

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

AGENCY: N.C. State Board of Elections

RULE CITATION: 08 NCAC 04 .0401

DEADLINE FOR RECEIPT: March 19, 2024

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, Line 5: Should “and” be “or”?

Page 1, Line 10: Define or delete “timely”.

Page 1, Lines 25-26: This is unclear and ambiguous. “Designed to ensure” that election personnel “can” comply. What criteria is used to make this determination?

Page 1, Line 28: “Including” implies that there is a need for access other than for elections or as otherwise authorized by law. What would those be?

Page 1, Line 29: What are the applicable federal standards , requirements, and guidelines?

Page 1, Lines 29-30: Explain how “federal guidance,” which is not law can be incorporated by reference pursuant to G.S. 150B-21.6. Is the manual a guideline or law? If law, pursuant to what authority and process was it adopted? Is it in the Federal Code?

Page 1, Line 31-32: Recognized how? By what procedure?

Page 1, Lines 33-34: What criteria will be used to determine whether the EPB is “designed” to the Board’s ambiguous specifications?

Page 2, Line 1: “Approved” how? By whom? Is there a rule citation which can be entered?

Page 2, Line 9: Define or delete “in a manner set forth by the State Board.”

Page 2, Line 21: Define or delete “primary”.

William W. Peaslee
Commission Counsel

Date submitted to agency: March 5, 2024

Page 2, Line 23: Where is “State Network” defined?

Page 2, Line 23: “Audited” by whom? Can anyone produce the audit?

Page 2, Line 23: Is the report audited or is it an audit report of the fiscal year?

Page 2, Line 27: Confirming that you want the “vendor’s financial statement[s]” not the manufacturers.

Page 3, Lines 20-25: Consider making this its own paragraph. Is this a “requirement”?

Page 3, Line 20: Change “may” to “shall” or state the criteria which the Board will use in making its determination.

Page 3, Line 21-22: There need to be citations added here to the rules which require the information. The Board cannot request information and penalize the vendor if the vendor fails to response unless that information is required by a rule.

Page 3, Line 23: Define “irreparable deficiencies.” By what criteria and process will be used to make this determination?

Page 4, Line 15: Strike “and policies.” See G.S. 150B-2(8a)l.

Page 4, Lines 10-23: Does this include subsequent amendments and editions? See G.S. 150B-21.6.

Page 4, Lines 15-23: Explain how federal guidelines, which are not law, can be incorporated by reference pursuant to G.S. 150B-21.6.

Page 4, Line 28: To whom is the vendor submitting requested changes?

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

1 (13) It shall allow for a wired connection to peripherals approved during the certification process that are
2 required for the operation of the electronic poll book and, as minimally required for functionality,
3 allow for a ~~wired~~ secure network connection for the secure transmission of data with the state's
4 electronic information management system, provided that the connection to the network is not
5 automatically enabled by default upon powering on or opening the electronic poll book. All other
6 forms of connectivity are prohibited.

7 (b) A vendor applying for certification by the State Board of Elections of an electronic poll book shall, as part
8 of the certification application, fulfill the following requirements:

9 (1) The vendor shall submit, in a manner set forth by the State Board, the electronic poll book for
10 examination, testing, and evaluation by the State Board. The vendor shall initiate the certification
11 process by submitting a letter of application directed to the Executive Director of the State Board.
12 A corporate officer or designee of the vendor shall sign the letter, and the letter shall include:

13 (A) The name and contact information of the company and the name and title of the corporate
14 officer signing the application. and all corporate information requested by the State Board.

15 (B) The vendor's corporate information. Corporate information shall include a history and
16 description of the business, year established, products and services offered, areas served,
17 branch office locations, and subsidiary or parent companies; a list of owners or
18 shareholders with a 5% or greater interest or share in each of the vendor's company,
19 subsidiary companies, and parent company; a description of management and staff
20 organization, number of full-time employees by category, number of part-time employees
21 by category, and resumes of primary employees to be tasked with assisting purchasing
22 counties; documentation demonstrating that the vendor meets the same level of security
23 compliance required for vendors connected to the State Network; an audited report of the
24 business' most current fiscal year; a comfort letter from the vendor's primary bank; and a
25 description of the vendor's financial history including a financial statement for the past
26 three (3) fiscal years. If the vendor is not the manufacturer of the equipment for which
27 application is made, the vendor shall include the vendor's financial statement for the past
28 three (3) fiscal years.

29 (C) The name and version number of the electronic poll book to be certified, and a list of all
30 jurisdictions that have certified, have used, or are currently using the electronic poll book.

31 (D) An attestation that the corporate officer signing the application has reviewed and confirmed
32 that the electronic poll book meets all legal requirements of electronic poll book systems
33 under state and federal law.

34 (2) The vendor shall provide a listing of all software, hardware, and consumables necessary for
35 operation of the electronic poll book, a technical data package, an accounting of any prior
36 submission of the electronic poll book to another jurisdiction for certification, an accounting of any
37 decertification of the vendor's electronic poll book or other voting product, and a demonstration of

1 the system. The vendor shall provide access to the information required to be placed in escrow by a
2 vendor pursuant to G.S. 163-165.9A.

3 (3) The vendor shall submit documentation of any review of the electronic poll book by an independent
4 testing authority ~~recognized by the United States Election Assistance Commission~~ for compliance
5 with federal or state standards, requirements, or guidance applicable to electronic poll books.

6 (4) The vendor shall provide a copy of its standard purchase contract and shall quote a statewide uniform
7 price for each unit of the electronic poll book, including peripherals, consumables, and software
8 required for operation of the electronic poll book.

9 (5) The vendor shall post a bond or letter of credit to cover damages resulting from defects in the
10 electronic poll book, sufficient to cover any costs of conducting a new statewide election attributable
11 to those defects. The State Board shall survey the county boards of elections in April of every odd-
12 numbered year following an election held at the time prescribed in G.S. 163-1(c) to determine each
13 county's costs for conducting its most recent general election, and the State Board shall aggregate
14 those amounts to arrive at the cost of conducting a new statewide election. That aggregate amount
15 shall determine the bond or letter of credit requirement, and it shall be effective June 1 of the year
16 the survey is conducted and remain in effect until an amount is likewise calculated in a subsequent
17 odd-numbered year following an election held at the time prescribed in G.S. 163-1(c) and is made
18 effective.

