

1 08 NCAC 17 .0101 is amended under temporary procedures **with changes**, and **additional changes** in response to Rules
2 Review Commission staff suggestions, as follow:

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

6 (a) ~~When a person presenting to vote checks in at a voting site, An election official shall check the registration status~~
7 ~~of all persons presenting to vote in person on election day or during one stop early voting pursuant to G.S. 163-166.7,~~
8 ~~and shall require that all persons presenting to vote provide an election official shall ask the voter to show photo~~
9 ~~identification in accordance with G.S. 163-166.16 and this Rule, one of the forms of photo identification listed in G.S.~~
10 ~~163-166.13(e), subject to the exceptions outlined in Paragraph (b) of this Rule. If a person not satisfying the exceptions~~
11 ~~described in Paragraph (b) of this Rule does not provide any photo identification, the election official shall inform the~~
12 ~~person presenting to vote of applicable options specified in G.S. 163-166.13(e). If the person presenting to vote wishes~~
13 ~~to choose the option of voting a provisional ballot, the election official shall provide the person presenting to vote with~~
14 ~~information on the provisional voting process and the address of the county board of elections office.~~

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

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

21 (1) ~~That the~~The photo identification is of the type acceptable for voting purposes pursuant to ~~G.S.~~
22 ~~163-166.13(e), G.S. 163-166.16(a).~~ A valid United States passport book or a valid United States
23 passport card is acceptable pursuant to ~~G.S. 163-166.13(e); G.S. 163-166.16(a)(1)c.~~

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

25 (2)(3) ~~That the~~The photograph appearing on the photo identification ~~depicts~~bears a reasonable
26 resemblance to the person presenting to vote. A reasonable resemblance is a similarity in appearance
27 such that an ordinary person would conclude that the photograph on the identification is more likely
28 than not the person presenting to vote. The election official shall make this determination based on
29 the totality of the circumstances, construing all evidence, along with any explanation or
30 documentation voluntarily proffered by the person presenting to vote, in the light most favorable to
31 that person, and bearing in mind that there are many reasons that a person's appearance could change
32 (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects of
33 medical conditions, aging, or medical treatment). The election official shall also be guided by the
34 purpose of the photo identification requirement, which is to confirm the person presenting to vote
35 is the registered voter on the voter registration records. ~~Perceived differences of the following~~
36 ~~features shall not be grounds for the election official to find that the photograph appearing on the~~
37 ~~photo identification fails to depict the person presenting to vote:~~

- 1 (A) ~~weight;~~
- 2 (B) ~~hair features and styling, including changes in length, color, hairline, or use of a wig or~~
- 3 ~~other hairpiece;~~
- 4 (C) ~~facial hair;~~
- 5 (D) ~~complexion or skin tone;~~
- 6 (E) ~~cosmetics or tattooing;~~
- 7 (F) ~~apparel, including the presence or absence of eyeglasses or contact lenses;~~
- 8 (G) ~~characteristics arising from a perceptible medical condition, disability, or aging;~~
- 9 (H) ~~photographic lighting conditions or printing quality.; and~~

10 (3)(4)

11 ~~That the~~The name appearing on the photo identification is the same as or substantially
 12 equivalent to the name contained in the voter's voter registration record. The election official shall
 13 make this determination based on the totality of the circumstances, construing all evidence, along
 14 with any explanation or documentation voluntarily ~~proffered~~ offered by the person presenting to
 15 vote, in the light most favorable to that person. The election official shall consider the name
 16 appearing on the photo identification shall to be considered substantially equivalent to the name
 17 contained in the registration record if differences are attributable to a reasonable explanation
 18 explanation, which shall include but is not limited to ~~or~~ one or more of the following reasons:

- 18 (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes
 19 only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd
 20 Jackson, or Maria Guzman-Santana versus Maria Guzman);
- 21 (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes
 22 only, Bill versus William, or Sue versus Susanne);
- 23 (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative
 24 purposes only, A.B. Sanchez versus Aaron B. Sanchez);
- 25 (D) Use of a former name, including maiden names (such as, for illustrative purposes only,
 26 Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or
 27 hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell
 28 D. ~~Jacobson~~); Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative
 29 purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative
 30 purposes only, Andrea D'Antonio versus Andrea Dantonio);
- 31 (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus
 32 Maria E. Lopez-Garcia); or
- 33 (F) Variation in spelling or typographical errors (such as, for illustrative purposes only,
 34 Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

35 (b)(4) The election official examining photo identification provided by a person presenting to vote shall not require
 36 the voter to provide any additional evidence outside the four corners of the photo identification. The election official
 37 shall not require that any person remove apparel for the purposes of ~~rendering a determination~~ determining reasonable

