



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Elections
2. Rule citation & name: 08 NCAC 17 .0101 - Verification of Photo Identification During In-Person Voting
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: June 2, 2023 b. Proposed Temporary Rule published on the OAH website: June 9, 2023 c. Public Hearing date: June 19, 2023 d. Comment Period: June 5 to June 23, 2023 e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 2, 2023 f. Adoption by agency on: June 27, 2023 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: As soon as approved by the Commission h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input checked="" type="checkbox"/> A recent court order. Cite order: Holmes v. Moore, 886 S.E.2d 120 (N.C. 2023) <input checked="" type="checkbox"/> Other: The need for the State Board to adopt a temporary rule upon any abbreviated notice or hearing the agency finds practical
Explain: <p>The State Board unanimously found that adherence to the notice and hearing requirements of permanent rulemaking would be contrary to the public interest and that the immediate adoption of these rules is required to ensure uniform implementation of photo identification requirements in the 2023 municipal elections. Pursuant to G.S. 150B-21.1(a)(11)b. and c., these rules are immediately required to implement G.S. 163-166.16 and 163-230.1(f1) and (g), which had been enjoined by a court until a decision by the state supreme court on April 28, 2023, and to preserve the integrity of upcoming elections and the elections process. Voting begins for the fall municipal elections on August 11, 2023, and the training of poll workers and printing of voting materials begins in mid-July. The rules are necessary to ensure that there is uniform, standard implementation of the photo ID requirements in all polling locations and among all county boards of elections. And it is necessary to repeal the obsolete rules again to avoid any misunderstanding among the public or election officials about what rules they should follow.</p>

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

After the state supreme court's decision reversing the injunction against the photo identification requirements for voting, the agency immediately worked to propose rules for the implementation of these requirements. But the permanent rulemaking procedures would not have put these rules into effect until, at the earliest, mere days before the November municipal elections. That would be too late to train poll workers, prepare materials, and implement the rules in absentee and early voting in those elections; and it would ensure the rules could not be effective at all for the September and October municipal elections. See further explanation in Item 6 above.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator:

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Agency contact, if any:

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0101

DEADLINE FOR RECEIPT: July 12, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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

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

Page 1, Lines 24-25: G.S. 163-166.16(b) directs the precinct officials to “verify that the photograph is that of the person seeking to vote”. Explain the Board’s authority to alter the standard to be applied by the precinct official to the “reasonable resemblance” standard which the statute requires to be applied by the “judges of the election”.

Page 1, Lines 24-25: What does the Board consider a “reasonable resemblance”? Consider, “A reasonable resemblance is a likeness and similarity in appearance such that an ordinary person would conclude that the photograph on the identification is more likely than not the person presenting to vote.”

Page 1, Lines 25-30: G.S. 163-166.16(b) directs the precinct official to “compare the photograph contained on the required identification with the persons presenting to vote.” Explain the Board’s authority to expand the examination by precinct officials beyond the four corners of the photograph. It appears that the General Assembly intended for the precinct official to simply examine the photograph and leave any supplementary evidence to be offered to and considered by the election judges.

Page 1, Line 27: The rule requires the precinct official to “construe” all evidence, including “explanations” “in the light most favorable” to the person presenting to vote. Explain the Board’s authority to require precinct officials to not only receive evidence outside of the photograph but additionally requiring the precinct officials to accept the evidence, including “explanations,” as true?

Page 2, Line 7: Is not “considering” a clearer word than “construing”?

Page 2, Line 9: The rule requires the precinct official to “construe” all evidence, including “explanations” “in the light most favorable” to the person presenting to vote. Explain the Board’s authority to require the precinct officials to accept the evidence, including “explanations,” as true?

William W. Peaslee
Commission Counsel

Date submitted to agency: June 30, 2023

Page 2, Line 11: Define or remove “reasonable explanation”.