19 (6) The vendor shall bear all of its costs associated with certification.

20 (7) The State Board may terminate a pending certification process if:

21 (A) The vendor fails to respond to a State Board request for information or other resources
22 required for the certification process.

23 (B) The State Board identifies irreparable deficiencies with the electronic poll book system,
24 vendor, or certification application.

25 (C) The vendor withdraws from the certification process.

26 (c) A vendor, to maintain certification by the State Board of Elections of the vendor's electronic poll book, shall
27 fulfill the following requirements for the duration of the electronic poll book's certification and use in North Carolina:

28 (1) The vendor shall conduct a presentation to demonstrate for a county board of elections, as part of
29 that county board's procurement and acceptance of a certified electronic poll book, the system's
30 ability to execute its designed functionality as presented and tested during State-level certification
31 and the vendor's ability to fulfill the duties required by G.S. 163-165.9A.

32 (2) The vendor shall submit to the State Board any escrow-related affidavits and other information
33 required by G.S. 163-165.9A.

34 (3) The vendor's contract with each purchasing county shall include the agreement required by G.S.
35 163-165.7(c)(4) and the following training and support:

36 (A) Operational training for a purchasing county's elections personnel;

1 (B) Operational support prior to and during any election in which the certified electronic poll
2 book will be in use; and,

3 (C) End-of-life and end-of-service-life planning for the certified electronic poll book system,
4 including guaranteed support until the system has reached the vendor's stated end-of-life
5 date, optional extended support until the system has reached the end-of-service-life date,
6 and sanitization of the electronic poll book once it has reached its end-of-service-life. End-
7 of-life shall mean the point in time in which the vendor will no longer sell or market the
8 electronic poll book. End-of-service-life shall mean the point in time in which the vendor
9 will no longer provide maintenance or support for the electronic poll book.

10 (4) The vendor shall provide, upon request by the State Board or a purchasing county, memory devices
11 or USB drives, sufficient in number to support the operation of the certified electronic poll book in
12 an election setting, that meet industry standards for sanitization and security requirements for
13 cryptographic modules, use cryptographic hashing algorithms of Secure Hash Algorithm 256-bit
14 (SHA-256) or higher, and meet all applicable North Carolina Department of Information
15 Technology information security standards and policies. The standard for sanitization shall be as
16 prescribed in National Institute of Standards and Technology (NIST) SP 800-88 Guidelines for
17 Media Sanitization. A copy of the SP 800-88 Guidelines are available for inspection in the offices
18 of the State Board of Elections and may also be obtained at no cost by accessing the NIST website
19 at <https://csrc.nist.gov/pubs/sp/800/88/r1/final>. The security requirements for cryptographic
20 modules shall be as prescribed in the National Institute of Standards and Technology's Federal
21 Information Processing Standards 140-3 (FIPS 140-3). A copy of the FIPS 140-3 is available for
22 inspection in the offices of the State Board of Elections and may also be obtained at no cost by
23 accessing the NIST website at <https://csrc.nist.gov/pubs/fips/140-3/final>.

24 (5) The vendor shall allow the State Board to examine the certified electronic poll book at any time to
25 ensure compliance with state and federal election laws and certification standards. To facilitate this
26 requirement, the vendor shall make available to the State Board, upon request and at no cost to the
27 agency, a certified electronic poll book model. The vendor shall, upon request, assist in the State
28 Board's examination and submit requested changes to the electronic poll book to ensure continued
29 compliance with state and federal law.

30 (6) The vendor shall submit documentation to the State Board identifying and describing a proposed
31 change to a certified electronic poll book in use in North Carolina. The vendor shall, upon request,
32 assist in the State Board's review of proposed changes. No vendor shall provide a county board of
33 elections any software, firmware, hardware, or instruction that will change a certified electronic poll
34 book unless that change has first been approved in accordance with 08 NCAC 04 .0402(b).

35 (7) The vendor shall provide electronic notice to the State Board of another United States jurisdiction's
36 decision to decertify or halt the use of its electronic poll book or other voting product within 24
37 hours of the jurisdiction's decision. The vendor shall provide electronic notice to the State Board of

1 any incident, anomaly, or defect in the same system known to have occurred anywhere, and of any
2 relevant defect known to have occurred in similar systems, within 24 hours of knowledge of the
3 incident, anomaly, or defect.

4 (8) The vendor shall maintain the required bond or letter of credit on a continuous basis, without
5 interruption.

6 (9) The vendor shall, on a quarterly basis, provide the State Board a quote for a statewide uniform price
7 for each unit of the electronic poll book. The vendor shall, on a quarterly basis, furnish the State
8 Board with an accounting of purchases of certified electronic poll books by a jurisdiction within
9 North Carolina.

10 (d) In accordance with G.S. 163-165.7, compliance with this Rule shall not ~~apply to~~ be required of an electronic
11 poll book which is developed or maintained by the State Board of Elections for that electronic poll book to be used in
12 an election in North Carolina.

13
14 *History Note: Authority G.S. 163-22; 163-165.7; 163-165.9A; 163-166.7*

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

AGENCY: N.C. Board of Elections

RULE CITATION: 08 NCAC 04 .0402

DEADLINE FOR RECEIPT: March 18, 2024

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, Line 11: Why is anything g after “.0401” necessary? If a portion of rule .0401 does not deal with accuracy, reliability, security, etc., does the State Board not check for compliance? Is not the test whether the poll book meets the requirements of rule .0401 “.”?

Page 1, Lines 12-13: Using what standard(s)? Rule .0401? Or is there another standard?