1 resemblance under Paragraph (e) Subparagraph (a)(2) of this Rule. If the face of the person presenting to vote is
2 covered to such an extent such that the election official cannot ~~render a determination under Subparagraph (e)(3),~~
3 determine reasonable resemblance, then the election official shall offer the voter the options to vote by provisional
4 ballot in accordance with Paragraph (e) of this Rule. ~~give the person the opportunity to remove the covering but shall~~
5 not require that removal. ~~If the person declines to remove the covering, the election official shall inform the person~~
6 presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-
7 182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3),
8 and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the
9 person bears any reasonable resemblance to the photo identification. G.S. 163-166.16.

10 ~~(c)(e)~~ Differences between the address appearing on the photo identification of a person presenting to vote meeting
11 the requirements of Subparagraph (e)(1) and the address contained in the registration record of that person shall not
12 be construed considered as evidence that the photographic identification ~~does not bear any reasonable resemblance~~
13 pursuant to Subparagraphs (e)(3) and (e)(4) of this Rule, nor shall it be construed as evidence that the photographic
14 identification does not otherwise fails to meet the requirements of any other provision of Paragraph (C). G.S. 163-
15 166.16 or this Rule.

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

- 22 (1) If the election official determines that the photo identification meets all the requirements of
23 Paragraph ~~(a)(e)~~, of this Rule, then the election official shall allow the person presenting to vote
24 shall be allowed to proceed vote pursuant to G.S. 163-166.7 and 163-166.13(b); or G.S. 163-166.7.
- 25 (2) If the election official determines that the photo identification is not an acceptable type of photo
26 identification under does not meet all of the requirements of Subparagraphs (e)(1) and (e)(2)
27 Subparagraph (a)(1) of this Rule, the election official shall inform the person presenting to vote of
28 the reasons for ~~that such~~ determination (such as, for illustrative purposes only, that the photo
29 identification is expired when that type of acceptable photo identification requires an expiration
30 date) and shall invite the person to provide any other acceptable photo identification that is
31 acceptable under Subparagraph (a)(1) of this Rule that the person he or she may have. If the person
32 presenting to vote does not produce photo identification that meets all the requirements of
33 Subparagraph (a)(1) of this Rule, (e)(1) and (e)(2), then the election official shall inform the person
34 presenting to vote of ~~applicable~~ the options specified in Paragraph (e) of this Rule. G.S. 163-
35 166.13(e). If the person presenting to vote wishes to choose the option of voting a provisional ballot,
36 the election official shall provide the person presenting to vote with information on the provisional
37 voting process and the address of the county board of elections office.

1 (3) If the election official determines that the photo or name on the photo identification do not satisfy
2 Subparagraphs (a)(2) and (a)(3) of this Rule, does not meet all the requirements of Subparagraphs
3 (e)(3) and (e)(4), the election official shall enter a challenge pursuant to G.S. 163-87 and
4 immediately notify the voting site's judges of election of the challenge, that the person presenting
5 to vote does not bear any reasonable resemblance to the photo identification. The judges of election
6 shall then conduct a challenge hearing, in accordance with the procedures in G.S. 163-88. At the
7 conclusion of the hearing, the judges of election shall vote on whether the photo identification of
8 the person presenting to vote bears a reasonable resemblance to that person ~~person,~~ or whether the
9 name appearing on the photo identification is the same as or substantially equivalent to the name
10 contained in the voter's voter registration record, applying the same standards as the election official
11 initially reviewing the identification under Subparagraphs (a)(2) and (a)(3), and each Each judge
12 shall record their the judge's findings in writing on a challenge form provided by the State Board. In
13 making this determination, the judges of election are subject to the requirements of this Rule in the
14 same manner as the election official initially examining the photo identification. Only if the judges
15 of election unanimously find that the photo identification does not bear a reasonable resemblance to
16 the person presenting to vote, or that the name appearing on the photo identification is not the same
17 as or substantially equivalent to the name contained in the voter's voter registration record, the voter
18 shall be offered the options to vote by the person shall vote with a provisional ballot in accordance
19 with Paragraph (e) of this Rule. Absent such a unanimous finding, the person shall vote with a
20 regular ballot pursuant to G.S. 163-166.7. To the extent the General Statutes do not specifically
21 address judges of election at one-stop sites, for For the purposes of this Subparagraph, "judges of
22 election" includes a group of three one-stop officials designated by the county board to hear a
23 challenge to a voter's photo identification reasonable resemblance, not all of whom are affiliated
24 with the same political party. When the judges of election conduct a challenge hearing under this
25 Rule and the challenge is to a curbside voter, to ensure the voting enclosure remains properly
26 attended, the judges may separately visit the curbside location to review the evidence.