Page 2, Lines 32-33, 35: Please see the inquiry to Page 1, Lines 24-25 and Page 1, Lines 25-30.

Page 3, Lines 5-10: Why is Paragraph (c) necessary pursuant to G.S. 150B-21.9 when G.S. 163-166.16(g) ably addresses this topic?

Page 3, Line 7: Is not “considered” a clearer word than “construe”?

Page 3, Line 11-13: Are these lines redundant to the examination of the photograph on the identification pursuant to (a)(2)? The lines appear to set a standard but do not identify that for which the election official is looking.

Page 3, Lines 13-14: It is unclear what the Board is requiring the election official to do when the rule directs the election official “to be guided by the purpose of the photo identification requirement.” It should be noted that “the purpose” of subsection (a) of G.S. 163-166.16 is the only purpose established by the General Assembly. See 163-166.16(g).

Page 3, Line 25: Is “acceptable” defined? Adding a reference to the statute or rule would resolve this. Consider, “shall invite the person to provide any photo identification that meets the requirements of Subparagraph (a)(1) of this Rule.”

Page 4, Lines 2 and 8: Define “reasonable resemblance”.

Page 4, Lines 3 and 9: Define “substantially equivalent”.

Page 4, Line 5: By what rule or statute have the contents or substantive requirements of this form been prescribed? See G.S. 150B-2(8a) d.

Page 4, Lines 5-7: Please see the note regarding Page 1, Line 27 regarding “light most favorable”.

Page 4, Lines 7-11: G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. The other question before the election judges during the G.S. 163-88 hearing would regard the substantial equivalence of the name on the photo identification. The General Assembly did not opine on the standard for this question. Whereas most challenge hearings are determined by majority vote, explain the Board’s authority to make unanimity the standard for substantial equivalence questions before the election judges.

Page 4, Line 23: “Completed the affidavit” sounds like the Board is providing a form. Is that the case? If so, is the person presenting to vote in this instance required to use the form?

William W. Peaslee
Commission Counsel

Date submitted to agency: June 30, 2023

Page 4, Line 24: "To ensure impartiality" is unnecessary. This is a reason for this portion of the rule and places no requirement on anyone.

Page 4, Line 24-25. G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. Explain the Board's authority to make unanimity the standard for matters determined pursuant to G.S. 163-166(f).

Page 4, Line 28: "Notice" of what?

Page 4, Line 28-30: This is unclear and ambiguous. If the Board requires notice, the Board should be able to define how notice is given.

Page 4, Line 36: Paragraph (d) to which the rule refers is unclear and ambiguous. Accordingly, Paragraph (e)(2) is unclear and ambiguous.

Page 5, Lines 4 and 10: The Board's use of the word "determines" is unclear. Is the Board stating that the staff member's determination is dispositive and thus removing the issue from the County Board? Or does the Board intend that the staff member shall provide the staff member's opinion to the person?

Page 5, Line 13: Here the Board is requiring the staff member to provide the staff member's "determination" to the person. Is the staff member's opinion dispositive?

Page 5, Line 8: What does "timely" mean?

Page 5, Line 14: Is the time and manner of "notice" defined anywhere?

Page 5, Lines 15-19: Explain the Board's authority to require the County Boards to apply the same analysis as the initial election official.

Page 5, Line 17: The Rule states that the members of the County Board are subject to the requirements of this Rule in the same manner as a staff member "initially examining" a voter's identification. Is the Board referring to the election official from Page 1, Line 7 or the staff member from Page 4, Line 35? Does the Board mean that the County Board members shall determine whether the identification satisfies the requirements of G.S. 163-166.16 and Paragraph (a) of this Rule?

Page 5, Lines 17-19: Please see the note regarding Page 1, Line 27 regarding "light most favorable".

Page 5, Lines 19-22: G.S. 163-166.16(b) requires a unanimous vote of the election judges to find that a photo on a photo identification does not bear a reasonable resemblance. This is inapplicable to the County Board. Explain the Board's authority to impose the unanimity standard upon the County Boards of Election.