Page 1, Line 21: Explain how the Voting System Testing & Certification Manual can be incorporated by reference pursuant to G.S. 150B-21.6. Is the manual a guideline or law? If law, pursuant to what authority and process was it adopted? Is it in the Federal Code?

Page 1, Line 21: Are subsequent additions and edits incorporated as well? See G.S. 150B-21.6.

Page 1, Line 28: What is a “full certification review?”

Page 1, Line 30: Isn't the submission to the Executive Director, not the State Board?

Page 1, Line 33: Change “may” to “shall” or state the criteria that the Board will use in exercising its discretion.

Page 1, Line 35: “Recommendation of Administrative Decision” is capitalized. Is this term defined in the rules? If so, cite the rule. If not, why is it capitalized?

Page 2, Line 6: Change “may” to “shall” or state the criteria that the Board will use in exercising its discretion.

Page 2, Lines 20-21: Which “standards”? Have these been adopted? If so, where?

William W. Peaslee
Commission Counsel

Date submitted to agency: March 4, 2024

Page 2, Lines 23-24: Consider making this part of Rule .0401. It seems like an afterthought.

Page 3, Line 8: What does the Board mean by sanitized? Who is the requirement placed upon?

Page 3, Line 10: Change “may” to “shall” or state the criteria that the Executive Director will use in exercising its discretion.

Page, Lines 10-13: How long is the suspension? Is the decision appealable? If so, how?

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: March 4, 2024

1 08 NCAC 04 .0402 is adopted with changes as published in 38:06 NCR 302 as follows:

2
3 **08 NCAC 04 .0402 PROCEDURES FOR CERTIFICATION OF ELECTRONIC POLL BOOKS**

4 (a) Before certifying an electronic poll book for use in North Carolina, the State Board shall do the following:

- 5 (1) Evaluate the electronic poll book for compliance with North Carolina laws and rules related to
6 electronic poll books.
- 7 (2) Examine an electronic poll book’s system functions, operational procedures, user guides and
8 maintenance manuals, certification reports from other states, reviews from product users, and any
9 other documentation provided by the vendor.
- 10 (3) Test the electronic poll book for its ability to meet the requirements in 08 NCAC 04 .0401 for
11 accuracy, reliability, security, usability, and accessibility.
- 12 (4) Evaluate the suitability of the electronic poll book equipment’s design and construction for use in
13 an election.
- 14 (5) Obtain from the proposed vendor a current financial statement and the manufacturer’s contact
15 information.

16 (b) Changes to Certified Electronic Poll Books. A vendor shall submit in writing for the review of the Executive
17 Director of the State Board of Elections any change to a certified electronic poll book, including changes to its
18 software, firmware, or hardware, prior to implementation in a certified electronic poll book in use in any county’s
19 elections. Following the review, the Executive Director shall determine whether the change is a modification or minor
20 change of the certified electronic poll book. “Minor change” shall have the same meaning as that term is defined in
21 Section 3.5 of Version 3.0 of the United States Election Assistance Commission’s Voting System Testing &
22 Certification Program Manual. Minor changes can include manufacturer enhancements. A copy of the Manual is
23 available for inspection in the offices of the State Board of Elections. A copy of the Manual may be obtained at no
24 cost by accessing the website of the Election Assistance Commission at [https://www.eac.gov/voting-](https://www.eac.gov/voting-equipment/manuals-and-forms)
25 [equipment/manuals-and-forms](https://www.eac.gov/voting-equipment/manuals-and-forms). A “modification” is a change to a certified electronic poll book that is not a minor
26 change. Based on this determination, the Executive Director shall proceed as follows:

- 27 (1) If it is determined to be a modification, the vendor shall submit the electronic poll book as modified
28 to the State Board of Elections for full certification review.
- 29 (2) A vendor that proposes to implement a minor change to a certified electronic poll book shall, when
30 submitting the proposal to the State Board for review and approval, identify whether the proposed
31 minor change has been submitted to an independent testing authority recognized by or partnered
32 with a federal agency ~~a Voting System Test Laboratory (VSTL)~~ for review and endorsement. The
33 State Board may require the vendor to obtain ~~VSTL~~ review and endorsement by an independent
34 testing authority recognized by or partnered with a federal agency before approving a minor change.
35 The Executive Director shall make a written Recommendation for Administrative Decision on the
36 proposed minor change to the State Board. The State Board will then act on the Recommendation
37 as follows:

1 (A) If, after two calendar days following the transmission of the Recommendation, no State
2 Board member has raised an oral or written objection to the Executive Director's
3 Recommendation, the Recommendation will become effective.

4 (B) If a State Board member raises an oral or written objection to the Executive Director's
5 Recommendation within two calendar days following the transmission of the
6 Recommendation, the State Board may hear the matter or require the change to be reviewed
7 as a modification.

8 A county board of elections using an electronic poll book certified by the State Board shall not implement a change
9 to the electronic poll book until that change has been approved in accordance with this Paragraph.

10 (c) Decertification of Electronic Poll Book. The State Board of Elections shall hear and act on complaints, arising by
11 petition or otherwise, that may result in the decertification of an electronic poll book in use in North Carolina. The
12 State Board shall base its decision to decertify an electronic poll book on any of the following grounds:

13 (1) The failure or neglect of an electronic poll book or its vendor to comply with any part of the election
14 laws of the State of North Carolina, including a failure to adhere to and fulfill the requirements of
15 Rule .0401 of this Chapter.

16 (2) The implementation by a vendor of a change to a certified electronic poll book prior to State Board
17 review and approval pursuant to Paragraph (b) of this Rule.

18 (3) The failure or neglect of a vendor to update and maintain the operability and security of the
19 electronic poll book.

20 (4) The failure of the electronic poll book to satisfy all performance standards in examination and
21 testing, or in an election setting.

22 (5) The failure of the vendor to provide electronic notice to the State Board of an incident or anomaly
23 affecting the electronic poll book in any jurisdiction. The vendor shall provide the electronic notice
24 within 24 hours of the vendor's knowledge of the incident or anomaly. As used in this Chapter, an
25 "incident" is an event related to the security or functioning of the electronic poll book that
26 contributed to, caused, or may have caused any of the following:

27 (A) An interruption to the voter check-in process, reporting process, or both processes.