27 (e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall
28 be offered the following options:

29 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification
30 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit as required in
31 G.S. 163-166.16(d) and is otherwise eligible to vote, to help ensure impartiality, the county board
32 shall count the provisional ballot unless may reject the provisional ballot only if the county board
33 unanimously finds that the affidavit is false. The county board shall substantiate any finding of
34 falsity with grounds recorded in a written decision. Before making a final finding of falsity, the
35 county board shall provide the voter notice and an opportunity to be heard at a meeting of the county
36 board prior to completion of the canvass on any grounds that the county board is considering
37 considers regarding the falsity of the affidavit. Notice of the grounds for falsity and the opportunity

1 for a hearing shall be provided by U.S. mail and by any email address or phone number that the
2 county board possesses for the voter, means designed to ensure it is received by the voter in advance
3 of the board's final decision on the affidavit.

4 (2) To vote by provisional ballot and then bring to the office of the county board identification
5 acceptable under G.S. 163-166.16 and this Rule before the end of business on the business day
6 before county canvass. The county board shall count the provisional ballot of a voter who presents
7 such identification to the office of the county board in a timely manner. If the voter brings photo
8 identification to the office of a county board in a timely manner, a county board staff member shall
9 examine the photo identification in accordance with Paragraphs (a), (b), and (c) Paragraph (d) of
10 this Rule. After examining the photo identification, the staff member shall proceed as follows:

11 (A) If the staff member determines that the photo identification meets all the requirements of
12 Paragraph (a) of this Rule, the staff member shall recommend approval of the provisional
13 ballot to the county board a report of this determination shall be included with the voter's
14 provisional ballot for county board action.

15 (B) If the staff member determines that the photo identification is not an acceptable type of
16 photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall
17 inform the voter of the reasons for that determination determination, while the voter is at
18 the county board office, and invite the voter to provide an acceptable photo identification
19 in accordance with Subparagraph (d)(2) of this Rule. If the voter does not timely provide
20 acceptable identification by the end of business on the business day prior to the
21 canvass, identification, then county board staff shall recommend disapproval of the
22 provisional ballot to the county board, shall not count the provisional ballot.

23 (C) If the staff member determines that the photo or name on the photo identification do not
24 satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then the staff member shall
25 recommend disapproval of the provisional ballot to the county board. documentation of
26 this determination shall be included with the provisional envelope containing the voter's
27 ballot. While the voter is at the county board office, The the staff member shall immediately
28 inform the voter of the recommendation determination and provide notice to the voter of
29 the county board meeting at which the voter's provisional ballot will be reviewed and
30 considered by the county board. If the voter appears at that meeting and desires to be heard
31 on whether their photo identification is acceptable under this Rule. In reviewing a photo
32 identification to make a final decision on a provisional ballot subject to this Subparagraph,
33 the county board members are subject to the requirements of this Rule in the same manner
34 as a staff member initially examining a voter's photo identification, and shall vote on
35 whether the photo identification presented satisfies Subparagraphs (a)(2) and (a)(3) of this
36 Rule.

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

6
7 *History Note:* Authority *G.S. 163-22; 163-82.6A; 163-82.15; 163-166.7; NAACP v. McCrory, 831 F.3d 204*
8 *(4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e); 163-166.11; 163-166.16;*
9 *Eff. January 1, 2016;*
10 *Temporary Amendment Eff. August 23, 2019;*
11 *Temporary Amendment Expired Eff. June 12, 2020, 2020;*
12 *Temporary Amendment Eff. August 1, 2023.*
13

1 08 NCAC 17 .0102 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION**

4

5 *History Note:* Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; NAACP v. McCrory, 831
6 F.3d 204 (4th Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);

7 Eff. January 1, 2016;

8 Temporary Amendment Eff. August 23, 2019;

9 Temporary Amendment Expired Eff. June 12, 2020;

10 ~~Repealed Eff. Temporary Repeal Eff. August 1, 2023.~~

11

1 08 NCAC 17 .0103 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS**

4

5 *History Note:* Authority *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1(d);

6 *Eff. January 1, 2016;*

7 *Temporary Repeal Eff. August 23, 2019;*

8 *Temporary Repeal Expired Eff. June 12, 2020;*

9 ~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

10

1 08 NCAC 17 .0105 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH**

4

5 *History Note:* *Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e), (h);*
6 *Eff. January 1, 2016;*
7 *Temporary Repeal Eff. August 23, 2019;*
8 *Temporary Repeal Expired Eff. June 12, 2020;*
9 ~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

