

## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0101

RECOMMENDATION DATE: February 25, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

I.

*Paragraph (b) of the rule prohibits "the election official" from "requiring the voter to provide any evidence regarding the identification apart from the identification itself." "Election Official" is an undefined term.<sup>1</sup>*

*However, G.S. 163-88(a) requires precinct judges in the context of a challenge hearing pursuant to G.S. 163-88 "to examine [the voter] as to his qualifications to be registered and vote." As written, the statute would require inquiry by precinct judges which the rule would prohibit. While the agency may aver that the relevant portion of Paragraph (b) is limited to the initial review of the identification contextually, that is unclear.*

*Accordingly, staff recommend objection pursuant to either G.S. 150B-21.9(a)(1) for the rule exceeding the agency's authority or (a)(2) for ambiguity.*

II.

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<sup>1</sup> HOWEVER, "PRECINCT OFFICIAL" IS DEFINED IN G.S. 163-41(B) AS THE CHIEF JUDGES, PRECINCT JUDGES AND ASSISTANTS APPOINTED PURSUANT TO G.S. 163-42.

William W. Peaslee  
Commission Counsel

*Paragraph (e)(1) of the rule requires that the County Boards of Elections (“CBE”) to send the notice using a method of delivery “designed to provide actual notice in advance of the opportunity to address the county board...”*

*Each CBE is left to wonder what means of physical delivery provides actual notice. Is U.S. first class mail designed to deliver the “actual notice” of an opportunity to be heard three days hence? What about four days? Is returned receipt required? The county boards’ individual interpretations of the requirement could vary widely resulting in unequal treatment of voters from county to county and within a county.*

*The Subparagraph lays an unclear and ambiguous requirement upon the county boards of elections.*

*Accordingly, staff recommends objection to the rule pursuant to G.S. 150B-21.9(a)(2).*

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. – The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

**§ 163-88. Hearing on challenge made on day of primary or election.**

(a) A challenge entered on the day of a primary or election shall be heard and decided by the chief judge and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by sworn testimony, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the chief judge shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is \_\_\_\_\_, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the \_\_\_\_\_ party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word "sworn."

(b) Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.

(c) A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 1223, s. 6; 1985, c. 380, ss. 1, 1.1; 1993 (Reg. Sess., 1994), c. 762, s. 27; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

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

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

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

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

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

- ~~(1) That the photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.13(e). A valid United States passport book or a valid United States passport card is acceptable pursuant to G.S. 163-166.13(e);~~
- ~~(2) That the photo identification is unexpired or is otherwise acceptable pursuant to G.S. 163-166.13(e);~~
- ~~(3) That the photograph appearing on the photo identification depicts the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. Perceived differences of the following features shall not be grounds for the election official to find that the photograph appearing on the photo identification fails to depict the person presenting to vote:
  - ~~(A) weight;~~
  - ~~(B) hair features and styling, including changes in length, color, hairline, or use of a wig or other hairpiece;~~
  - ~~(C) facial hair;~~
  - ~~(D) complexion or skin tone;~~
  - ~~(E) cosmetics or tattooing;~~
  - ~~(F) apparel, including the presence or absence of eyeglasses or contact lenses;~~
  - ~~(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, when examining the photo identification provided by of a person presenting to vote  
33 shall not require the voter to provide any additional evidence regarding the identification apart from the  
34 identification itself outside the four corners of the photo identification. If the face of the person presenting to vote  
35 is covered to such an extent that the election official cannot determine reasonable resemblance under Subparagraph  
36 (a)(2) of this Rule, then the election official shall inform the voter that the face covering is preventing the official  
37 from determining that the photo on the identification is that of the voter and shall offer the voter the option to briefly



1 remove the face covering. If the voter chooses not to remove the covering, then the election official shall enter a  
2 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 identification~~  
8 ~~that meets the requirement of Paragraph (a) of this Rule. If the voter does not produce~~  
9 ~~acceptable photo identification, identification that meets the requirement of Paragraph (a)~~  
10 ~~of this Rule, then the staff member shall recommend disapproval of the provisional ballot~~  
11 ~~to the county board. While the voter is at the county board office, the staff member shall~~  
12 ~~inform the voter of the recommendation and provide notice to the voter of the county board~~  
13 ~~meeting at which the voter's provisional ballot will be reviewed and considered by the~~  
14 ~~county board. If the voter appears at that meeting and desires to address the county board~~  
15 ~~on whether their photo identification meets the requirement of Paragraph (a) of this Rule,~~  
16 ~~is acceptable under this Rule, the county board members are subject to the requirements of~~  
17 ~~this Rule in the same manner as a staff member initially examining a voter's photo~~  
18 ~~identification.~~

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

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