. 5195c and G.S. §§ 132-1.2, 132-1.7, 163-166.7, and 163-275.

42 U.S.C. § 5195c: Establishing critical infrastructure, including cyber infrastructure. In January 2017, the U.S. Department of Homeland Security designated the infrastructure used to administer the nation’s elections as critical infrastructure. This designation recognizes that the United States’ election infrastructure is of such vital importance to the American way of life that its incapacitation or destruction would have a devastating effect on the country. This provides federal law justification for the provisions in the Rule designed to avoid unauthorized disclosure of sensitive voting system information that could be used by malicious actors to compromise the security of voting systems.

G.S. § 132-1.2: 163-165.7(e) incorporates trade secret standards within 132-1.2 to maintain that such records are confidential and may not be disclosed by an agency, but may be accessed pursuant to the rules adopted under 163-165.7(f)(9), which is the principal authority for this Rule. Per G.S. § 163-165.7(f)(9), designees and State party chairs are treated as public officials under G.S. § 132-2, which vests them with obligations to protect trade secrets which may not be disclosed under G.S. § 132-1.2.

G.S. § 132-1.7: (a2) exempts from disclosure of records containing security information or plans to prevent or respond to criminal, gang, or organized illegal activity, which confidential security features of voting systems would constitute. Per G.S. § 163-165.7(f)(9), designees and State party chairs are treated as public officials under

G.S. § 132-2, which vests them with obligations to protect the State's sensitive public security information which is not subject to disclosure under G.S. § 132-1.7.

G.S. § 163-166.7: Subparagraph (c)(1) authorizes the State Board to promulgate rules to ensure "the voting system remains secure throughout the period voting is being conducted." This provides authority for the provision in Subparagraph (d)(5) in this Rule stating that the "review shall not occur during the period from the start of one-stop absentee voting through the conclusion of statewide canvassing of the vote." It also provides authority for Rule provisions concerning the security of voting systems and the prevention of leaks of information that could compromise the security of the State's voting systems.

G.S. § 163-275: Subsection (4) defines the felony of knowingly swear falsely with respect to any matter pertaining to any primary or election. Within the Rule, (b)(3) requires authorized persons to submit a sworn affidavit to get access to confidential voting systems used in our State's primaries and elections. Subsection (9) defines the felony of election record tampering which would encompass tampering with election results through unauthorized access to voting systems. This prohibition supports the agency's determination of the critical importance of fashioning a review process, pursuant to G.S. § 163-22(a) and § 163-165.7(f), that avoids that process being used to enable the crime of tampering with election records.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 04 .0309

DEADLINE FOR RECEIPT: September 9, 2022

PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*Page 1, Lines 8-12: Is the language in the first sentence after “shall execute a confidentiality and nondisclosure agreement” necessary? Why is this language needed? The requirements are set out in the subparagraphs and only lends misunderstanding the requirements of the required agreement. **Changed.***

*Page 1, Lines 12-13: The agreement shall require the authorized person to subsequently agree? This is awkward. Consider “The agreement shall contain the following terms and conditions:” This would require some modifications to the language used in the list. For example: (1) the authorized person shall not..., (5) the authorized person shall submit... (6) the authorized person shall pay for any and all damages... Many of the required terms read like a subsequent obligation to agree or acknowledge when the agreement should simply state what the parties are required to do. **To address this, we have modified that introductory phrase to say, “The agreement shall contain only the following terms and conditions, requiring the authorized person to:” This avoids the need to further edit each item in the list.***

Relatedly, we have addressed syntax problems in the list for Items (7) and (9).

*Page 1, Lines 17: In subparagraph (1), remove the comma between “Agency” and “any” in line 17 to eliminate potential for considering the proprietary information portion of the sentence a nonrestrictive clause. **To address the potential for misreading here, we’ve reorganized the clauses: moved the entire clause “any proprietary information to which the Authorized Person is granted access, pursuant to G.S. 132-1.2,” to immediately follow “Not disclose or reveal” and prior to “to any person...” and ended the sentence with “Agency.”***

*Page 1, Line 22: Similarly, in subparagraph (2), remove the comma between “Agency” and “any” in line 22 to avoid separating the subject and verb of the sentence. **To address the potential for misreading here, we’ve reorganized the clauses: moved the entire clause “any feature, component, or perceived flaw or vulnerability of the information placed in escrow by a voting system vendor, pursuant to G.S. 132-1.7(a2), G.S. 132-***

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

1.7(b), and G.S. 132-6.1(c),” to immediately follow “Not disclose or reveal” and prior to “to any person...” and ended the sentence with “Agency.”

Page 2, Lines 3-14, (9): Explain how the addition of this requirement is not a substantially different from the published rule.

The addition:

- 1.) Does not affect interests of persons who did not have notice under the proposed rule. This provision, which is a common provision used in protective orders in litigation and other confidentiality agreements, addresses the situation in which an authorized person’s duties under this agreement come into conflict with another legal authority. It doesn’t change who would be subject to the agreement as originally proposed in the published rule.
- 2.) Does not address new subject matter. The proposed rule had various provisions addressing the limits on disclosure, and the proposed addition “clarifie[s] and narrow[s] the scope of” the published rule by acknowledging that there may be conflicts between the obligations in the agreement and other sources of law and merely provides a procedure for addressing those conflicts. *Affordable Care, Inc. v. N.C. State Bd. of Dental Examiners*, 153 N.C. App. 527, 542-43 (2002) (holding that revisions clarifying and narrowing the scope of a published rule do not result in a substantial difference from the published rule)).
- 3.) Does not produce an unexpected effect relative to the proposed text of the rule. The obligations in Part (9) merely provide a way to resolve a conflict with a court order or other source of authority that compels disclosure of information that the agreement makes confidential. This is a conflict that could arise whether this agreement addresses it or not. In the absence of this provision, the parties would still have to determine how to proceed in the face of such a conflict, but with no agreed-to provisions to guide their conduct. This provision merely outlines procedures for handling such a conflict.