William W. Peaslee
Commission Counsel

Date submitted to agency: June 30, 2023

1 08 NCAC 17 .0101 is amended under temporary procedures **with changes** as follows:

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

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

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

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

24 ~~(2)(3) — That the~~The photograph appearing on the photo identification ~~depicts~~bears a reasonable
25 resemblance to the person presenting to vote. The election official shall make this determination
26 based on the totality of the circumstances, construing all evidence, along with any explanation or
27 documentation voluntarily proffered by the person presenting to vote, in the light most favorable to
28 that ~~person~~person, and bearing in mind that there are many reasons that a person's appearance could
29 change (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects
30 of medical conditions, aging, or medical treatment). ~~Perceived differences of the following features~~
31 ~~shall not be grounds for the election official to find that the photograph appearing on the photo~~
32 ~~identification fails to depict the person presenting to vote:~~

33 (A) ~~— weight;~~

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

36 (C) ~~— facial hair;~~

37 (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.; and~~

(3)(4) ~~That the~~ The name appearing on the photo identification is the same as or substantially equivalent to the name contained in the voter's voter 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 election official shall consider the name appearing on the photo identification ~~shall to 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 or inclusion of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);
- (B) Use of a 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. Sanchez versus Aaron B. 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 or hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. ~~Jacobson~~; Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative purposes only, Andrea D'Antonio versus Andrea Dantonio);
- (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia); or
- (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

(b)(4) The election official examining photo identification provided by a person presenting to vote shall not require the voter to provide any additional evidence outside the four corners of the photo identification. The election official shall not require that any person remove apparel for the purposes of ~~rendering a determination~~ determining reasonable resemblance under ~~Paragraph (c) Subparagraph (a)(2) of this Rule.~~ If the face of the person presenting to vote is covered to such an extent such that the election official cannot ~~render a determination under Subparagraph (c)(3),~~ determine reasonable resemblance, then the election official shall offer the voter the options to vote by provisional ballot in accordance with Paragraph (c) of this Rule. ~~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~~

1 presenting to vote ~~that he or she may cast a provisional ballot, which shall be counted in accordance with~~ G.S. 163-
2 182.1A, or, if applicable, may complete a written request for an absentee ballot as set out in G.S. 163-166.13(e)(3),
3 and shall inform the voting site's judges of election that the election official cannot affirmatively determine that the
4 person bears any reasonable resemblance to the photo identification. ~~G.S. 163-166.16.~~

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

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

17 (1) If the election official determines that the photo identification meets all the requirements of
18 Paragraph ~~(a)(e)~~, of this Rule, then the election official shall allow the person ~~presenting to vote~~
19 shall be allowed to proceed vote pursuant to G.S. 163-166.7 and 163-166.13(b); ~~or G.S. 163-166.7.~~

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

32 (3) If the election official determines that the photo or name on the photo identification do not satisfy
33 Subparagraphs (a)(2) and (a)(3) of this Rule, ~~does not meet all the requirements of Subparagraphs~~
34 ~~(e)(3) and (e)(4)~~, the election official shall enter a challenge pursuant to G.S. 163-87 and
35 immediately notify the voting site's judges of election of the challenge. ~~that the person presenting~~
36 ~~to vote does not bear any reasonable resemblance to the photo identification.~~ The judges of election
37 shall then conduct a challenge hearing, in accordance with the procedures in G.S. 163-88. At the

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

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

22 (1) To vote by provisional ballot with an affidavit claiming an exception to the identification
23 requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit and is
24 otherwise eligible to vote, to help ensure impartiality, the county board may reject the provisional
25 ballot only if the county board unanimously finds that the affidavit is false. The county board shall
26 substantiate any finding of falsity with grounds recorded in a written decision. Before making a final
27 finding of falsity, the county board shall provide the voter notice and an opportunity to be heard on
28 any grounds that the county board considers regarding the falsity of the affidavit. Notice shall be
29 provided by means designed to ensure it is received by the voter in advance of the board's final
30 decision on the affidavit.