28 (B) An unauthorized disclosure of voter information.

29 (C) An unauthorized access to the electronic poll book.

30 (D) The software or data of the electronic poll book to become unreliable or corrupt.

31 As used in this Chapter, an "anomaly" is an unexpected functioning of the electronic poll book in
32 its operation.

33 (6) The failure of the vendor to report in writing to the State Board a change in the vendor's corporate
34 information provided with the certification application. The vendor shall make the report within 30
35 calendar days of the change.

36 (7) The electronic poll book reaching its end-of-service-life date.

1 Before exercising its power to decertify an electronic poll book, the State Board shall notify the electronic poll book
2 vendor and any affected county boards of elections, and shall give the opportunity for the vendor and county boards
3 to be heard at a hearing to be set by the State Board. The State Board’s written decision to decertify an electronic poll
4 book shall be considered a final decision for purposes of seeking judicial review. An electronic poll book that has
5 been decertified by the State Board cannot be used for elections held in the State of North Carolina and cannot be
6 purchased by a county board of elections. ~~An electronic poll book which has been decertified and is in the possession~~
7 ~~of a county board of elections shall have its memory sanitized after decertification.~~ Upon decertification of an
8 electronic poll book, the memory of those units in the possession of a county board of elections shall be sanitized prior
9 to disposition.

10 (d) Suspension of Electronic Poll Book. The Executive Director of the State Board may, in the event of a threat to the
11 integrity of an election or the privacy of voter information, issue a written order to a county board of elections to
12 suspend the use of a certified electronic poll book system, or individual unit, for a term not to exceed one month. The
13 Executive Director shall give written notice of the suspension to the electronic poll book vendor.

14 (e) In accordance with G.S. 163-165.7, this Rule shall not apply to an electronic poll book which is developed
15 or maintained by the State Board of Elections.

16

17 *History Note: Authority G.S. 163-22; 163-165.7; 163-165.9A; 163-166.7*

18

19

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

AGENCY: N.C. Board of Elections

RULE CITATION: 08 NCAC 17 .0101

DEADLINE FOR RECEIPT: March 15, 2024

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 4, Lines 6-7: What does the Board mean by “in the light most favorable to that person”? RRC counsel is aware of the standard in a summary judgment proceeding which does not appear applicable in this non-adversarial setting.

Page 4, Lines 29-31: Does the procedure only apply in the event someone is voting a provisional ballot because “the voter’s record does not appear on the poll book”?

Page 4, Lines 32-33: Evidence of what?

Page 4, Lines 32-33: Can the election official accept additional evidence volunteered or is their analysis limited to the four corners? See G.S. 163-166.16(b).

Page 4, Lines 32-33: Aren’t precinct judges “election officials”? Doesn’t this fly in the face of G.S. 163-88 which requires the judges’ “examination” of qualifications to vote? (This is where a definitions rule would be handy.)

Page 6, Lines 22-26: What is the authority of the BOE to determine that a provisional voter’s right to notice to be heard or present evidence is predicated on a finding that the affidavit is false by a super or perhaps super-super majority? If the county board has ten members, the notice of the opportunity to be heard is triggered not be the majority vote of the county board but only when there is a finding of falsity by nine members? See G.S. 163-166.16(f).

Page 6, Lines 22-26: When and by what procedure would the county board members determine the falsity of an affidavit prior to giving notice? When would this occur?

Page 6, Lines 22-26: Explain why this change post publication is not a substantial change pursuant to G.S. 150B-21.2(g).

Page 7, Lines 7, 8, and 14: Define “acceptable”. (This is where a definitions rule would be handy.)

William W. Peaslee
Commission Counsel

Date submitted to agency: March 1, 2024

Page 7, Lines 12-16: County Board members cannot ask the provisional voter any questions? Are they too limited to the four corners of the identification presented? See Paragraph (b). It would appear that the precinct judges have greater latitude in their hearing than the members of the County Boards. Is that correct?

Page 7, Lines 17-19: As determined by who? The County Board?

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: March 1, 2024

1 08 NCAC 17 .0101 is amended with changes as published in 38:10 NCR 614 as follows:

2
3 **08 NCAC 17 .0101** **DETERMINATION OF REASONABLE RESEMBLANCE AT CHECK-IN**
4 **VERIFICATION OF PHOTO IDENTIFICATION DURING IN-PERSON**
5 **VOTING**

6 ~~(a) An election official shall check the registration status of all persons presenting to vote in person on election day~~
7 ~~or during one stop early voting pursuant to G.S. 163-166.7, and shall require that all persons presenting to vote provide~~
8 ~~one of the forms of photo identification listed in G.S. 163-166.13(e), subject to the exceptions outlined in Paragraph~~
9 ~~(b) of this Rule. If a person not satisfying the exceptions described in Paragraph (b) of this Rule does not provide any~~
10 ~~photo identification, the election official shall inform the person presenting to vote of applicable options specified in~~
11 ~~G.S. 163-166.13(e). If the person presenting to vote wishes to choose the option of voting a provisional ballot, the~~
12 ~~election official shall provide the person presenting to vote with information on the provisional voting process and the~~
13 ~~address of the county board of elections office.~~

14 ~~(b) The election official shall not require photo identification of a person who has a sincerely held religious objection~~
15 ~~to being photographed and meets the requirements of G.S. 163-166.13(a)(2), or who is the victim of a natural disaster~~
16 ~~and meets the requirements of G.S. 163-166.13(a)(3). Persons falling within any exception listed in this Paragraph~~
17 ~~shall be allowed to proceed pursuant to G.S. 163-166.7.~~

18 ~~(c) The election official shall inspect any photo identification provided by the person presenting to vote and shall~~
19 ~~determine the following:~~