Page 2, Lines 3-14, (9): Regarding parts (9)(a) through (c) and subpart (i), the text should be preceded by a tab after the numbering of the subdivision. Also, parts are labelled as (A), (B), (C), etc. Additionally, the subpart (i) should be tabbed over from the parts subdivisions and subpart (ii) should be its own paragraph. Changed.

Please review and state whether and why each of the following laws are applicable in the authority section: 42 U.S.C. 5195c and G.S. §§ 132-1.2, 132-1.7, and 163-166.7.

42 U.S.C. § 5195c: Establishing critical infrastructure, including cyber infrastructure. In January 2017, the U.S. Department of Homeland Security designated the infrastructure used to administer the nation’s elections as critical infrastructure. This designation recognizes that the United States’ election infrastructure is of such vital importance to the American way of life that its incapacitation or destruction would have a devastating effect on the country. This provides federal law justification for the provisions in the Rule designed to avoid unauthorized disclosure of sensitive voting system information that could be used by malicious actors to compromise the security of voting systems.

G.S. § 132-1.2: 163-165.7(e) incorporates trade secret standards within 132-1.2 to maintain that such records are confidential and may not be disclosed by an agency,

William W. Peaslee
Commission Counsel

Date submitted to agency: August 30, 2022

but may be accessed pursuant to the rules adopted under 163-165.7(f)(9), which is the principal authority for this Rule. Per G.S. § 163-165.7(f)(9), designees and State party chairs are treated as public officials under G.S. § 132-2, which vests them with obligations to protect trade secrets which may not be disclosed under G.S. § 132-1.2. G.S. § 132-1.7: (a2) exempts from disclosure of records containing security information or plans to prevent or respond to criminal, gang, or organized illegal activity, which confidential security features of voting systems would constitute. Per G.S. § 163-165.7(f)(9), designees and State party chairs are treated as public officials under G.S. § 132-2, which vests them with obligations to protect the State's sensitive public security information which is not subject to disclosure under G.S. § 132-1.7. G.S. § 163-166.7: Subparagraph (c)(1) authorizes the State Board to promulgate rules to ensure "the voting system remains secure throughout the period voting is being conducted." This provides authority for Rule provisions concerning the prevention of leaks of information that could compromise the security of the State's voting systems.

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

Burgos, Alexander N

Subject: FW: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, October 17, 2022 4:40 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

Thank you, Bill.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, October 17, 2022 4:26 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

Thank you for your email.

If you could have the BOE responses back to me by Nov 7 please.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Saturday, October 15, 2022 3:03 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: Consideration of 08 NCAC 04 .0308 and .0309 by RRC

Hi Bill,

I understand you were seeking information yesterday afternoon on whether the State Board of Elections would be seeking consideration of its voting systems escrow access rules, 08 NCAC 04 .0308 and .0309, at the October RRC meeting. We are still reviewing staff's comments on the proposed rules and are planning to prepare responses in advance of the November RRC meeting. I hope this is helpful for planning purposes. Do

you have a suggested date by which you would like to receive any agency response to staff comments in advance of the November meeting? We will be sure to meet any such deadline, to ensure that we have ample time to address staff's comments, including any discussion following the submission of the agency's responses.

Best regards,

Paul Cox | General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

430 N SALISBURY STREET

RALEIGH, NC 27611

919.814.0700

www.ncsbe.gov

Burgos, Alexander N

From: Peaslee, William W
Sent: Friday, September 16, 2022 10:48 AM
To: Cox, Paul
Cc: Burgos, Alexander N; Wakely, Lindsey
Subject: Extension letter
Attachments: 09.2022 Elections Extension Letter.pdf

Good morning,

Attached please find the notice of extension pursuant to G.S. 150B-21.13 from yesterday's RRC meeting.

As always, if you have any questions please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, September 6, 2022 10:31 AM
To: Cox, Paul
Cc: Burgos, Alexander N; SBOE_Grp - Legal
Subject: RE: Request for Changes 08 NCAC 04 .0308 & .0309

Good morning Paul and congratulations on your appointment to the GC position.

The RRC frequently grants extensions of time pursuant to G.S. 150B-21.13 at the request of agencies. While I cannot guarantee that the RRC will grant the extension, I have not seen such a request denied. Please confirm to me that the SBOE is asking for the extension.

Please be safe in your travels.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, September 5, 2022 3:04 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: Request for Changes 08 NCAC 04 .0308 & .0309

Hi Bill,

Following up on this matter, I'm actually scheduled to be on leave for a family trip on September 15, and I'm the rulemaking coordinator for these rules. I believe you mentioned a possibility to seek a continuance to the next RRC meeting. Could I request such a continuance?

Thank you for the consideration.

Best regards,

Paul Cox | General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET

RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, August 30, 2022 12:19 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Request for Changes 08 NCAC 04 .0308 & .0309

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the North Carolina State Board of Elections for the September 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, September 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on September 9, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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