31 (2) To vote by provisional ballot and then bring to the office of the county board identification
32 acceptable under G.S. 163-166.16 and this Rule before the end of business on the business day
33 before county canvass. The county board shall count the provisional ballot of a voter who presents
34 such identification to the office of the county board in a timely manner. If the voter brings photo
35 identification to the office of a county board in a timely manner, a county board staff member shall
36 examine the photo identification in accordance with Paragraph (d) of this Rule. After examining the
37 photo identification, the staff member shall proceed as follows:

1 (A) If the staff member determines that the photo identification meets all the requirements of
2 Paragraph (a) of this Rule, a report of this determination shall be included with the voter's
3 provisional ballot for county board action.

4 (B) If the staff member determines that the photo identification is not an acceptable type of
5 photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall
6 inform the voter of the reasons for that determination and invite the voter to provide an
7 acceptable photo identification in accordance with Subparagraph (d)(2) of this Rule. If the
8 voter does not timely provide acceptable identification, then the county board shall not
9 count the provisional ballot.

10 (C) If the staff member determines that the photo or name on the photo identification do not
11 satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then documentation of this
12 determination shall be included with the provisional envelope containing the voter's ballot.
13 The staff member shall immediately inform the voter of the determination and provide
14 notice to the voter of the county board meeting at which the voter's provisional ballot will
15 be reviewed and considered by the county board. In reviewing a photo identification to
16 make a final decision on a provisional ballot subject to this Subparagraph, the county board
17 members are subject to the requirements of this Rule in the same manner as a staff member
18 initially examining a voter's photo identification and shall vote on whether the photo
19 identification presented satisfies Subparagraphs (a)(2) and (a)(3) of this Rule. The county
20 board shall count the provisional ballot unless the county board unanimously decides the
21 photo identification presented does not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule,
22 in which case the county board shall record in writing the grounds for its decision.

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



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

State Board of Elections

2. Rule citation & name:

08 NCAC 17 .0102, .0103, .0105, .0106

3. Action:

Adoption

Amendment

Repeal

4. Was this an Emergency Rule: Yes

No

Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: June 2, 2023

b. Proposed Temporary Rule published on the OAH website: June 9, 2023

c. Public Hearing date: June 19, 2023

d. Comment Period: June 5 to June 23, 2023

e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 2, 2023

f. Adoption by agency on: June 27, 2023

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: As soon as approved by the Commission

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
 The effective date of a recent act of the General Assembly or of the U.S. Congress.

Cite:

Effective date:

- A recent change in federal or state budgetary policy.

Effective date of change:

- A recent federal regulation.

Cite:

Effective date:

- A recent court order.

Cite order: Holmes v. Moore, 886 S.E.2d 120 (N.C. 2023)

- Other: The need for the State Board to adopt a temporary rule upon any abbreviated notice or hearing the agency finds practical

Explain:

The State Board unanimously found that adherence to the notice and hearing requirements of permanent rulemaking would be contrary to the public interest and that the immediate adoption of these rules is required to ensure uniform implementation of photo identification requirements in the 2023 municipal elections. Pursuant to G.S. 150B-21.1(a)(11)b. and c., these rules are immediately required to implement G.S. 163-166.16 and 163-230.1(f1) and (g), which had been enjoined by a court until a decision by the state supreme court on April 28, 2023, and to preserve the integrity of upcoming elections and the elections process. Voting begins for the fall municipal elections on August 11, 2023, and the training of poll workers and printing of voting materials begins in mid-July. The rules are necessary to ensure that there is uniform, standard implementation of the photo ID requirements in all polling locations and among all county boards of elections. And it is necessary to repeal the obsolete rules again to avoid any misunderstanding among the public or election officials about what rules they should follow.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