20 ~~(1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S.~~
21 ~~163-166.13(e). A valid United States passport book or a valid United States passport card is~~
22 ~~acceptable pursuant to G.S. 163-166.13(e);~~

23 ~~(2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);~~

24 ~~(3) That the photograph appearing on the photo identification depicts the person presenting to vote. The~~
25 ~~election official shall make this determination based on the totality of the circumstances, construing~~
26 ~~all evidence, along with any explanation or documentation voluntarily proffered by the person~~
27 ~~presenting to vote, in the light most favorable to that person. Perceived differences of the following~~
28 ~~features shall not be grounds for the election official to find that the photograph appearing on the~~
29 ~~photo identification fails to depict the person presenting to vote:~~

30 ~~(A) weight;~~

31 ~~(B) hair features and styling, including changes in length, color, hairline, or use of a wig or~~
32 ~~other hairpiece;~~

33 ~~(C) facial hair;~~

34 ~~(D) complexion or skin tone;~~

35 ~~(E) cosmetics or tattooing;~~

36 ~~(F) apparel, including the presence or absence of eyeglasses or contact lenses;~~

37 ~~(G) characteristics arising from a perceptible medical condition, disability, or aging;~~

1 (H) — photographic lighting conditions or printing quality.; and
2 (4) — ~~That the name appearing on the photo identification is the same or substantially equivalent to the~~
3 ~~name contained in the registration record. The election official shall make this determination based~~
4 ~~on the totality of the circumstances, construing all evidence, along with any explanation or~~
5 ~~documentation voluntarily proffered by the person presenting to vote, in the light most favorable to~~
6 ~~that person. The name appearing on the photo identification shall be considered substantially~~
7 ~~equivalent to the name contained in the registration record if differences are attributable to a~~
8 ~~reasonable explanation or one or more of the following reasons:~~
9 (A) — ~~Omission of one or more parts of the name (such as, for illustrative purposes only, Mary~~
10 ~~Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson,~~
11 ~~or Maria Guzman Santana versus Maria Guzman);~~
12 (B) — ~~Use of a variation or nickname rather than a formal name (such as, for illustrative purposes~~
13 ~~only, Bill versus William, or Sue versus Susanne);~~
14 (C) — ~~Use of an initial in place of one or more parts of a given name (such as, for illustrative~~
15 ~~purposes only, A.B. Sanchez versus Aaron B. Sanchez);~~
16 (D) — ~~Use of a former name, including maiden names (such as, for illustrative purposes only,~~
17 ~~Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation~~
18 ~~(such as, for illustrative purposes only, Chantell D. Jacobson Smith versus Chantell D.~~
19 ~~Jacobson);~~
20 (E) — ~~Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus~~
21 ~~Maria E. Lopez Garcia);~~
22 (F) — ~~Variation in spelling or typographical errors (such as, for illustrative purposes only,~~
23 ~~Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).~~
24 ~~(d) The election official shall not require any additional evidence outside the four corners of the photo identification.~~
25 ~~The election official shall not require that any person remove apparel for the purposes of rendering a determination~~
26 ~~under Paragraph (c). If the face of the person presenting to vote is covered such that the election official cannot render~~
27 ~~a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove~~
28 ~~the covering but shall not require that removal. If the person declines to remove the covering, the election official shall~~
29 ~~inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance~~
30 ~~with G.S. 163-182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-~~
31 ~~166.13(c)(3), and shall inform the voting site's judges of election that the election official cannot affirmatively~~
32 ~~determine that the person bears any reasonable resemblance to the photo identification. G.S. 163-166.16.~~
33 ~~(e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph~~
34 ~~(c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic~~
35 ~~identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor~~
36 ~~shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any~~
37 ~~other provision of Paragraph (C).~~

1 ~~(f) The election official examining photo identification provided by a person presenting to vote shall construe all~~
2 ~~evidence, along with any explanation or documentation voluntarily offered by the person presenting to vote, in the~~
3 ~~light most favorable to that person, and shall be guided by the purpose of the photo identification requirement, which~~
4 ~~is to confirm the person presenting to vote is the registered voter on the voter registration records. After an examination~~
5 ~~performed in the manner set out in Paragraphs (a) through (c)(d) of this Rule, the election official shall proceed as~~
6 ~~follows:~~

7 ~~(1) If the election official determines that the photo identification meets all the requirements of~~
8 ~~Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-~~
9 ~~166.7 and 163-166.13(b); or~~

10 ~~(2) If the election official determines that the photo identification does not meet all of the requirements~~
11 ~~of Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote~~
12 ~~of the reasons for such determination (such as, for illustrative purposes only, that the photo~~
13 ~~identification is expired) and shall invite the person to provide any other acceptable photo~~
14 ~~identification that he or she may have. If the person presenting to vote does not produce photo~~
15 ~~identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election~~
16 ~~official shall inform the person presenting to vote of applicable options specified in G.S. 163-~~
17 ~~166.13(c). If the person presenting to vote wishes to choose the option of voting a provisional ballot,~~
18 ~~the election official shall provide the person presenting to vote with information on the provisional~~
19 ~~voting process and the address of the county board of elections office.~~

20 ~~(3) If the election official determines that the photo identification does not meet all the requirements~~
21 ~~of Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of~~
22 ~~election that the person presenting to vote does not bear any reasonable resemblance to the photo~~
23 ~~identification.~~

24 (a) When a person presenting to vote checks in at a voting site, an election official shall ask the voter to show photo
25 identification in accordance with G.S. 163-166.16 and this Rule. The election official shall examine any photo
26 identification provided by the person presenting to vote and shall determine the following:

27 (1) The photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-
28 166.16(a). A valid United States passport book or passport card is acceptable pursuant to G.S.
29 163-166.16(a)(1)c.

