

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 17 .0101

DEADLINE FOR RECEIPT: Wednesday, August 12, 2015

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

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

Please be sure that no changes were made using track changes.

In (a), why is "Photo identification at check-in procedure:" necessary as an intro statement as there are not other introductory statements elsewhere in this Rule. Please make consistent.

In (c), is the election official required to make all of the determinations listed in Sub-Paragraphs (1) through (4)? Please clarify by adding an "and" at the end of (3)(H) and ending the Sub-Paragraphs with semi-colons.

In (c)(4)(F), page 2, line 62, please delete the space in between "McCarthy" and ",".

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

Amber Cronk May
Commission Counsel
Date submitted to agency: July 31, 2015

08 NCAC 17 .0101 is adopted with changes as published in 29:21 NCR 2435 as follows:

CHAPTER 17 – PHOTO IDENTIFICATION

08 NCAC 17 .0101 DETERMINATION OF REASONABLE RESEMBLANCE AT CHECK-IN

(a) Photo identification at check-in procedure: 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 then 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 ~~that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-166.13(e) of applicable options specified in G.S. 163-166.13(c).~~ 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)(3).
- (2) That the photo identification is unexpired or is ~~excepted from an expiration requirement 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;
- (H) photographic lighting conditions or printing quality.
- (4) That the name appearing on the photo identification is the same or substantially equivalent to the name contained in the registration record. 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. The name appearing on the photo identification shall be considered substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation or one or more of the following reasons:
- (A) Omission of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick ~~William Smith~~ Todd Jackson, Jr. versus Patrick ~~William Smith~~ Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);
- (B) Use of a ~~customary~~ variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
- (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. ~~Smith~~ Sanchez versus Aaron B. ~~Smith~~ Sanchez);
- (D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation (such as, for illustrative purposes only, ~~Mary Beth Smith versus Mary Beth Jacobson, or Mary C. Chantell D. Jacobson-Smith versus Mary C. Chantell D. Jacobson~~);
- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. ~~Lopez Garcia~~ Lopez-Garcia);
- (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy , or Aarav Robertson versus Aarav Robertsson).
- (d) The election official shall not require any additional evidence outside the four corners of the photo identification. The election official shall not ~~request~~ require that any person remove apparel for the purposes of rendering a determination under Paragraph (c). If the face of the person presenting to vote is covered such that the election official cannot render a determination under Subparagraph (c)(3), then the election official shall give the person the opportunity to remove the covering but shall not require that removal. If the person declines to remove the covering, the election official shall inform the person presenting to vote that he or she may cast a provisional ballot, which shall be counted in accordance with G.S. 163-182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(c)(3), and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the person bears any reasonable resemblance to the photo identification.
- (e) Differences between the address appearing on the photo identification meeting the requirements of Subparagraph (c)(1) and the address contained in the registration record shall not be construed as evidence that the photographic identification does not bear any reasonable resemblance pursuant to Subparagraphs (c)(3) and (c)(4) of this Rule, nor shall it be construed as evidence that the photographic identification does not otherwise meet the requirements of any other provision of Subparagraph (c).

(f) The election official shall construe all evidence, along with any explanation or documentation voluntarily proffered by the person presenting to vote, in the light most favorable to that person. After an examination performed in the manner set out in Paragraphs (a) through (d) of this Rule, the election official shall proceed as follows:

- (1) If the election official determines that the photo identification meets all the requirements of Paragraph (c), then the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and 163-166.13(b); or
- (2) If the election official determines that the photo identification does not meet all of the requirements of Subparagraphs (c)(1) and (c)(2), the election official shall inform the person presenting to vote of the reasons for such determination (such as, for illustrative purposes only, that the photo identification is expired) and shall invite the person to provide any other acceptable photo identification that he or she may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (c)(1) and (c)(2), then the election official shall inform the person presenting to vote ~~that he or she may cast a provisional ballot of~~ applicable options specified in G.S. 163-166.13(c). 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.
- (3) If the election official determines that the photo identification does not meet all the requirements of Subparagraphs (c)(3) and (c)(4), the election official shall notify the voting site's judges of election that the person presenting to vote does not bear any reasonable resemblance to the photo identification.

History Note: Authority G.S. 163-82.6A, 163-82.15, 163-166.7, 163-166.13, 163-166.14, 163-182.1A
Eff. January 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 17 .0102

DEADLINE FOR RECEIPT: Wednesday, August 12, 2015

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

In (d)(2), line 27, "Paragraph (f)" of this Rule" is referenced. Did you mean Paragraph (e)?

In (d)(2), it is stated that a person "may cast a provisional ballot, which shall be counted in accordance with G.S. 163-88.1." G.S. 163-88.1 refers to a "challenged ballot." Did you mean "challenged ballot," rather than a "provisional ballot"?

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

Amber Cronk May
Commission Counsel
Date submitted to agency: July 31, 2015

08 NCAC 17 .0102 is adopted with changes as published in 29:21 NCR 2436 as follows:

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

(a) The judges of election shall make a determination as to reasonable resemblance pursuant to G.S. 163-166.14 only if the person presenting to vote is referred to them by an election official as set out in 08 NCAC 17 .0101(f)(3).

(b) The judges of election shall inspect the photo identification provided by the person presenting to vote and shall make a determination as to all requirements set out in 08 NCAC 17 .0101(c)(3) and (4). The judges of election shall make their determinations based on the totality of the circumstances, construing all evidence in the light most favorable to the person presenting to vote. The judges of election ~~may~~shall consider the ~~following:~~following, if presented:

(1) Any information contained in the photo identification meeting the requirements of 08 NCAC 17 .0101(c)(1) and the registration record (such as, for illustrative purposes only, date of birth, sex, or race);

(2) Any explanation proffered by the person presenting to vote or by other persons; and

(3) Any additional documentation provided by the person presenting to vote or by other persons.