After the state supreme court's decision reversing the injunction against the photo identification requirements for voting, the agency immediately worked to propose rules for the implementation of these requirements. But the permanent rulemaking procedures would not have put these rules into effect until, at the earliest, mere days before the November municipal elections. That would be too late to train poll workers, prepare materials, and implement the rules in absentee and early voting in those elections; and it would ensure the rules could not be effective at all for the September and October municipal elections. See further explanation in Item 6 above.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

- Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:
- No

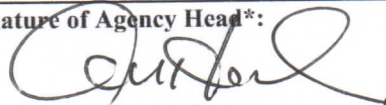
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Agency contact, if any:

Phone:
E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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.

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.*

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.*

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;

8

Temporary Repeal Eff. August 23, 2019;

9

Temporary Repeal Expired Eff. June 12, 2020;

10

Repealed Eff.

11



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

State Board of Elections

2. Rule citation & name:

08 NCAC 17 .0109 - Photo Identification for Absentee-by-mail Ballots

3. Action: Adoption Amendment Repeal

4. Was this an Emergency Rule: Yes No **Effective date:**

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: June 2, 2023
- b. Proposed Temporary Rule published on the OAH website: June 9, 2023
- c. Public Hearing date: June 19, 2023
- d. Comment Period: June 5 to June 23, 2023
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): June 2, 2023
- f. Adoption by agency on: June 27, 2023
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: As soon as approved by the Commission
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: N/A

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order: Holmes v. Moore, 886 S.E.2d 120 (N.C. 2023)
- Other: The need for the State Board to adopt a temporary rule upon any abbreviated notice or hearing the agency finds practical

Explain:

The State Board unanimously found that adherence to the notice and hearing requirements of permanent rulemaking would be contrary to the public interest and that the immediate adoption of these rules is required to ensure uniform implementation of photo identification requirements in the 2023 municipal elections. Pursuant to G.S. 150B-21.1(a)(11)b. and c., these rules are immediately required to implement G.S. 163-166.16 and 163-230.1(f1) and (g), which had been enjoined by a court until a decision by the state supreme court on April 28, 2023, and to preserve the integrity of upcoming elections and the elections process. Voting begins for the fall municipal elections on August 11, 2023, and the training of poll workers and printing of voting materials begins in mid-July. The rules are necessary to ensure that there is uniform, standard implementation of the photo ID requirements in all polling locations and among all county boards of elections. And it is necessary to repeal the obsolete rules again to avoid any misunderstanding among the public or election officials about what rules they should follow.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

After the state supreme court's decision reversing the injunction against the photo identification requirements for voting, the agency immediately worked to propose rules for the implementation of these requirements. But the permanent rulemaking procedures would not have put these rules into effect until, at the earliest, mere days before the November municipal elections. That would be too late to train poll workers, prepare materials, and implement the rules in absentee and early voting in those elections; and it would ensure the rules could not be effective at all for the September and October municipal elections. See further explanation in Item 6 above.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator:

Paul Cox
Phone:
919-814-0717
E-Mail:
paul.cox@ncsbe.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0109

DEADLINE FOR RECEIPT: July 12, 2023

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:

Generally, to the rule: Consider adding a definition of "Acceptable photo identification" and then use that term to shorten the rule.

Page 1, Line 5: What "identification"? Consider adding a reference to the rule or statute that answers this question.

Page 1, Lines 5-6: 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, Lines 5-6: Is the Board requiring the identification or the copy of the identification to be readable and with a proper depiction?

Page 1, Line 7: The General Assembly uses the word "photocopy" while the rule states "photographic copy". Is there a difference? If so, what is the difference? If not, the term should be consistent.

Page 1, Line 7: G.S. 163-230.1(f1) requires a "photocopy". What is the Board's authority to require a "duplicate of an original"? Or is the Board attempting to define "photocopy"?