30 (2) The photograph appearing on the photo identification bears a reasonable resemblance to the
31 person presenting to vote. A reasonable resemblance is a similarity in appearance such that an
32 ordinary person would conclude that the photograph on the identification is more likely than not
33 the person presenting to vote. The election official shall make this determination based on the
34 totality of the circumstances, bearing in mind that there are many reasons that a person's
35 appearance could change (such as, for illustrative purposes only, changes in hair, facial hair, or
36 weight; or the effects of medical conditions, aging, or medical treatment). The election official

1 shall also be guided by the purpose of the photo identification requirement, which is to confirm the
2 person presenting to vote is the registered voter on the voter registration records.

3 (3) The name appearing on the photo identification is the same as or substantially equivalent to the
4 name contained in the voter's voter registration record. The election official shall make this
5 determination based on the totality of the circumstances, construing all evidence, along with any
6 explanation or documentation voluntarily offered by the person presenting to vote, in the light
7 most favorable to that person. The election official shall consider the name appearing on the photo
8 identification to be substantially equivalent to the name contained in the registration record if
9 differences are attributable to a reasonable explanation, which shall include but is not limited to
10 one or more of the following reasons:

11 (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes
12 only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick
13 Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);

14 (B) Use of a variation or nickname rather than a formal name (such as, for illustrative
15 purposes only, Bill versus William, or Sue versus Susanne);

16 (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative
17 purposes only, A.B. Sanchez versus Aaron B. Sanchez);

18 (D) Use of a former name, including maiden names (such as, for illustrative purposes only,
19 Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or
20 hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus
21 Chantell D. Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative
22 purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative
23 purposes only, Andrea D'Antonio versus Andrea Dantonio);

24 (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez
25 versus Maria E. Lopez-Garcia); or

26 (F) Variation in spelling or typographical errors (such as, for illustrative purposes only,
27 Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav
28 Robertsson).

29 If a voter is casting a provisional ballot because the voter's record does not appear in the poll
30 book, the election official shall instead compare the name on the photo identification with the
31 name provided by the voter on the provisional ballot application.

32 (b) The election official examining photo identification provided by a person presenting to vote shall not require the
33 voter to provide any additional evidence outside the four corners of the photo identification. If the face of the
34 person presenting to vote is covered to such an extent that the election official cannot determine reasonable
35 resemblance under Subparagraph (a)(2) of this Rule, then the election official shall inform the voter that the face
36 covering is preventing the official from determining that the photo on the identification is that of the voter and shall

1 offer the voter the option to briefly remove the face covering. If the voter chooses not to remove the covering, then
2 the election official shall enter a challenge in accordance with Subparagraph (d)(3) of this Rule.

3 (c) Differences between the address appearing on the photo identification of a person presenting to vote and the
4 address contained in the registration record of that person shall not be considered as evidence that the photographic
5 identification fails to meet the requirements of G.S. 163-166.16 or this Rule.

6 (d) After examining the photo identification according to Paragraphs (a) through (c) of this Rule, the election
7 official shall proceed as follows:

8 (1) If the election official determines that the photo identification meets all the requirements of
9 Paragraph (a) of this Rule, then the election official shall allow the person to vote pursuant to G.S.
10 163-166.7.

11 (2) If the election official determines that the photo identification is not an acceptable type of photo
12 identification under Subparagraph (a)(1) of this Rule, the election official shall inform the person
13 presenting to vote of the reasons for that determination (such as, for illustrative purposes only, that
14 the photo identification is not on the list of student identifications approved by the State Board of
15 Elections) and shall invite the person to provide any other photo identification that is acceptable
16 under Subparagraph (a)(1) of this Rule that the person may have. If the person presenting to vote
17 does not produce photo identification that meets all the requirements of Subparagraph (a)(1) of
18 this Rule, then the election official shall inform the person presenting to vote of **the both** options to
19 vote by provisional ballot in accordance with Paragraph (e) of this Rule.

20 (3) If the election official determines that the photo or name on the photo identification do not satisfy
21 Subparagraphs (a)(2) and (a)(3) of this Rule, the election official shall inform the person
22 presenting to vote of the reasons for that determination and shall invite the person to provide any
23 other photo identification that the person may have that is acceptable under Subparagraph (a)(1)
24 and satisfies Subparagraphs (a)(2) and (a)(3) of this Rule. If the person presenting to vote does not
25 produce photo identification that meets all the requirements of Paragraph (a) of this Rule, then the
26 election official shall enter a challenge pursuant to G.S. 163-87 and immediately notify the voting
27 site's judges of election of the challenge. The judges of election shall then conduct a challenge
28 hearing, in accordance with the applicable procedures in G.S. 163-88. At the conclusion of the
29 hearing, the judges of election shall vote on whether the photo appearing on the photo
30 identification of the person presenting to vote bears a reasonable resemblance to that person or
31 whether the name appearing on the photo identification is the same as or substantially equivalent
32 to the name contained in the voter's voter registration record, applying the same standards as the
33 election official initially reviewing the identification under Subparagraphs (a)(2) and (a)(3). Each
34 judge shall record the judge's findings in writing. Only if the judges of election unanimously find
35 that the photo appearing on the photo identification does not bear a reasonable resemblance to the
36 person presenting to vote, or that the name appearing on the photo identification is not the same as
37 or substantially equivalent to the name contained in the voter's voter registration record, the voter

1 shall be offered ~~the both~~ options to vote by provisional ballot in accordance with Paragraph (e) of
2 this Rule. Absent such a unanimous finding, the person shall vote with a regular ballot pursuant to
3 G.S. 163-166.7. When the judges of election conduct a challenge hearing under this Rule and the
4 challenge is to a curbside voter, to ensure the voting enclosure remains properly attended, the
5 judges may separately visit the curbside location to assess the voter's identification.