(c) The judges of election shall follow 08 NCAC 17 .0101(e) with regard to addresses appearing on the photo identification.

(d) After considering the evidence, the judges of election shall vote to determine whether the photo identification bears any reasonable resemblance to the person presenting to vote. All judges of election must vote either yea or nay, and the result shall be governed by the following:

(1) Unless the judges of election unanimously find that the photo identification does not bear any reasonable resemblance to the person appearing before them as set out in Subparagraph (e)(2), the person presenting to vote shall be allowed to proceed pursuant to G.S. 163-166.7 and 163-166.13(b).

(2) If the judges of election unanimously find that the photo identification does not meet all the requirements of 08 NCAC 17 .0101(c)(3) and (4), the judges of election shall enter a determination that the photo identification does not bear any reasonable resemblance to the person presenting to vote, and shall record their determinations in the manner set out in Paragraph (f) of this Rule. The judges of election shall inform the person presenting to vote that he or she may cast a provisional ~~ballot~~ballot, which shall be counted, which shall be counted in accordance with ~~G.S. 163-182.1A~~G.S. 163-88.1~~182.1A~~. ~~The judges of election shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office. The judges of election shall provide the person presenting to vote with information on the provisional voting process and the address of the county board of elections office.~~

(e) The judges of election shall record their determination as to reasonable resemblance on a form provided by the State Board of Elections that provides the date and time, the voting site, the names of the judges of election, the name of the person presenting to vote, and the determination of each individual judge of election.

38 *History Note:* *Authority* *G.S. 163-166.7, 163-82.6A, 163-82.15, 163-88.1, 163-166.13, 163-166.7, ~~163-14,~~*
39 *163-166.14*~~163-182.1A~~

40 *Eff. January 1, 2016,*~~163-182.1A~~

1 08 NCAC 17 .0103 is adopted as published in 29:21 NCR 2437 as follows:

2
3 **08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS**

4 An election official assisting curbside voters shall require identification of curbside voters pursuant to G.S.
5 163-166.9(b). If the curbside voter provides one of the forms of photo identification listed in G.S. 163-166.13(e), the
6 provisions of 08 NCAC 17 .0101 shall apply.

7
8 *History Note: Authority G.S. 163-166.9, 163-166.13*

9 *Eff. January 1, 2016.*

08 NCAC 17 .0104 is adopted with changes as published in 29:21 NCR 2437 as follows:

**08 NCAC 17 .0104 OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE
RESEMBLANCE IS DETERMINED**

A person able to vote a regular ballot ~~pursuant to 08 NCAC 17 .0101 or 17 .0102,~~ but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and 163-82.16(d) to reflect the person's true and current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and 163-166.13(b), so long as the person remains eligible to vote based on residence within the county of the voting place.

History Note: Authority G.S. 163-82.15(d), 163-82.16(d), 163-166.7, 163-166.13(b)
Eff. January 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 17 .0105

DEADLINE FOR RECEIPT: Wednesday, August 12, 2015

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In (a)(1), to what information is being referred by "the voter's information"?

In (b), please change "will" to "shall."

In (b), line 19, did you intend to use G.S. 162-82.7A, rather than G.S. 182.1A(b)? Please verify and correct the citation.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: July 31, 2015

08 NCAC 17 .0105 is adopted with changes as published in 29:21 NCR 2437 as follows:

08 NCAC 17 .0105 DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH

(a) Declaration form: Every county board of elections shall have available a Declaration of Religious Objection to Photograph form, as prescribed by the State Board of Elections. This form shall contain:

(1) The voter's information;

(2) The following declaration: "I, [voter's name], have a sincerely-held religious objection to being photographed. My voter registration will be identified as excepted from the photo identification requirements associated with in-person voting beginning in 2016. This declaration will be effective for all future elections at least 25 days from the date of this declaration being received by my local County Board of Elections, or, if I have already cast a provisional ballot for an election, at the time I make this declaration and provide one of the documents listed in G.S. 163-166.12(a)(2) to the County Board of Elections. I understand that if at some time in the future I no longer hold such religious objection to being photographed, I may request a cancellation of this declaration with my local County Board of Elections. I understand that a false or fraudulent declaration is a Class I felony."; and

(3) The voter's dated signature.

(b) A signed declaration ~~form~~ as allowed under G.S. 163-166.13(a)(2) will be effective for all elections going forward that are held at least 25 days from the date of the completed declaration being received by the county board of elections, or until the voter cancels the declaration. A signed declaration form as allowed under G.S. 182.1A(b) will be effective for the election for which the declaration was signed and all elections going forward, or until the voter cancels the declaration.

(c) The voter may cancel the declaration at any time by submitting a written statement, signed and dated, to the county board of elections.

(d) Upon moving to a new county in the State of North Carolina, a voter who has completed a declaration that is still in effect shall continue to be excepted from the photo identification requirements associated with in-person voting.

(e) Upon receiving a completed declaration form that is received at least 25 days prior to the next election, or receiving a new voter registration for a voter that has completed a still-current declaration from another county, the county board of elections shall identify the voter as excepted from the photo identification requirements set out in G.S. 163-166.13(a)(2), so that the voter is identified as such in all voter registration lists and pollbooks associated with in-person voting.

*History Note: Authority G.S. 163-82.7A, 163-166.12(a)(2), 163-166.13(a)(2), 163-182.1A(b)(2), 163-275
Eff. January 1, 2016.*