Page 1, Line 10: Consider: "...is acceptable if it is listed in G.S. 166-166.16(a), is readable, and the name..."

Page 1, Line 22: What does the Board mean by "complete"?

Page 1, Line 22: By "send" does the Board mean "mail"?

Page 1, Lines 22-28: What happens if the County Board staff fails to do this? Does the ballot then count? Would this create a cause to overturn an election if the margins are close enough?

William W. Peaslee
Commission Counsel

Date submitted to agency: June 30, 2023

Page 1, Lines 33-34: "To help ensure impartiality" is a reason for the rule but does not impose any substantive requirement. It is unnecessary.

Page 1, Line 35: Explain the Board's authority to require a unanimous vote of the County Boards of Elections.

Page 2, Line 2: "To help ensure impartiality" is a reason for the rule but does not impose any substantive requirement. It is unnecessary.

Page 2, Line 3: Explain the Board's authority to require a unanimous vote of the County Boards of Elections.

Page 2, Line 6: Define "notice" or cite to a statute or rule defining notice. When, what, where, how?

Page 2, Lines 13-15: Explain the Board's authority to exempt covered voters.

Page 2, Lines 17-18: How can the county board make a photocopy of that which it does not have? I believe the Board intends for staff to request photo identification which meets the of G.S. 163-166.16(a) and (b). Must the copy made by the county board staff meet the requirements of the rule?

Page 2, Lines 20-22: Must the County Board notify the voter and then send the identification? How must the voter be notified? To what address?

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: June 30, 2023

1 08 NCAC 17.0109 is adopted under temporary procedures with changes as follows:

2
3 **08 NCAC 17.0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

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

- 5 (1) “Readable” means the name on the identification can be read and the photograph depicts a person,
6 as opposed to displaying, for example, a mere shadow or outline of a person.
7 (2) “Copy” means a duplicate of an original document, including a photographic copy of the original
8 document.

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

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

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

- 32 (1) If the voter has submitted a copy of their photo identification, the county board shall make its
33 determination whether the identification is acceptable under Paragraph (b) of this Rule. To help
34 ensure impartiality, a final determination that the copy of photo identification is not acceptable under
35 Paragraph (b) of this Rule shall require a unanimous vote by the county board. If the county board
36 makes a final determination that a voter’s copy of photo identification is not acceptable, staff shall
37 notify the voter as provided in Paragraph (c) of this Rule.

1 (2) If the voter has completed an affidavit claiming an exception to the identification requirement
2 pursuant to G.S. 163-166.16(d), and is otherwise eligible to vote, to help ensure impartiality, the
3 county board may reject that person's ballot only if the county board unanimously finds that the
4 affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded
5 in a written decision. Before making a finding of falsity, the county board shall provide the voter
6 notice and an opportunity to be heard on any grounds that the county board considers regarding the
7 falsity of the affidavit.

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

13 (e) Exception for Military and Overseas Voters. A covered voter who is casting a ballot pursuant to G.S. 163, Article
14 21A, Part 1 is not required to submit a copy of acceptable photo identification under Paragraph (b) of this Rule or
15 claim an exception under G.S. 163-166.16(d).

16 (f) Return of Original Form of Identification. If a voter sends their original form of photo identification in the
17 container-return envelope, or hand-delivers an absentee ballot to the county board of elections that is not accompanied
18 by a photocopy of the voter's photo identification, the county board shall make a photocopy of the identification,
19 which shall serve as an acceptable photo identification accompanying the voter's absentee ~~ballot, ballot, and mail the~~
20 ~~original form of identification back to the voter.~~ The county board shall notify the voter that the original photo
21 identification will be returned to the voter and shall use a method of return that documents receipt of the photo
22 identification.

23
24 *History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-229; 163-230.1;*
25 *Temporary Adoption Eff. August 23, 2019; January 1, 2020;*
26 *Temporary Rule Expired Eff. October 11, 2020.*