6 (e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall
7 be offered ~~both of~~ the following options:

8 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification
9 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit as required in
10 G.S. 163-166.16(d) and is otherwise eligible to vote, the county board shall count the provisional
11 ballot unless the county board unanimously finds that the affidavit is false. The county board shall
12 substantiate any finding of falsity with grounds recorded in a written decision, ~~and those grounds~~
13 ~~shall be based only on facts and not speculation~~. Before disapproving a voter's provisional ballot
14 because of a finding of falsity, the county board shall provide the voter advance notice and an
15 opportunity to address the county board prior to the canvass on any grounds that the county board
16 is considering regarding the falsity of the affidavit. The notice shall identify the specific reasons the
17 county board is considering the affidavit to be potentially false and inform the voter how the voter
18 may address the reasons for potential falsity, which shall include the ~~option options~~ to provide a
19 written explanation or ~~documentation or to~~ address the board at a meeting in person. The notice
20 shall be provided by a means of physical delivery designed to provide the voter actual notice in
21 advance of the opportunity to address the county board and by any email address or phone number
22 that the county board possesses for the voter. The notice and opportunity to address the county board
23 provided for in this Subparagraph shall be offered only to those provisional voters for whom a
24 ~~number of county board members equal to one less than all of the members of the county board~~
25 ~~board, or more, has have~~ identified a ~~specific reason, based only on facts and not speculation~~, to find
26 that the affidavit claiming an exception to the identification requirement is false.

27 (2) To vote by provisional ballot and then bring to the office of the county board identification
28 acceptable under G.S. 163-166.16 and this Rule before 5 p.m. on the business day before county
29 canvass. If the voter brings photo identification to the office of a county board in a timely manner,
30 a county board staff member shall examine the photo identification in accordance with Paragraphs
31 (a), (b), and (c) of this Rule. After examining the photo identification, the staff member shall proceed
32 as follows:

33 (A) If the photo identification meets all the requirements of Paragraph (a) of this Rule, the staff
34 member shall recommend approval of the provisional ballot to the county board.

35 (B) If the photo identification is not an acceptable type of photo identification under
36 Subparagraph (a)(1) of this Rule, then the staff member shall inform the voter of the reasons
37 for that determination, while the voter is at the county board office, and invite the voter to

1 provide an acceptable photo identification in accordance with Subparagraph (d)(2) of this
2 Rule. If the voter does not provide acceptable identification by 5 p.m. on the business day
3 prior to the canvass, then county board staff shall recommend disapproval of the
4 provisional ballot to the county board.

5 (C) If the photo or name on the photo identification do not satisfy Subparagraphs (a)(2) and
6 (a)(3) of this Rule, then the staff member shall inform the voter of the reasons for that
7 determination and shall invite the voter to provide any other acceptable photo
8 identification. If the voter does not produce acceptable photo identification, then the staff
9 member shall recommend disapproval of the provisional ballot to the county board. While
10 the voter is at the county board office, the staff member shall inform the voter of the
11 recommendation and provide notice to the voter of the county board meeting at which the
12 voter's provisional ballot will be reviewed and considered by the county board. If the voter
13 appears at that meeting and desires to address the county board on whether their photo
14 identification is acceptable under this Rule, the county board members are subject to the
15 requirements of this Rule in the same manner as a staff member initially examining a
16 voter's photo identification.

17 If the voter brings photo identification that is an acceptable type of photo identification under
18 Subparagraph (a)(1) of this Rule to the county board office before 5 p.m. on the business day prior
19 to the canvass, the county board shall count the provisional ballot unless the county board
20 unanimously decides the photo identification presented does not satisfy Subparagraphs (a)(2) and
21 (a)(3) of this Rule, in which case the county board shall record in writing the grounds for its decision.

22
23 *History Note:* Authority G.S. 163-22; ~~163-82.6A~~; ~~163-82.15~~; ~~163-166.7~~; *NAACP v. McCrory*, 831 F.3d 204
24 (4th Cir. 2016); ~~163A-1145.1~~; S.L. 2018-144, s. 3.1(e); ~~163-166.11~~; ~~163-166.16~~;
25 Eff. January 1, 2016;
26 Temporary Amendment Eff. August 23, 2019;
27 Temporary Amendment Expired Eff. June 12, ~~2020~~, 2020;
28 Temporary Amendment Eff. August 1, ~~2023~~, 2023;
29 Amended Eff. April 1, 2024.

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

AGENCY: N.C. State Board of Elections

RULE CITATION: 08 NCAC 17 .0109

DEADLINE FOR RECEIPT: March 15, 2024

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, Line 9: Consider: "and the photograph depicts discernable facial features such that the depicted person could be identified if he or she appeared in person."

Page 1, Line 26-27: Does the photocopy or affidavit need to be provided by or received by 5 P.M. on the business day before the county canvass?

Page 1, Line 27: Define "acceptable." (This is where a definitions rule would be handy.)

Page 1, Line 27: Claiming an exemption pursuant to what? G.S. 163-166.16?

Page 1, Lines 31-32: Does the photographic identification have to meet any standards? Paragraph (a)? Does the affidavit not need to comply with G.S. 163-166.16? I ask this because the rule states that they "shall be acceptable." It is unclear if the Board means acceptable in the common parlance or as in defined in Paragraph (a). (This is where a definitions rule would be handy.)

Page 2, Line 19: "...a physical means designed to provide actual notice..." is ambiguous. Consider 26 NCAC 05 .0110(b). In the alternative, who will make the determination whether a means is "designed" to provide actual notice and what criteria will be used in making the determination?

Page 2, Lines 22-27: What is the authority of the BOE to determine that a voter's right to notice to be heard or present evidence is predicated on a finding that the affidavit is false by a super or perhaps super-super majority? If the county board has ten members, the notice of the opportunity to be heard is triggered not be the majority vote of the county board but only when there is a finding of falsity by nine members? See G.S. 163-166.16(f).

Page 2, Lines 22-27: When and by what procedure would the county board members determine the falsity of an affidavit prior to giving notice? When would this occur?

William W. Peaslee
Commission Counsel

Date submitted to agency: March 1, 2024

Page 2, Line 33: What is a “covered voter”?

Page 3, Line 4-8: This sentence either has too few or too many words.

Page 3, Line 10: Explain the relevance of G.S. 163-166.7 and G.S. 163-229.

