



*State of North Carolina*  
*Department of the Secretary of State*

ELAINE F. MARSHALL  
SECRETARY OF STATE

March 7, 2024

By E-Mail:

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Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

Re: Request for change to 2024-2027 Existing Rules Review Schedule  
For 18 NCAC 07 (Notary Rules)

Dear Chair Doran, Vice Chairs Jackson and Overton:

I request removal of 18 NCAC 07, Notary Public Division, from the 2024-2027 Existing Rules Review (ERR) schedule. Removal is authorized by and consistent with Gen. Stat. § 150B-21.3A(d)(1) and 26 NCAC 05 .0209. The Department of the Secretary of State has been and will continue to review existing Notary Public rules in connection with rule writing mandated by the Remote Electronic Notarization Act (RENA) (S.L. 2022-54, as subsequently amended),<sup>1</sup> and separate ERR review will be redundant, wasteful and confusing. The Department's ERR classifications of its rules in 18 NCAC 07, Notary Public Division, are presently scheduled for review by the Commission at its September 2024 meeting.

ERR requires covered agencies to review their existing rules at least every 10 years. Gen. Stat. § 150B-21.3A(c). The purposes of the ERR are two-fold: (1) ensuring that rules are reviewed and dealt with appropriately after review, and (2) ensuring that the public has the ability to periodically exercise its Due Process rights to notice and the opportunity to comment with regard to existing rules.

RENA established remote electronic notarization and required this Department to create a system for performing remote electronic notarizations. Because existing rules addressing traditional and electronic notarial acts must be harmonized with those authorized under RENA, the Department since July 2022 has conducted a comprehensive review of all existing 18 NCAC 07 rules,<sup>2</sup> followed by amending or repealing

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<sup>1</sup> S.L. 2022-54 was amended by S.L. 2023-57, 2023-124, and 2023-134.

<sup>2</sup> The Department has thoroughly and comprehensively reviewed its existing notary rules in 18 NCAC 07, in full compliance with the purposes of the ERR. We have reviewed each existing rule and determined whether it:

- Needs revision,
- Needs to be clarified by adoption of additional rules, or
- Needs to be repealed.

existing rules, as well as adopting new rules. The first two phases of RENA rule writing have culminated in RRC approval of nearly 300 permanent rules at its December 2023 and January and February 2024 meetings. The third phase of rule writing remains underway and is expected to come before the December 2024 session of RRC. It will include the only three Chapter 7 rules yet to be addressed, found at Subchapter J. At this point, the Department has invested more than 7500 hours in this rulemaking process, with no funding for the rulemaking provided by the General Assembly.<sup>3</sup>

In the first two phases of our three-phase rulemaking, we have done the equivalent of readoption of the 18 NCAC 07 rules. The Commission and its staff, along with the public, have had ample chance to review the rules and submit public comments. If the Commission keeps 18 NCAC 07 on the ERR schedule for review in September 2024, mere months after the Commission approved the amended, repealed, and adopted rules, its review will be an exercise in redundancy for all involved. Moreover, the ERR reports, which are based on the rules as they appeared in the NCAC as of January 1, 2024, do not reflect the recent RRC-approved rule numbers, captions, and text. Keeping this chapter of the Department's rules on the Existing Rules Review (ERR) schedule is unnecessary and will unduly burden the Commission, its staff, our own staff, and confuse the public.

In conclusion, I request that you remove the Department's 18 NCAC 07 rules from the 2024 – 2027 Existing Rules Review Schedule. The Department General Counsel and Rulemaking Coordinator, Ann Wall, will attend the Commission meeting on Wednesday, March 27, 2024, and she will be available to answer any questions you may have in relation to this request.

Regards,



Elaine F. Marshall

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<sup>3</sup> Last year before the RRC had received the amendments, adoptions, and repeals that have since been approved, I submitted a request for removal of the 18 NCAC 07 rules from the ERR schedule. The Commission denied that request at its June 2023 meeting on the grounds that the request was premature as no 18 NCAC 07 rules had been presented to, or reviewed by, the Commission. Since then, the Commission has reviewed and approved the Department's Phase 1 and 2 rules. At the December 14, 2023 meeting, the Commission approved 18 NCAC 07K rule adoptions. At the January 31, 2024 meeting, the Commission approved amendments, adoptions, and repeals of 18 NCAC 07B, 07F, and 07I rules. At its February 28, 2024 meeting, the Commission approved amendments, adoptions, and repeals of rules in 18 NCAC 07B, 07C, 07D, and 07E.