10

1 08 NCAC 17 .0106 is repealed under temporary procedures as follows:

2

3 **08 NCAC 17 .0106 SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST**
4 **AN ABSENTEE BALLOT**

5

6 *History Note: Authority NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016); S.L. 2018-144, s. 3.1.(j);*

7

Eff. March 1, 2016;

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Temporary Repeal Eff. August 23, 2019;

9

Temporary Repeal Expired Eff. June 12, 2020;

10

~~*Repealed Eff. Temporary Repeal Eff. August 1, 2023.*~~

11

1 08 NCAC 17.0109 is adopted under temporary procedures with changes, and additional changes in response to
2 Rules Review Commission staff suggestions, as follows:

3
4 **08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

5 ~~(a) Definitions. The following definitions apply to this Rule:~~

6 ~~(1) "Readable" means the name on the identification can be read and the photograph depicts a person,~~
7 ~~as opposed to displaying, for example, a mere shadow or outline of a person.~~

8 ~~(2) "Copy" means a duplicate of an original document, including a photographic copy of the original~~
9 ~~document.~~

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

21 ~~(b)(e)~~ Initial Review by County Board Staff. County board staff shall, upon receipt of a voter's absentee ballot
22 application, determine whether the application is accompanied by a photocopy eopy of photo identification that is
23 readable and is of a type of photo identification acceptable for voting purposes under 08 NCAC 17 .0101(a)(1), or, if
24 the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S.
25 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that
26 exception is complete. If staff identify any deficiency, they shall send mail written notice of the deficiency to the voter
27 within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal
28 guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability,
29 may provide a photocopy eopy of the voter's acceptable photo identification or a completed affidavit claiming an
30 exception to the county board by the deadline specified in G.S. 163-166.16(c). Staff shall additionally notify the voter
31 by telephone or email, using any telephone number or email address contained in the voter's voter registration record
32 or provided by the voter when requesting an absentee ballot. ~~if the voter provided their telephone number or email~~
33 ~~address when registering to vote.~~

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

- 36 (1) If the voter has submitted a photocopy eopy of their photo identification, the county board shall
37 make its determination whether the identification is acceptable under Paragraph ~~(a)(b)~~ of this Rule.

1 ~~To help ensure impartiality, a~~ final determination that the ~~photocopy copy~~ of photo identification
2 is not acceptable under Paragraph ~~(a)(b)~~ of this Rule shall require a unanimous vote by the county
3 board. ~~If the county board makes a final determination that a voter's photocopy copy of photo~~
4 ~~identification is not acceptable, staff shall notify the voter as provided in Paragraph (b)(e) of this~~
5 ~~Rule.~~

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, ~~to help ensure impartiality~~ the
8 county board may reject that person's ballot only if the county board unanimously finds that the
9 affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded
10 in a written decision. Before making a finding of falsity, the county board shall provide the voter
11 notice and an opportunity to be heard ~~at a meeting of the county board prior to the completion of~~
12 ~~the canvass~~ on any grounds that the county board ~~is considering~~ ~~considers~~ regarding the falsity of
13 the affidavit. ~~Notice of the grounds for falsity and the opportunity for a hearing shall be provided~~
14 ~~by U.S. mail and by any email address or phone number that the county board possesses for the~~
15 ~~voter.~~

16 (3) If a voter's ~~photocopy copy~~ of photo identification or ~~alternative affidavit~~ affidavit claiming an
17 exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient under
18 Paragraph ~~(b)(e)~~ of this Rule, the county board shall reserve its final decision on the approval of the
19 absentee application until the next official meeting after the deficiency is cured or the county
20 canvass, whichever occurs first.

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

24 ~~(c)(f)~~ Return of Original Form of Identification. If a voter sends their original form of photo identification in the
25 container-return envelope, or if a voter hand-delivers an absentee ballot to the county board of elections that is not
26 accompanied by a photocopy of the voter's photo identification and the voter has a type of photo identification
27 acceptable for voting purposes under 08 NCAC 17.0101(a)(1) on hand, the county board shall make a photocopy of
28 the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee
29 ~~ballot, ballot, and mail the original form of identification back to the voter.~~ The county board shall notify the voter by
30 mail and by any email address or phone number that the county board possesses for the voter that the original photo
31 identification will be returned to the voter and shall use a method of return that documents receipt of the photo
32 identification.

33
34 *History Note:* Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229; 163-230.1;
35 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*
36 *Temporary Rule Expired Eff. October 11, 2020-2020;*
37 *Temporary Adoption Eff. August 1, 2023.*