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: March 1, 2024

1 08 NCAC 17 .0109 is adopted with changes as published in 38:10 NCR 614 as follows:

2
3 **08 NCAC 17 .0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

4 (a) Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee
5 ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for
6 voting purposes under 08 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same
7 as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08
8 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this
9 Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for
10 example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between
11 the address appearing on an absentee voter's photo identification and any address contained in the voter's absentee
12 request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under
13 this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the
14 identification) where the person's name and photo appears.

15 (b) Initial Review by County Board Staff. County board staff shall, upon receipt of a voter's absentee ballot
16 application, determine whether the application is accompanied by a photocopy of photo identification that is
17 acceptable under Paragraph (a) of this Rule, or, if the application is accompanied by an affidavit claiming an exception
18 to the identification requirement pursuant to G.S. 163-166.16(d), determine whether the affidavit includes the
19 affirmations required by G.S. 163-166.16(d) for that exception and, if applicable, the personal identification number
20 required to be provided by G.S. 163-230.1(g)(2). Staff shall review the registration records to determine whether the
21 number provided matches the corresponding number in the registration records. The number required to be provided
22 by G.S. 163-230.1(g)(2) is deficient only if it does not match the corresponding number listed in the voter's voter
23 registration record.

24 If staff identify any deficiency, they shall mail written notice of the deficiency to the voter within one business
25 day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal guardian or near
26 relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability, may provide a
27 photocopy of the voter's acceptable photo identification or a completed affidavit claiming an exception to the county
28 board by 5 p.m. on the business day before the county canvass. The notice of the deficiency shall also be provided by
29 telephone or email if the telephone number or email address was provided by the voter on the request form for the
30 absentee ballot. The voter may transmit either of the above documentation curing the deficiency in person, by mail,
31 or by email. An electronic copy of the voter's photographic identification or signed affidavit claiming an exception to
32 the identification requirement, if provided via email, shall be acceptable.

33 (c) Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 163-230.1(f)
34 after the application and ballot is received, proceed as follows:

- 35 (1) If the voter has submitted a photocopy of their photo identification, the county board shall make its
36 determination whether the identification is acceptable under Paragraph (a) of this Rule. A final
37 determination that the photocopy of photo identification is not acceptable under Paragraph (a) of

1 this Rule shall require a unanimous vote by the county board. If the county board makes a final
2 determination that a voter's photocopy of photo identification is not acceptable, staff shall notify the
3 voter as provided in Paragraph (b) of this Rule, and the county board shall reserve its final decision
4 on the approval of the absentee application until the next official meeting after it receives
5 documentation curing the deficiency or the county canvass, whichever occurs first.

6 (2) If the voter has completed an affidavit claiming an exception to the identification requirement
7 pursuant to G.S. 163-166.16(d) and is otherwise eligible to vote, the county board may reject that
8 person's ballot only if the county board unanimously finds that the affidavit is false. The county
9 board shall substantiate any finding of falsity with grounds recorded in a written ~~decision~~ decision,
10 and those grounds shall be based only on facts and not speculation. Before rejecting a voter's ballot
11 because of a finding of falsity, the county board shall provide the voter advance notice and an
12 opportunity to address the county board prior to the canvass on any grounds that the county board
13 is considering regarding the falsity of the affidavit, ~~provided there is sufficient time remaining before~~
14 ~~the county canvass to send a notice that will be delivered in advance of the opportunity to address~~
15 ~~the county board~~. The notice shall identify the specific reasons the county board is considering the
16 affidavit to be potentially false and inform the voter how the voter may address the reasons for
17 potential falsity, which shall include the ~~option~~ options to provide a written explanation or
18 documentation or to address the board at a meeting in person. The notice shall be provided by a
19 means of physical delivery designed to provide the voter actual notice in advance of the opportunity
20 to address the county board, ~~provided there is sufficient time remaining before the county canvass~~
21 ~~to send a notice that will be delivered in advance of the opportunity to address the county board~~, and
22 by any email address or phone number that the county board possesses for the voter. The notice and
23 opportunity to address the county board provided for in this Subparagraph shall be offered only to
24 those voters for whom a number of county board members equal to one less than all of the members
25 ~~of the county board board, or more, has have~~ identified a specific reason ~~reason~~, based only on facts
26 and not speculation, to find that the affidavit claiming an exception to the identification requirement
27 is false.

28 (3) If a voter's photocopy of photo identification or affidavit claiming an exception to the identification
29 requirement pursuant to G.S. 163-166.16(d) is deemed deficient upon initial review under Paragraph
30 (b) of this Rule, the county board shall reserve its final decision on the approval of the absentee
31 application until the next official meeting after it receives documentation curing the deficiency
32 identified pursuant to Paragraph (b) of this Rule or the county canvass, whichever occurs first.

33 (d) Exception for Military and Overseas Voters. A covered voter who is casting a ballot pursuant to G.S. 163, Article
34 21A, Part 1 is not required to submit a photocopy of acceptable photo identification under Paragraph (a) of this Rule
35 or claim an exception under G.S. 163-166.16(d).

36 (e) Return of Original Form of Identification. If a voter sends their original form of photo identification in the
37 container-return envelope, or if a voter or other person permitted to return the voter's absentee ballot hand-delivers an

1 absentee ballot to the county board of elections that is not accompanied by a photocopy of the voter's photo
2 identification and the voter or other person has the voter's photo identification that is a type acceptable for voting
3 purposes under 08 NCAC 17 .0101(a)(1) on hand, the county board shall make a photocopy of the identification,
4 which shall serve as an acceptable photo identification accompanying the voter's absentee ballot. When a voter sends
5 their original form of photo identification in the container-return envelope, the county board shall notify the voter by
6 mail and by any email address or phone number that the county board possesses for the voter that the original photo
7 identification will be returned to the voter and shall use a method of return that documents receipt of the photo
8 identification.

9

10 *History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229;163-230.1;*

11 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*

12 *Temporary Rule Expired Eff. October 11, 2020;*

13 *Temporary Adoption Eff. August 1, 2023;*

14 *Eff. April 1, 2024.*

15